VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

EARLIA R. HARRIS, Claimant

Opinion by DIAMOND
Commissioner

JCN VA010-0242-5961

v.

JUNE 22, 2011

COUNTY OF HENRICO,Employer
COUNTY OF HENRICO, Insurer

Seth Carroll, Esquire
for the Claimant.

Corey R. Pollard, Esquire
for the Defendant.

REVIEW on the record by Commissioner Diamond, Commissioner Dudley, and Commissioner Williams at Richmond, Virginia.

This case is before the Commission on the request of the claimant for Review of the Deputy Commissioner's March 1, 2011, Opinion finding that the functional capacity evaluation (FCE) recommended by Dr. Leslie Cohen is not reasonable and necessary medical treatment for the claimant's compensable left foot injury. We AFFIRM.

The claimant sustained a compensable injury by accident to her left foot on March 27, 2009, and she has a lifetime award for causally related medical benefits.

The claimant's June 16, 2010 claim sought authorization from and payment by Henrico County for a functional capacity evaluation prescribed by Dr. Leslie Cohen, her treating physician, on June 3, 2010. The Deputy Commissioner convened an evidentiary hearing on December 15, 2010. The employer defended that it should not be responsible for the FCE because its sole purpose was to rate the claimant's permanent partial disability.

The claimant, then age 56, testified that she last worked for the employer on the day of the accident and has not been employed since then. She was injured in a boys' bathroom at a school when the end of a door fell onto her left foot. She treated with Dr. Cohen from May 2009 until June 2010. She understands that her left foot has reached maximum medical improvement.

Dr. Cohen prescribed a functional capacity evaluation on June 3, 2010, and the claimant has not undergone such an evaluation. She understood that the employer would not pay for it. Dr. Cohen gave her work restrictions related to her left foot injury earlier in 2010, including no prolonged standing or walking, but the claimant did not think they were permanent.

No other doctor has prescribed an FCE for the claimant. Her left foot gives her pain if she stands and walks for prolonged periods of time. The claimant believes that Dr. Cohen has done everything that she can for the claimant's left foot.

The Deputy Commissioner suggested that either of the parties could depose Dr. Cohen to find out what she meant by her June 3, 2010 note. Upon the request of the employer, he left the record open until January 28, 2011 to allow the employer to take Dr. Cohen's deposition. The employer requested that the record remain open until February 28, 2011 to secure Dr. Cohen's deposition, but by letter dated February 24, 2011, counsel for the employer moved to close the record without deposing Dr. Cohen. The record closed on February 28, 2011.

The pertinent medical record reflects that Dr. Cohen treated the claimant for infection, debrided the wound on her left foot, and did staged reconstruction with a split thickness skin graft. She continued to treat the claimant in a wound healing clinic.

The claimant was referred for work hardening and participated at Tidewater Physical Therapy. On November 3, 2009, Dr. Cohen completed an injury status report for the traumatic injury to the left foot, indicating that the claimant had received wound care and that she could

return to modified work with no prolonged standing or walking, limited to four hours per day. A comment stated that the claimant's activities may be limited due to non-work related knee injury, and the claimant was to massage her foot and increase Neurontin in the afternoon. Dr. Cohen wrote, "continued work hardening program as tolerated." On November 10, 2009, Dr. Cohen wrote a prescription pad note indicating "continue work hardening as prescribed." On November 11, 2009, another physician wrote "hold PT until knee surgery done."

The claimant saw Dr. Cohen on November 20, 2009, and pain management treatment was recommended. The claimant had achieved five hours of work per day in work hardening. Dr. Cohen discharged her from the wound healing clinic but agreed to continue to see her for workers' compensation documentation at the request of the claimant's case manager. Dr. Cohen wrote that "we are really turning over the pain management to the specialist at this point." The claimant was discharged from work hardening on November 25, 2009.

The claimant returned to Dr. Cohen on March 11, 2010, had not undergone pain management, and was out of her prescribed medication, Neurontin. Dr. Cohen noted that the claimant had incomplete pain control and prescribed Neurontin. Dr. Cohen wrote:

> The patient is released to work 4 hours daily with restrictions including no prolonged standing or walking. She is released for 8 hours daily sedentary work. . . . From my perspective, there are no limitations in her work capabilities with regard to her foot injury. . . . She was discharged in stable condition from our clinic and she will follow up with me on an as needed basis.

In May 21, 2010 questionnaire responses sent to counsel for the claimant, Dr. Cohen indicated that the claimant has reached maximum medical improvement regarding her March 27, 2009 work injury. When asked to state the percentage of permanent impairment to the claimant's left foot attributable to her work injury, Dr. Cohen wrote, "I do not provide impairment ratings. She would need to go to a physical therapist who specializes in that."

Dr. Cohen's June 3, 2010 prescription stated "functional assessment with impairment rating Dx: [left] foot injury."

At the hearing, claimant's counsel argued that the injured worker filed her claim for payment of an FCE and had paid for Dr. Cohen's May 21, 2010 questionnaire response before requesting the FCE prescribed by her treating physician. In addition, he asserted that the claimant was claiming a functional capacity assessment with an impairment rating as prescribed by Dr. Cohen rather than simply an assessment for an impairment rating.

The Deputy Commissioner noted that it is the employer's burden to prove that it does not have to pay for the FCE, as the prescription is valid on its face and is reasonable and necessary unless the employer proves otherwise. He wrote that the claimant received permanent restrictions from Dr. Cohen, and that it did not appear that Dr. Cohen believed that those restrictions would change or that a functional capacity assessment would be necessary to determine at what level the claimant was able to work, if any. The Deputy Commissioner wrote that "we cannot find that the purpose of the functional capacity evaluation recommended by Dr. Cohen is for any purpose other than determining whether the claimant has a permanent disability to her left foot." Finding that the recommended evaluation is not reasonable or necessary medical treatment, he denied and dismissed the claim.

A determination of the employer's responsibility for medical expenses depends upon whether the requested expenses are causally related to the accident, and reasonable and necessary for treatment of the compensable injuries, and whether the medical service was rendered by or on referral by an authorized treating physician. See Va. Code § 65.2-603; Volvo White Truck Corp. v. Hedge, 1 Va. App. 195, 336 S.E.2d 903 (1985). Furthermore, we have previously held in certain circumstances that a visit to a physician for the sole purpose of proving a disability rating

does not constitute medical treatment under Va. Code § 65.2-603. See, e.g., Anderson v. Atlantic Waste Disposal, VWC File No. 218-46-84 (March 15, 2006), Fike v. G.E.O. Finishes, Inc. VWC File No. 206-23-45 (May 16, 2005), Morgan v. Profitts, Inc., VWC File No. 180-18-10 (December 28, 2005); Harris v. Goodyear Tire & Rubber, 79 OWC 198 (2000).

On Review, we find that the sole purpose for the functional assessment prescribed by Dr. Cohen is to determine whether and to what degree the claimant has any permanent disability to her left foot. Such an assessment does not constitute medical treatment pursuant to Code § 65.2-603, and it is not the employer's financial responsibility.

For these reasons, the March 1, 2011, Opinion is AFFIRMED.

This matter is removed from the Review docket.

APPEAL

You may appeal this decision to the Virginia Court of Appeals by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Virginia Court of Appeals within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Virginia Court of Appeals.

cc: Earlia R. Harris
County of Henrico