

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H207830

ANNA NUNEZ, Employee	CLAIMANT
VAN BUREN SCHOOL DISTRICT, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, Carrier	RESPONDENT

OPINION FILED JANUARY 17, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 18, 2023, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 16, 2023 and a pre-hearing order was filed on that same date. A copy of the 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 claimant sustained compensable injuries to her bilateral ankles on November 1, 2022.

3. The claimant was earning an average weekly wage of \$575.34 which would entitle her to compensation at the weekly rates of \$384.00 for total disability benefits and

\$288.00 for permanent partial disability benefits.

4. Respondents accepted and paid a 7% rating to the right lower extremity.

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

1. Temporary total disability or temporary partial disability benefits.
2. Medical from Dr. Bird.
3. Permanent partial disability benefits.
4. Attorney's fee.

Subsequent to the hearing the parties agreed that the only issue to be decided at this time is claimant's entitlement to payment for Dr. Bird's treatment. All other issues are reserved.

The claimant contends that the medical treatment she received from Dr. Bird was reasonably necessary emergency medical treatment for her compensable ankle injuries and should be the liability of the respondents.

The respondents contend that the treatment with Dr. Bird was unauthorized. Claimant sought a change of physician to him but obtained treatment before an order was entered.

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 at a pre-hearing conference conducted

on October 16, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that respondent is liable for payment of medical treatment provided by Dr. Bird. Dr. Bird's medical treatment was unauthorized; therefore, respondent is not liable for payment.

3. All other issues are reserved.

FACTUAL BACKGROUND

Claimant is a 63-year-old woman who graduated from high school and has some college credit. For 17 years she owned and operated a mortuary transport company. In January 2021 she became employed by respondent as a bus driver. She worked two hours in the morning and two hours in the afternoon. In addition, she also worked extra hours driving the bus for field trips, athletic activities, et cetera.

On November 1, 2022 claimant was sitting in her bus waiting for school to let out when she decided to go inside the school to the bathroom. As she was stepping off the bus she stepped on an uneven surface and twisted her right ankle. Claimant was in extreme pain and was taken to the Mercy emergency room in Fort Smith where she was diagnosed with a right ankle trimalleolar fracture dislocation and left nondisplaced fibular tip fracture. The left ankle was treated conservatively, but she underwent an open right ankle reduction and internal fixation procedure by Dr. Bolyard on November 2, 2022. Following this procedure claimant was sent to a rehab facility for a period of time before she was released to return home. Medical records from Dr. Bolyard indicate that claimant continued to have some complaints of pain involving her right ankle after the surgery. His

treatment included physical therapy, the use of a boot, heated socks, and a TENS unit. He also limited claimant to sedentary work. In a report dated April 18, 2023, Dr. Bolyard indicated that a recent MRI scan revealed no significant findings. He opined that he had nothing further to offer claimant from an orthopedic standpoint and stated that she had reached maximum medical improvement.

After her release by Dr. Bolyard, claimant and her attorney attempted to obtain a change of physician through the Commission. According to e-mails submitted into evidence several doctors declined to accept claimant as a patient. While the process of finding a new physician was ongoing, claimant on her own sought medical treatment from Dr. Bird. Dr. Bird determined that the orthopedic hardware was causing claimant's continued complaints of pain and he performed a surgery to remove that hardware in June 2023.

Claimant filed this claim contending that she is entitled to payment of Dr. Bird's treatment as well as temporary total or temporary partial disability benefits, permanent partial disability benefits, and a controverted attorney fee. As previously noted, the parties subsequent to the hearing agreed that the only issue to be determined at this time is claimant's entitlement to payment for Dr. Bird's treatment. All other issues are reserved.

ADJUDICATION

Claimant contends that respondent is liable for payment of the medical treatment she received from Dr. Bird. An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). The employer has the right to select the

initial treating physician. A.C.A. §11-9-514(a)(3)(A)(i). However, an employee may request a one-time change of physician. A.C.A. §11-9-514(a)(2)(A), (a)(3)(A)(ii), (iii). When a claimant seeks a change of physician, she must petition the Commission for approval. *Stevenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 270, 19 S.W. 3d 36, 39 (2000). Treatment or services furnished or prescribed by any physician other than the one selected according to the change of physician rules, except emergency treatment, shall be at the claimant's expense. A.C.A. §11-9-514(b).

A.C.A. §11-9-514 provides in pertinent part:

(c)(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

In this case, respondent submitted into evidence a copy of Commission Form AR-N dated December 5, 2022, bearing the claimant's signature. In addition, the form also has claimant's signature acknowledging that she was provided a copy of the form on December 5, 2022. Therefore, I find that notice of the change of physician rules was provided to claimant as required by A.C.A. §11-9-514 and any unauthorized medical expenses after that date are not the responsibility of the respondent.

As previously noted, claimant filed a request for a change of physician after her release by Dr. Bolyard. Apparently, the physicians chosen by the claimant declined to

accept her as a patient. Instead of finding a physician who would accept her as a workers' compensation patient the claimant on her own sought medical treatment from Dr. Bird. She continued to receive treatment from Dr. Bird despite her attorney's advice to obtain a change of physician order.

Q And did I recommend that you wait until we could get a change of physician to Dr. Bird before you underwent that recommended treatment?

A Yes, you did. You recommended it, but I felt since I was already dismissed by the Van Buren School District, it was only a matter of time before I ran out of insurance, health insurance.

In summary, claimant was provided a copy of Form AR-N regarding the change of physician rules. Before that process could be completed, claimant on her own sought medical treatment from Dr. Bird and a change of physician was never filed by the Commission. Under these circumstances, the medical treatment provided by Dr. Bird was unauthorized and it is not the responsibility of the respondent. A.C.A. §11-9-514(c)(3).

ORDER

Claimant has failed to prove by a preponderance of the evidence that respondent is liable for payment of medical treatment she received from Dr. Bird. The treatment received by claimant from Dr. Bird was unauthorized; therefore, respondent is not liable for payment of said treatment. Claimant's claim for these benefits is hereby denied and dismissed.

Respondents are responsible for payment of the court reporter's charges for

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preparation of the hearing transcript in the amount of \$357.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE