

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G804572**

JEFFREY D. ANDREWS, Employee	CLAIMANT
ACE FENCE COMPANY INC., Employer	RESPONDENT
ARKANSAS P & C GUARANTY FUND, Carrier	RESPONDENT

OPINION FILED **AUGUST 4, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by KEVIN M. O'DWYER, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 12, 2022, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 28, 2022 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 employee/employer/carrier relationship existed on July 25, 2017.
3. Claimant sustained a compensable injury on July 25, 2017.
4. All prior Opinions are *res judicata*.

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

1. Claimant's entitlement to pain management treatment.
2. Unpaid medical bills.

All other issues are reserved by the parties.

The claimant contends that:

“a. His attorney requested respondents to authorize pain management treatment for the claimant; however, the respondents have refused to authorize the requested pain management treatment and instead takes the position that no pain management is appropriate because of the absence of objective findings. This position is taken notwithstanding the fact that objective permanent injury has been sustained by the claimant as evidenced by the fact that he received a permanent impairment rating.

b. The claimant further contends that the respondents have been requested to pay unpaid medical bills and as of the submission of this Prehearing Questionnaire it is the claimant’s belief that the bills remain unpaid.”

The respondents contend that “claimant’s entitlement to pain management is without objective findings as to the necessity of treatment.”

From a review of the entire record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of claimant and to observe his 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 April 28, 2022 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met his burden of proof by a preponderance of evidence that he is entitled to additional medical treatment from Dr. Luc Balis for pain management for his cervical spine injury.

FACTUAL BACKGROUND

This matter is before the Commission for a second time. A decision by the Full Commission to award wage-loss benefits to claimant was upheld by the Arkansas Court of Appeals in *Ace Fence Co. v. Andrews*, 2021 Ark. App. 450.

HEARING TESTIMONY

Claimant testified that after his job-related injury on July 25, 2017, he was eventually treated by Dr. Kyle Mangels. Dr. Mangels performed surgery on his neck. The surgery improved the pain but did not make it go away completely, and claimant testified that he was taking Gabapentin, Hydrocodone, and medical marijuana for his pain. Claimant said that he had stopped taking this pain medication to determine if his pain was worse without it and affirmed that it indeed was worse when he did not take the medication.

Claimant said that Dr. Luc Balis is his primary care physician and prescribed the prescription medication to him. Claimant requested that Dr. Balis be authorized to prescribe medications as part of his workers' compensation claim. Claimant said that activities such as driving, lifting, stooping, bending, or sitting at a computer with his head stationary for a period of time causes his neck to hurt.

Claimant presented a bill from July 25, 2017, which was for an emergency room visit following his on-the-job accident. Claimant said other bills related to his treatment had been paid and he did not know why this particular bill remained unpaid.

On cross-examination, claimant testified that his only restriction from Dr. Mangels was not to lift over fifty pounds. Claimant explained that Dr. Balis prescribed the Gabapentin and Hydrocodone, but Dr. Miller was a pain management doctor who also prescribed medical marijuana to him.

DOCTOR'S DEPOSITION

The deposition of Dr. Mangels was taken on June 10, 2022 and was presented as an exhibit to the hearing. Dr. Mangels testified that he had done surgery on claimant's neck in December 2018. He saw claimant for the last time in January 2022 for a reevaluation. Claimant was complaining of neck pain in or around the surgery site. The discussion Dr. Mangels had with the claimant related to pain management and how claimant was going to manage his residual pain that was not surgical over the long term. Dr. Mangels opined that claimant had healed at his surgical site and he could not find anything else structural going on with him, but claimant maintained he had some residual pain. Dr. Mangels said that he was not a pain management doctor beyond treating patients for pain following surgery.

Dr. Mangels did not perform any new tests during this last visit; however, he had reviewed the results of tests that other physicians had run in the proceeding few months. Dr. Mangels believed that claimant had reached "maximum medical improvement with regards to his surgical outcome from a surgery standpoint," and then stated that claimant should probably be allowed to see Dr. Balis. Dr. Mangels was not sure why claimant was also seeing a doctor from the Veteran's Administration.

When asked about objective findings, Dr. Mangels said that claimant did not have a neurological defect or anything like that that would be a glaring reason for claimant's continued pain. Claimant's surgery had healed and there was no neurological deficit or weakness, nor anything structural in claimant's spine that he could point to as an objective finding. However, Dr. Mangels said that "pain is subjective." When asked why claimant should be allowed to see Dr. Balis or some other doctor for pain management, Dr. Mangels said "because he has chronic pain and not everybody that has chronic pain has objective findings."

On cross-examination, Dr. Mangels said that it was unusual for people to continue to have

pain post-operatively and he believes claimant's pain was out of proportion to what he would expect. The surgery in December 2018 was an anterior cervical fusion from C5-C7. During that surgery, Dr. Mangels testified that "I put a cervical plate in his neck, and he had two cages that we put a stem cell bone graft product in." Dr. Mangels said it was not unusual for a patient to complain about changes in barometric pressure involving a surgery in which metal was inserted into their neck. While explaining again that he believed claimant's pain was out of proportion to what he expected based on the postoperative imaging, Dr. Mangels testified "it's not shocking he's got some residual pain."

After discussing several methods of treating post operative pain and the reason for a functional capacity evaluation, claimant's attorney asked Dr. Mangels this question:

Q: (BY MR. WALKER): "Would you be willing to defer to the opinion of a pain management specialist as to whether or not Mr. Andrews need pain management?"

A: "Well yes, however, I never said he had to go to a pain management doctor. I said that I thought his pain could be managed by one of these other doctors that we have already talked about. And if they weren't able to do that then he could see a pain management doctor. I think he needs somebody to help him. But if Dr. Balis or this doctor from the VA were willing to help him, then he doesn't need a formal pain management doctor."

On redirect-examination, Dr. Mangels was asked the following by respondent's counsel:

Q: (BY MR. O'DWYER): "Did you see any other--anything else in any of the studies that suggests other than the cervical surgical site, that would suggest that Mr. Andrews had the pain the magnitude that he complains of?"

A: "No, his pain is out of proportion in my opinion to what we see objectively in all the tests. I have always thought that – I think his nurse case manager thought that I can't speak for her obviously, but I think that she thought that as well. I don't know why he has such significant residual pain. I don't know, but I tend to believe him. I mean, who am I to say he doesn't have pain, you know?"

Dr. Mangels said that he might have some residual pain through the hardware but that would not mean that the cages should be removed. Dr. Mangels did not believe that a restricted range of

motion was necessarily indicative of a pain level.

REVIEW OF THE MEDICAL EXHIBITS

An extensive examination of the medical exhibits is unnecessary, as most predate the November 17, 2021 opinion from the Court of Appeals. These records demonstrate that claimant had a “cervical fusion anteriorly from the C5-C7 using Stryker Tritanium Cages and Plating done from C5-C7 anteriorly at Tulsa Spine and Specialty Hospital with the surgery being done in December 2018.” (CL.X.1 page 44)

Both claimant and respondent included the January 19, 2022, office progress note from Dr. Kyle Mangels. Dr. Mangels was questioned about this report in his deposition which was reviewed above. To summarize the portion of the report that is pertinent to the issue in this case, Dr. Mangels said there were no objective findings to support his recommendation for pain management services for claimant, stating that there were only subjective complaints of pain. Nonetheless, Dr. Mangels believed it was reasonable for claimant to see his primary care doctor to be treated for pain or alternatively to see a pain management doctor.

ADJUDICATION

Claimant has consistently been treated for pain in his cervical area following his compensable injury. Respondent’s position at the hearing was that it did not believe it needed to provide pain management for claimant because Dr. Mangels said claimant “does not have any objective findings at this point, such as neurologic changes or weakness.” Respondent’s reliance on Dr. Mangel’s report in that regard is misplaced.

Compensable injuries must be established by medical evidence supported by objective findings, Ark. Code Ann. § 11-9-102(4)(D), and objective findings are those that cannot come under the

voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Complaints of pain are not objective medical findings. *Ark. Sec'y of State v. Young*, 2018 Ark. App. 508, at 8, 559 S.W.3d 331, 336. However, once it has been established that a claimant has sustained a compensable injury, he is not required to offer objective medical evidence to prove entitlement to additional benefits, *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, at 9, 558 S.W.3d 408, 414. As claimant clearly had objective evidence to support his initial claim, it was unnecessary for him to provide new objective findings for the treatment he sought at this hearing.

I find, as did Dr. Mangels, that what claimant requested was reasonable and necessary to treat his on-going neck pain. While it may be puzzling to Dr. Mangels as to why the pain in claimant's neck remains so severe, I found nothing about the testimony of claimant to be unreliable on this issue. It is the employer's responsibility to provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee, Ark. Code Ann. 11-9-508(a), and I find pain management under the direction of Dr. Balis is reasonably necessary for claimant's compensable injury.

As for the unpaid medical bill (CL.X.2), respondent offered no explanation as to why it was never paid, and as it plainly states that it is for emergency room services on the date claimant was injured (CL.X.1 pages 1-6), respondent is responsible for paying the bill for those services.

ORDER

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment in the form of pain management for his cervical spine injury as directed by Dr. Balis. Claimant also met his burden of proof by a preponderance of the evidence that the bill to Mercy Hospital Fort Smith in the amount of \$856.00 for services rendered on July 25, 2017, was

unpaid. Respondent is ordered to pay that bill in full within 30 days of the date of this order. ¹

Pursuant to A.C.A. § 11-9-715(a)(1)(B)(ii), attorneys fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." In this case, there was no claim that indemnity benefits have been controverted from the date of the previous award, and as such, no attorney's fee can be awarded in this matter at this time. Claimant's attorney is free to voluntarily contract with medical provider pursuant to A.C.A. § 11-9-715(a)(4).

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$335.35.

IT IS SO ORDERED

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE

¹ The bill contains an "uninsured discount," but respondent may not qualify for that discount, as claimant was clearly covered by workers' compensation insurance on the date of the injury. Thus, the amount ordered is the total amount of the bill without the discount.