

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410732

JANICE NICHOLS, EMPLOYEE	CLAIMANT
OMAHA SCHOOL DISTRICT, EMPLOYER	RESPONDENT NO. 1
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED APRIL 22, 2009

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents No. 1 represented by the HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID SIMMONS, Attorney at Law, Little Rock, Arkansas. Mr. Simmons waived participation in the hearing due to the issue being litigated.

Respondent No. 3 represented by the HONORABLE CHRISTY KING, Attorney at Law, Little Rock, Arkansas. Ms. King did not participate in the hearing.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed September 10, 2008. In

said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of th within claim.
2. The employee-employer-carrier relationship existed at all relevant times.
3. The prior Opinion of June 8, 2007 of the Full Commission is the law of the case.
4. This claim for additional benefits has been controverted in its entirety.
5. Additional medical treatment is reserved.
6. The claimant did not sustain her burden of proving by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with her compensable left shoulder injury of October 1, 2004.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the September 10, 2008 decision of the Administrative Law Judge, including

all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant failed to prove entitlement to additional reasonably necessary medical treatment for her compensable left shoulder injury. Based on a de novo review of the record, I find that the claimant has met her burden of proof by the preponderance of the evidence for additional reasonably necessary medical treatment, and therefore, I must respectfully dissent.

Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent

of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. Id. Furthermore, this Commission has found that treatment intended to help a claimant cope with chronic pain attributable to a compensable injury may be reasonable and necessary. Maynard v. Belden Wire & Cable Company, Full Workers' Compensation Commission Opinion filed April 28, 1998 (E502002); Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission opinion filed June 20, 1991 (Claim No. 704562). Here, the claimant underwent left shoulder surgery in December 2004 and remained in physical therapy until August 2005. Dr. Robert O'Brien opined that the claimant achieved MMI on September 28, 2005. Prior to the compensable injury, the claimant has never had any complaints of a left shoulder injury and she had reported no recent injury to

her left shoulder. The claimant testified that after the surgery, her shoulder was "much better", but that she could use it to do "some things but not everything." The claimant testified that for the year after the surgery, she would have to put her arm in a sling about once per month because of pain and muscle spasms in her shoulder and that her arm would feel as if it "weighed 50 pounds." The claimant testified that she sought the treatment of Dr. Robert O'Brien about 6 months after her surgery because she was continuing to have "problems", and that the claimant was hoping that the problems would work themselves out. The claimant testified that she attempted to return to Dr. O'Brien six months after her surgery, but that Dr. O'Brien had retired. The claimant testified that when she tried to contact Dr. O'Brien's office for another doctor, they stated that they "didn't have anyone that did shoulders." The claimant testified that since the surgery she felt as if a nerve was being pinched and that the shoulder was "popping, grinding... it kind of hangs up on me, locks up" or that there was a bone spur present. The claimant testified that she uses a heating pad, an RS Medical unit, and a TENS unit on her shoulder. The claimant testified that she was

seeking further medical treatment to "figure out some way to get rid of the pain."

In conclusion, I find that the claimant has met her burden of proof by the preponderance of the evidence for entitlement to additional reasonably necessary medical treatment for her compensable left shoulder injury, and therefore, I must respectfully dissent.

PHILIP A. HOOD, Commissioner