

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F905402

DEBORAH WARNOCK, EMPLOYEE	CLAIMANT
ST. EDWARD MERCY MEDICAL CENTER, EMPLOYER	RESPONDENT
SISTERS OF MERCY HEALTH SYSTEM, INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 15, 2010

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE RANDY MURPHY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed August 18, 2010. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the prehearing conference conducted on February 10, 2010, and contained in a pre-hearing order filed February 11, 2010, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that the additional medical treatment Dr. Bebout has recommended for the claimant's right shoulder is reasonable and necessary medical treatment.
3. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from May 10, 2009, until a date yet to be determined.
4. The claimant has proven by a preponderance of the evidence that her attorney is entitled to an attorney's fee in this matter commiserate (sic) with the Arkansas Workers' Compensation Act.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the August 18, 2010, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence she was entitled to additional medical treatment in the form of right shoulder surgery and awarding temporary total disability benefits from May 10, 2009 to a date yet to be determined. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the

respondent is only responsible for medical services which are causally related to the compensable injury.

In my opinion, a review of the evidence demonstrates the claimant is not entitled to additional medical treatment in the form of surgery. It appears the claimant suffers from significant degenerative problems of the acromioclavicular joint. An MRI showed significant acromioclavicular arthrosis with hypertrophic change and edema. In my opinion, that is the source of the claimant's problems and not because of any trauma related to her fall on May 10, 2009. Accordingly, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment in the form of shoulder surgery as recommended by Dr. Bebout.

The claimant was also awarded temporary total disability benefits for the period May 10, 2009 to a date yet to be determined. In my opinion, the claimant has failed to prove by a preponderance of the evidence that she is entitled to these benefits as well. The evidence demonstrates that when the claimant was terminated by the respondent employer, she was terminated for excessive absenteeism. The claimant filed for and has been receiving unemployment benefits since that date. The evidence demonstrates that the claimant

has not been able to return to work because of her inability to obtain employment, not because of her compensable injury. Further, Dr. Bebout released her from treatment on September 17, 2009. As such, the claimant is not entitled to any temporary total disability benefits. If the claimant were entitled to temporary total disability benefits, a finding I do not make, the respondents should receive a credit for those unemployment benefits the claimant has received towards the temporary total disability benefits. Accordingly, for all the reasons set forth herein, I respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, Commissioner