

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H305860**

BRENDA J. ARNOLD, EMPLOYEE

CLAIMANT

**OSCEOLA SCH. DIST.,
SELF-INSURED EMPLOYER**

RESPONDENT

**ARK. SCH. BDS. ASSN.,
THIRD-PARTY ADM'R**

RESPONDENT

OPINION FILED JULY 19, 2024

Hearing before Administrative Law Judge O. Milton Fine II on June 21, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Daniel E. Wren, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 21, 2024, the above-captioned claim was heard in Jonesboro, Arkansas. A prehearing conference took place on April 29, 2024. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issue, and respective contentions were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. They are the following, which I accept:

1. The Arkansas Workers' Compensation Commission (the "Commission") has jurisdiction over this claim.

2. The employee/self-insured employer/third-party administrator relationship existed among the parties on August 30, 2023, when Claimant suffered a compensable injury to her cervical spine.

Issue

The parties discussed the issue set forth in Commission Exhibit 1. The following was litigated:

1. Whether Claimant must submit to an independent medical evaluation under Ark. Code Ann. § 11-9-511 (Repl. 2012).

All other issues have been reserved.

Contentions

The respective contentions of the parties are the following:

Claimant:

1. Respondents have no standing under § 11-9-511 to request an independent medical evaluation. That section of the Arkansas Workers' Compensation Act is reserved specifically for the Commission *sua sponte* to require Claimant to submit to an evaluation.
2. Respondents are requesting that Claimant undergo a physical examination by Dr. Wayne Bruffett, who was specifically chosen by an adjustor for Respondents and thus is not an independent qualified physician as required under § 11-9-811. The adjustor never discussed with Claimant's counsel the need for any further evaluation of Claimant prior to arranging the evaluation in question. Moreover, the adjustor

already had the surgical recommendation by Dr. James Adametz reviewed by an outside physician.

3. Claimant has been examined by doctors authorized by Respondents just over six months ago. It is her position that there are no reasonable and necessary circumstances requiring another examination by any physician, much less one chosen by Respondents.
4. Since Respondents are asking for a specific evaluation by Dr. Bruffett, and not by an authorized doctor chose by the Commission, this matter should be denied as a matter of law; no hearing thereon is necessary.

Respondents:

1. Respondents contend that all appropriate benefits are being paid with regard to Claimant's injuries sustained on August 30, 2023. At issue is her entitlement to cervical surgery recommended by Dr. Adametz. The surgery did not pass pre-certification; and Claimant has medical records showing pre-existing problems with her cervical spine.
2. Respondents request an independent medical evaluation pursuant to Ark. Code Ann. §§ 11-9-511 & 11-9-811 (Repl. 2012). In addition to Dr. Adametz, Claimant has also treated at Ortho Arkansas. Respondents requested and set up an independent medical evaluation with Dr. Bruffett at the University of Arkansas for Medical Sciences ("UAMS"), and he agreed to perform the evaluation. Claimant's counsel has objected. Respondents contend that an independent medical evaluation is

reasonable and necessary, and are requesting an order for Claimant to attend the same with Dr. Bruffett.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, deposition testimony, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. A preponderance of the credible evidence establishes that Claimant should submit to an independent medical evaluation by Dr. Wayne Bruffett under Ark. Code Ann. § 11-9-511(a) (Repl. 2012) because such is reasonable and necessary. The parties will work together to expedite this evaluation. The evaluation shall be at the expense of Respondents. Claimant will be entitled to mileage reimbursement for travel to and from Dr. Bruffett's office in accordance with AWCC Advisory 89-2.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case consist of the following: Joint Exhibit 1, a compilation of Claimant's medical records, consisting of one index page and 26 numbered pages thereafter; and Respondents' Exhibit 1, non-medical records, consisting of one index page and ten numbered pages thereafter (including a disc containing surveillance footage of Claimant).

ADJUDICATION

Whether Respondents are entitled to have Claimant undergo an independent medical evaluation by Dr. Wayne Bruffett.

Introduction. As the parties have stipulated, Claimant sustained a compensable injury to her cervical spine on August 30, 2023, while working for Respondent Osceola School District. In this action, Respondents are seeking to have her undergo an independent medical evaluation by Dr. Bruffett.

Standards. Only by a preponderance of the evidence can it be established that she must submit to the evaluation. See Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012). The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Testimony. Claimant testified that she injured her neck previously. In 1991, she jumped from a vehicle to get away from her husband, who was beating her. As a result, she wore a neck brace for three-and-a-half months. Ten years ago, her neck was hurt again when her vehicle was struck from the rear. In that instance, she was again placed in a neck brace for a time.

As for the incident at issue, Claimant related that she fell at work. She continued:

When I fell, I landed on—I landed—well, I landed on the hip and my head was on the ground. Ms. Lee was in there, who's my assistant principal. And my neck—well, the hip hurt and the knee hurt. This right here on my neck was just like immediately started hurting, and I told Ms. Lee. And my back was hurting and she told me to be still, and I could not get up at all, could not et up at all. And I did ask, you know, what student, and she was my girl I had been working with to help, you know. But, anyway, my girl, she's the one that went and got the principal, so I appreciated that from her, but you know, I did tell Ms. Lee that I hurt my neck

Trent Tappan, PA-C, recommended on September 19, 2023, that she undergo an injection in her neck. He also recommended that she have a CT scan, which took place that next day.

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Questioned by her attorney, it was Claimant's testimony that she was unhappy with the treatment rendered by Tappan. For that reason, she requested and was granted a one-time change of physician to Dr. James Adametz. The following exchange took place:

- Q. Are you happy with the treatment that you're getting with Dr. Adametz?
- A. I love Dr. Adametz. He knows what he's doing. He's smart, he's intelligent, explains everything. He is so professional, so smart. And I trust him and he said he could help me, and that's who I want. I don't want nobody else.

During her examination by the Commission, the following exchange occurred:

- Q. How many times have you seen Dr. Adametz, Ms. Arnold?
- A. Can I ask him [her attorney] to look? I've seen him several, several times.
- Q. You don't—it's been multiple times?
- A. Oh, yes.
- Q. When's the last time you saw Dr. Adametz, do you know?
- A. The last time I seen him, he wanted me to go to pre-op. He wanted—he planned to—
- Q. Well, when was it?
- A. —do surgery February 21. I believe it was in January when I saw him last.
- Q. January of this year?
- A. Yes.
- Q. Okay. And you know the issue here is supposedly the—the respondents are wanting you to submit to the short term—the term

for it is an IME. It stands for independent medical evaluation, do you understand that?

A. Yes.

Q. Okay. And they want to look into a cervical surgery that Dr. Adametz has recommended.

A. Yes.

Q. You understand that?

A. Yes.

Q. All right. Do you object to undergoing an independent medical evaluation? They've set it up with Dr. Wayne Bruffett is my understanding. Do you understand that?

A. Yes.

Q. Are you willing to submit to the IME or are you objecting to it?

A. I totally object.

Q. And why do you object to it?

A. There's no reason to see another doctor whatsoever. And if that doctor wanted to do surgery, I don't know that man, I don't trust that man. I don't know him, and also he's—well, he's a spine surgeon, and the neurosurgeon has got more education, etcetera. And I like my doctor, I trust my doctor, I don't want to see—I don't want to see that other guy.

Medical Records. Claimant's records in evidence reflect the following:

On January 22, 2021, following a motor vehicle accident, Claimant presented to Arkansas Methodist Medical Center and underwent, inter alia, a CT scan of her cervical spine. It showed no acute process, but degenerative changes at multiple levels.

After the work-related incident at issue, on September 19, 2023, she treated with Tappan. The report reads in pertinent part:

HPI:

Ms. Arnold is a 53-year-old female who presents to the clinic for a new worker's [sic] compensation appointment. She reports a fall at work, where she is a teacher. She describes the incident as having occurred in a room that was not properly cleaned, causing her to trip and fall. She landed on her hip, which had previously undergone hip replacement surgery. Since the fall, she has been experiencing pain in her spine, back, and hip, which has been significantly impacting her ability to stand for extended periods. She also reports that her neck has been causing her significant discomfort, despite not having experienced any neck pain prior to the fall. She has a history of a broken C6 vertebrae from an incident in 1991, and she reports that her neck has been hurting in the same area since her recent fall. She has been taken off work due to her current condition. She is currently on Hydro 10/325 and a muscle relaxer for pain management, but reports that these medications only make the pain manageable and do not eliminate it completely.

PHYSICAL EXAM:

+2 symmetric reflexes in her upper and lower extremities. Reasonable good strength in her arms and legs bilaterally normal sensation. Negative Hoffmann's. Negative Spurling's. Negative clonus. Tender to palpate in her neck midline. No frank neurologic deficit.

IMAGING:

X-rays of her cervical spine today reveal degenerative changes most pronounced at C5-6. MRI of her cervical spine reveals degenerative changes at C5-6 with some broad-based disc protrusion bilateral foraminal stenosis severe. X-rays of her thoracic and lumbar spine reveal multilevel degenerative changes spondylolisthesis at L4-5.

ASSESSMENT:

I had a long visit with Ms. Arnold that [sic] her symptoms and images. I reassured her I think neck and back looks stable. Most of her pain seems to be in her neck. I suspect she may be symptomatic from the degenerative changes at C5-6. There is some disc protrusion. I just do not see any obvious acute injury but she may have been rendered symptomatic from a C5-6 stenosis and degeneration. I told her ultimately I would leave her thoracic and lumbar spine alone. We did discuss an injection at C5-6. Ultimately I would not recommend surgery for right now

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I told her this I think will improve with time. I would recommend an epidural injection at C5-6. I am going to put her back to work on restrictions. No prolonged standing or sitting no lifting over 5 pounds. I told her I would plan to place her at MMI and release her after her return from the injection.

The CT scan referenced above, when compared to her 2021 scan, did have new objective findings in the forms of straightening of the lordotic curvature and a minimal central disc protrusion at C4-5.

Dr. Sumeet Vadera, a board-certified neurosurgeon, conducted a peer review of Dr. Adametz's surgical recommendation¹ on February 12, 2024. It reads in pertinent part:

Summary of Treatment/Case History:

This patient is a 53-year (date of birth 09/13/70) female with neck and low back pain. The patient's exam reveals no focus with deficit. The MRI shows stenosis at C4-5, moderate central stenosis at C5-6, and severe foraminal narrowing. The patient has been recommended to undergo C4-5 and C5-6 anterior cervical discectomy and fusion (ACDF) with a partial corpectomy of C4, C5, and C6.

Explanation of Findings:

1. Is the proposed Anterior Cervical Discectomy and Fusion at C-C5 and C5-C6 with partial corpectomies of C4, C5, and C6 using Instrumentation placement and screws with allograft, indicated and medically appropriate based on reported pain, since the latest clinic note documented improved clinical findings? Please explain and provide supporting rationale.

No. The proposed Anterior Cervical Discectomy and Fusion at C4-C5 and C5-C6 with partial corpectomies at C4, C5, and C6 using Instrumentation placement and screws with allograft, is not indicated and not medically appropriate based on reported pain, since the latest clinic note documented improved clinical findings.

¹As discussed at the hearing and more fully *infra*, Dr. Adametz's report was not introduced into the evidentiary record.

Based upon the standards of billing and coding, a partial corpectomy requires at least 50% of the vertebral body to be removed. Therefore, it is not appropriate for this patient, as there is no clear evidence to support a partial corpectomy in this patient. In addition, there is only mild stenosis noted at C 4-5, Which would not support surgery. Therefore, the entire surgery is not considered medically necessary due to the components listed above.

2. If the proposed Anterior Cervical Discectomy and Fusion at C4-C5 and C5-C6 with partial corpectomies of C4, C5, and C6 using Instrumentation placement and screws with allograft is not indicated or medically appropriate, is there an alternate procedure and/or treatment indicated and medically appropriate?

The alternate procedure and treatment that is indicated and medically appropriate for this patient would be a C5-6 anterior cervical discectomy and fusion (ACDF), as there is moderate to severe stenosis noted at this level.

3. If the proposed Anterior Cervical Discectomy and Fusion at C4-C5 and C5-C6 with partial corpectomies of C4, C5, and C6 using Instrumentation placement and screws with allograft is indicated and medically appropriate, is the need for this treatment indicated as the direct result of the 08/30/23 injury vs pre-existing degenerative spine disease? Please explain.

Not applicable.

Conclusion:

The proposed Anterior Cervical Discectomy and Fusion at C4-C5 and C5-C6 with partial corpectomies of C4, C5, and C6 using Instrumentation placement and screws with allograft, is not indicated and not medically appropriate based on reported pain, since the latest clinic note documented improved clinical findings. The alternate procedure and treatment that is indicated and medically appropriate for this patient would be a C5-6 anterior cervical discectomy and fusion (ACDF).

Non-medical Records. Included in Respondents' Exhibit 1 is a DVD containing surveillance footage of Claimant taken on January 13 and February 3, 2024. The January 13 footage depicts Claimant cleaning out a motor vehicle, while Claimant was observed on February 3 placing items into and removing items from her vehicle, and

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playing with a dog. She did not display any difficulty with picking up objects or turning her head.

Discussion. Per Dr. Vadera's report, Dr. Adametz has recommended that Claimant undergo a two-level anterior cervical discectomy and fusion at C4-6, along with a partial corpectomy of C4, C5, and C6. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). However, none of Dr. Adametz's records are in evidence, so I am unable to credit his opinion. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). I am in the same situation with respect to Dr. Vadera, but for a different reason: he neglects to cite in his report what medical records of Claimant, if any, that he reviewed.

What the Commission is left with is a claimant with a stipulated compensable cervical spine injury who has been recommended to undergo a very extensive surgery, with a peer reviewer asserting that the fusion is not indicated at the C4-5 level, and that the corpectomies are not warranted, either.

Claimant has argued that it is not appropriate for Respondents to seek an independent medical evaluation under Ark. Code Ann. § 11-9-511 (Repl. 2012).

Subsection (a) reads:

An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated **or approved** by the Workers' Compensation Commission, as

the commission may require from time to time if reasonable and necessary.

(Emphasis added) In sum, Claimant must undergo an independent medical evaluation if the Commission finds that such is reasonable and necessary. *See generally Burkett v. Exxon Tiger Mart, Inc.*, 2009 Ark. App. 93, 304 S.W.3d 2.

Again, Dr. Adametz has recommended that Claimant undergo, inter alia, a multi-level cervical fusion. She has documented extensive pre-existing degenerative findings in her cervical spine. A peer review physician has taken issue with this recommendation. While—again—I have not been asked to determine whether the proposed surgery by Adametz is reasonable and necessary, I could not do so anyway based on the paucity of evidence that was offered at the hearing. But what I am able to do—and in fact am compelled to do based on the evidence outlined above—is find that the evaluation by Bruffett is reasonable and necessary. In so doing, I note that Claimant did not display any problems with her neck in the surveillance footage that is in evidence. Certainly, that is not dispositive. But what it does do is raise a legitimate question about her cervical condition and need for the surgery recommended by Dr. Adametz that Dr. Bruffett's evaluation hopefully will put to rest.

Accordingly, I approve of an independent medical evaluation of Claimant conducted by Dr. Bruffett pursuant to § 11-9-511(a). The parties will work together to expedite this evaluation, which shall be at the expense of Respondents. Respondents will provide Claimant reimbursement for the mileage for her travel to and from Bruffett's office in accordance with AWCC Advisory 89-2.

CONCLUSION

Judgment is hereby entered in accordance with the Findings of Fact and Conclusions of Law set forth above.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge