

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005596

STACY BELL, Employee	CLAIMANT
NORTHPORT HEALTH SERVICES ARK LLC, Employer	RESPONDENT
PMA MANAGEMENT CORPORATION, Carrier/TPA	RESPONDENT

OPINION FILED FEBRUARY 10, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON M. HATFIELD, Attorney, Springdale, Arkansas.

Respondents represented by LAURA J. PEARN, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On January 20, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 29, 2020 and an amended pre-hearing order was subsequently filed on December 31, 2020. A copy of the amended pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed between the parties on January 5, 2020.
3. The claimant sustained a compensable right shoulder sprain/strain on January

5, 2020.

At the time of the hearing the parties also agreed to stipulate that claimant suffered a compensable injury to her right elbow on January 5, 2020. In addition, the parties also agreed to stipulate that claimant earned sufficient wages to entitle her to the maximum compensation rates in effect for 2020.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant is entitled to additional medical treatment as recommended by Dr. Garlow.
2. Temporary total disability benefits from December 1, 2020 through a date yet to be determined.
3. Attorney fee.

The claimant contends that as a result of her compensable injury, Dr. Garlow has recommended shoulder surgery and the respondents have controverted this treatment. Claimant's employment was terminated by respondent on approximately December 1, 2020. Claimant was and is on restricted duty, and therefore claimant is entitled to temporary total disability from December 1, 2020 to a date yet to be determined. Claimant contends she is entitled to the maximum compensation rates, and that her attorney is entitled to an attorney's fee.

The respondents controverted claimant's entitlement to the additional medical treatment as recommended by Dr. Garlow.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact

and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties as set forth in the amended pre-hearing order filed December 31, 2020 are hereby accepted as fact.

2. The parties' stipulation that claimant suffered a compensable injury to her right elbow on January 5, 2020 is also hereby accepted as fact.

3. The parties' stipulation that claimant earned sufficient wages to entitle her to the maximum compensation rate is also hereby accepted as fact.

4. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment, including surgery, as recommended by Dr. Garlow.

5. Claimant is entitled to temporary total disability benefits beginning December 2, 2020 and continuing through a date yet to be determined.

6. Respondents have controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant is a 52-year-old woman with a bachelor's degree in psychology who was hired by the respondent as a care transition coordinator. The respondent had three nursing homes in the River Valley. Claimant would receive referrals on patients in the hospital in the River Valley and surrounding area and would talk to the patient as well as meet with physicians, case managers, and social workers and other individuals to

determine whether a particular patient could become a resident in one of its nursing homes.

January 5, 2020 was claimant's first day to work for the respondent and she was sent for training in Tuscaloosa, Alabama. Claimant testified that she flew into Birmingham and went to the luggage carousel to retrieve her luggage which weighed approximately 42 pounds. Her bag was caught on the wheel of another bag and as she yanked her bag and pulled it with force "everything internally rotated. My wrist, my elbow, my shoulder. I heard a pop and I knew that something was amiss. The pain was immediate."

Claimant testified that she had pain throughout the training in Alabama. Claimant reported the injury and was taken to a treating physician in Alabama for treatment. The parties were unable to obtain those initial medical records.

When claimant returned to Arkansas, she was sent by respondent for medical treatment with Dr. Ian Cheyne. Claimant's initial visit with Dr. Cheyne occurred on January 20, 2020 at which time he diagnosed claimant's condition as a strain of the shoulder and upper arm area, as well as a sprain of the right elbow. Dr. Cheyne provided claimant with medication and work restrictions.

Subsequent medical records from Dr. Cheyne indicate that he continued to treat claimant with medication, work restrictions, injections, and physical therapy. Dr. Cheyne also ordered MRI scans of claimant's right elbow and right shoulder. These MRI scans were performed on February 19, 2020. The MRI scan of claimant's right elbow revealed:

Lateral epicondylitis/tendinitis at the common extensor tendon insertion site on the lateral epicondyle.

Furthermore, the claimant's right shoulder MRI scan revealed:

Degenerative hypertrophic arthropathy of the AC joint. Inferior spurring from the joint has mild encroachment upon the subacromial space, potentially predisposing to shoulder impingement. Correlate clinically. No rotator cuff tear.

Following these MRI scans, claimant returned to Dr. Cheyne on February 24, 2020, at which time he noted that the MRI scan of claimant's right shoulder revealed degenerative changes and the MRI scan of her right elbow revealed lateral epicondylitis. Dr. Cheyne injected claimant's elbow at that time and he subsequently provided additional injections. When Dr. Cheyne's medical treatment did not improve claimant's condition, he referred her for an orthopedic evaluation in his report of April 29, 2020.

Claimant was evaluated by Dr. Garlow, orthopedic surgeon, on May 6, 2020. Dr. Garlow indicated that claimant was suffering from right elbow lateral epicondylitis and recommended treatment in the form of medication, the use of an elbow strap, and a repeat injection.

In a report dated June 17, 2020, Dr. Garlow indicated that he had given claimant a third injection in her elbow and he also gave claimant a repeat injection in her right shoulder. Dr. Garlow also gave claimant work restrictions of a 10-pound push/pull and lift limit.

In his report of July 29, 2020, Dr. Garlow noted that the injection of claimant's right shoulder had provided her no relief. As a result, he stated:

Chronic right shoulder pain, underlying bursitis and impingement, failed conservative measures.

At this time, given the chronicity and severity of her

symptoms, we are going to move forward with right shoulder SAD, DCR. This has been going on since January. This all happened when she was pulling some luggage off of the carousel.

Although surgery was scheduled for August 6, 2020, that procedure was canceled when claimant developed COVID. In addition, respondent denied liability for payment of the surgical procedure recommended by Dr. Garlow. Dr. Garlow's last medical report is dated November 18, 2020, and it indicates that he had continued to give claimant injections in an effort to provide claimant some relief while she was pursuing her workers' compensation claim. In addition to her shoulder, Dr. Garlow also gave claimant an injection in her right elbow on November 18, 2020.

Throughout the time claimant was receiving medical treatment from Dr. Cheyne and Dr. Garlow, she continued to work for the respondent. Although claimant had originally been assigned to recruit patients for three nursing homes in the River Valley, she was subsequently promoted and moved to Springdale where she was responsible for one nursing home as the admissions coordinator. Due to COVID restrictions, claimant testified that she was no longer allowed to go to the hospital to engage in the recruiting process, but instead had to perform many of her job activities by telephone or by Zoom. Claimant also testified that prior to COVID the facility in Springdale had 108 of 111 beds filled. As a result of COVID, the Springdale facility lost approximately 23 patients and due to various restrictions it was difficult to fill those beds. As a result, claimant's employment was terminated by respondent on December 1, 2020.

Claimant has filed this claim contending that she is entitled to additional medical treatment as recommended by Dr. Garlow. She also requests payment of temporary total

disability benefits and a controverted attorney fee.

ADJUDICATION

Initially, claimant contends that she is entitled to additional medical treatment as recommended by Dr. Garlow. Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof. In response to Dr. Garlow's recommendation for additional medical treatment in the form of surgery, respondent had claimant's medical records reviewed by Dr. Edwin Roeder, an orthopedic surgeon in West Plains, Missouri. Dr. Roeder responded to various questions in a letter report dated August 8, 2020. Basically, Dr. Roeder was of the opinion that claimant did have some complaints involving her right shoulder following the incident on January 5, 2020. However, it was his opinion based upon the MRI findings that claimant's injury consisted only of a sprain/strain of the right shoulder and that the treatment proposed by Dr. Garlow is not related to that injury, but rather to a pre-existing and degenerative condition in claimant's right shoulder. Dr. Roeder went on to indicate that in his opinion claimant had reached maximum medical improvement with regard to her right shoulder injury, that surgery was not related, and that claimant had no restrictions resulting from her January 5, 2020 injury.

While there is no question that claimant did suffer from pre-existing conditions in her right shoulder, it was Dr. Garlow's opinion that those conditions were aggravated as

a result of the injury on January 5, 2020. In his report of November 18, 2020, Dr. Garlow stated:

A MRI of her shoulder does not show any cuff tears although it does show acromioclavicular joint changes with impingement. This seems to have all been aggravated with the luggage event, essentially sending her into an inflammatory spiral, and we have been unable to get her out. (Emphasis added.)

Thus, while claimant did have a pre-existing condition, according to Dr. Garlow that pre-existing condition was aggravated by the incident on January 5, 2020. Dr. Garlow's opinion is supported by a lack of any evidence indicating that claimant had any prior problems with her right shoulder before the January 5, 2020 injury. Claimant specifically testified that prior to that date, she had no issues with her right shoulder or elbow and she had not sought any medical treatment for any issues relating to either of those areas.

I find that the opinion of Dr. Garlow is entitled to greater weight than that of Dr. Roeder. Dr. Garlow has evaluated the claimant on numerous occasions while Dr. Roeder has never physically examined the claimant. Accordingly, I find that the opinion of Dr. Garlow is credible, entitled to great weight, and more persuasive than the opinion of Dr. Roeder.

In reaching this decision, I also note that claimant testified that on a night in March 2020 she was getting out of bed when she slipped on a rug next to her bed and fell, striking her chin on the nightstand and losing consciousness. Claimant testified that she did not believe she injured her right elbow or shoulder as a result of that fall. The next day claimant underwent physical therapy and reported this incident to the physical therapist. The physical therapist note does indicate that claimant was experiencing

increased pain in her right shoulder on that date. However, there is no indication that claimant had any increased pain in her right shoulder subsequent to March 18, 2020. Furthermore, as previously noted, it was Dr. Garlow's opinion that claimant's injury of January 5, 2020 aggravated her pre-existing conditions and resulted in the need for additional medical treatment, including surgery.

In summary, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment, including surgery, as recommended by Dr. Garlow.

I also find that claimant is entitled to temporary total disability benefits beginning December 2, 2020 and continuing through a date yet to be determined. Here, the claimant has suffered both a scheduled and an unscheduled injury. The injury to claimant's shoulder is an unscheduled injury, while the injury to her right elbow is a scheduled injury. In order to be entitled to temporary total disability benefits for an unscheduled injury, the claimant must prove by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981). While claimant has remained within her healing period for her right shoulder injury, she has not suffered a total incapacity to earn wages because she has been released to return to work by Dr. Garlow with restrictions.

However, claimant also continues under Dr. Garlow's care for her right elbow injury. A claimant who suffers a scheduled injury is entitled to temporary total disability benefits until they reach the end of their healing period or until they return to work, whichever occurs first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41

S.W. 3d 822 (2001).

Here, claimant has not reached the end of her healing period for her right elbow injury. In fact, Dr. Garlow at the time of his last visit with claimant on November 18, 2020 gave claimant another injection in her right elbow. Furthermore, while claimant had initially returned to work for respondent and continued to work within restrictions, respondent terminated claimant's employment on December 1, 2020. Claimant has not returned to work for respondent or any other employer since that time. Accordingly, I find that claimant is entitled to temporary total disability benefits beginning December 2, 2020 (the day after she was terminated by respondent) and continuing through a date yet to be determined.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment, including surgery, as recommended by Dr. Garlow. She has also proven that she is entitled to temporary total disability benefits beginning December 2, 2020 and continuing through a date yet to be determined. Respondent has controverted claimant's entitlement to all indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

Respondent is responsible for paying the court reporter her charges for preparation

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of the hearing transcript in the amount of \$410.50.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE