

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H301278 & H303725

MICHELLE BURNETT, Employee	CLAIMANT
SOUTHSIDE HIGH SCHOOL, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN., Carrier	RESPONDENT

OPINION FILED MARCH 12, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 14, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 21, 2023, and a Pre-hearing Order was filed on August 22, 2023. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 this claim.
2. The relationship of employee-employer-carrier existed between the parties on January 18, 2023, and February 24, 2023.
3. The claimant sustained a compensable injury to her low back, right knee, and right arm on or about January 18, 2023.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$835.00 for temporary total disability benefits and \$626.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a new compensable injury to her low back, right knee, right arm, and coccyx on or about February 24, 2023, or whether current need for treatment is a continuance of compensable injuries sustained on January 18, 2023.

2. Whether Claimant is entitled to medical treatment in the form of an MRI of the lumbar spine.

3. Whether Claimant sustained a compensable cervical spine injury on January 18, 2023, and/or February 24, 2023.

4. Whether Claimant is entitled to medical treatment for her cervical spine injury.

The claimant's contentions are as follows:

“a. The Claimant contends that she is in need of additional medical treatment either due to the continuing effects of her admittedly compensation injury on January 18, 2023 or the effects of her job related fall that occurred on February 24, 2023.

b. The Claimant contends that the respondents should be held liable for additional medical treatment regarding the claimant's back, including but not necessarily limited to an MRI.

c. The Claimant contends that his attorney is entitled to an appropriate attorney's fee.”

The respondents' contentions are as follows:

“Respondents contend they accepted the January 18, 2023 event as compensable and have paid the reasonable, necessary and related benefits. The claimed February 24, 2023 event did not occur within the course and scope of claimant's employment or while claimant was performing employment services.”

The claimant in this matter is a 52-year-old female who sustained compensable injuries to her low back, right knee, and right arm on January 18, 2023, while employed by the respondent. The claimant additionally alleges to have suffered a compensable cervical spine injury during her January 18, 2023, incident. On direct examination the claimant gave testimony about her January 18, 2023, accident and her symptoms directly after as follows:

Q Ms. Burnett, it has been agreed upon that you had an accident while working for the Fort Smith Public School system on January 18, 2023. Will you explain how that accident happened.

A Yes, I was – I had entered the stairwell, south hallway, Freshman Center, and lost my footing as I was approaching the second floor – second, third floor. When I fell, I hit my knees first and then fell backwards.

I called for some assistance and no one responded, so I attempted to assist myself and slipped two more steps, two or three more steps, and then I used my cellular device to call Rachel Foster who eventually came to assist me.

Q And what symptoms did you have after that accident occurred?

A My knees were hurting. I had pain in my lower back and I had some shoulder pain.

Q What would you consider to have been your primary symptoms at that time? What was hurting you worse?

A My knees were, of course, because I had scraped them and then my lower back was giving me – it was pretty intense. It hurt. It was more of a throbbing sensation. And then my upper arm, my arm and my shoulder, the same type of symptoms, they were throbbing.

Q Now, you say your arm and your shoulder. Tell us a little bit more about that. What do you mean your arm and your shoulder?

A Well, my shoulder was more of a sore sensation where my arm was throbbing, so it was the intensity was a little bit more so down my arm.

Q And were you sent to the doctor the same day?

A Yes, sir.

Q And was that Dr. Ian Cheyne?

A Yes, sir.

The claimant was seen by Dr. Ian Cheyne at Mercy Occupational Medicine Clinic on January 18, 2023. Following is a portion of that medical record:

CHIEF COMPLAINT

Right side, left side, and back.

PATIENT DESCRIPTION OF ACCIDENT

Michelle was walking up steps when she reached the railing and lost her footing. She states that she landed on her knees and fell back onto the wall. She then tried to call for help and tried to stand up but ended up slipping two more stairs injuring both her upper arms.

HISTORY OF PRESENT ILLNESS

Michelle's primary problem is pain located in the lower back. She describes it as throbbing, Tender. The problem began on 1/18/2023. Michelle says that it seems to be constant. She has noticed that it is made worse by bending, sitting. Her pain level is 7.

Michelle's secondary problem is pain located in the left upper arm. She describes it as aching. The problem began on 1/18/2023. Michelle says that it seems to be variable – depending on the activity level, intermittent. She has noticed that it is made worse by lifting. Her pain level is 4.

Michelle's tertiary problem is pain located in the right upper arm. She describes it as soreness, Tender. The problem began on 1/18/2023. Michelle says it seems to be variable - depending on activity level, intermittent. She has noticed that it is made worse by lifting. Her pain level is 4.

Michelle's fourth problem is pain located in the right knee, left knee. She describes it as pressure, sharp, throbbing. The problem began on 1/18/2023. Michelle says that it seems to be variable –

depending on the activity level. She has noticed that it is made worse by standing. Her pain level is 6.

Michelle's fifth problem is pain located in the right hip. She describes it as pressure, sharp, throbbing. The problem began on 1/18/2023. Michelle says that it seems to be variable – depending on the activity level. She has noticed that it is made worse by standing. Her pain level is 4. Additional History: patient sore in several areas as above from fall. Most painful areas seem to be in the knees, right hip and low back. She has noticed an abrasion right knee and bruising b/l upper extremities.

DIAGNOSIS

1. Fall (on) (from) other stairs and steps, initial encounter (W10.8XXA).
2. Contusion of right upper arm, initial encounter (S40.021A).
3. Contusion of left upper arm, initial encounter (S40.022A).
4. Contusion of right knee, initial encounter (S80.01XA).
5. Contusion of left knee, initial encounter (S80.02XA).
6. Contusion of right hip, initial encounter (S70.01XA).
7. Contusion of lower back and pelvis, initial encounter (S30.0XXA).

The claimant was placed on work restrictions of alternate sit/stand/walk as tolerated, prescribed pain medication, and told to ice and heat areas of most discomfort.

The claimant returned to see Dr. Ian Cheyne on January 25, 2023. The History of Present Illness portion of that medical report does indicate a lessening of pain in various body parts. The report also indicates soreness in her left neck during a portion discussing her left upper arm as follows:

Michelle's secondary problem is pain located in the left upper arm. She describes it as soreness. The problem began on 1/18/2023. Michelle says that it seems to be not present now. She has noticed that it is made worse by lifting. She feels it is improving. Her pain level is 0. Patient states she has some soreness on her left neck.

That same report from January 25, 2023, includes an Examination section, which states the following regarding the claimant's cervical spine examination:

Cervical Spine: An abrasion is not present. Bruising is not present. Erythema is not present. An open wound is not present. Pain on motion is not present. Pain to palpation is not present. Swelling is not present. Range of motion is normal.

I note that no diagnosis was included in that medical report referencing the claimant's neck or cervical spine. The claimant was given home exercises and told to follow up in one week.

The claimant returned to see Dr. Ian Cheyne on February 9, 2023. The History of Present Illness section of that report states:

Additional History: Patient mainly have right low back pain at this point. Everything else seems to have resolved. She states that there are times she has to lean against a wall while she is walking to get some relief. Potential pain radiating right groin.

The claimant was then referred to physical therapy three times per week for two weeks. It appears the claimant was scheduled to begin physical therapy on February 22, 2023, but missed her appointment.

On February 24, 2023, the claimant alleges to have had a second fall while at work again injuring her low back, right knee, and right arm. She also alleges additional injury to her coccyx and cervical spine during the second incident/fall. On direct examination the claimant described her second incident as follows:

Q Now, tell us about your second incident in February of 2023, on February 24th. What happened?

A We were asked to arrive early for supervision purposes, so I went to my office, gathered my items. My daughter was going to bring breakfast because I didn't have time to eat, especially with medication.

So she texted me and she said she was outside. I already checked in. I walked outside to retrieve the items and speaking with her about the upcoming Black History Month at Northside. I was walking backwards, you know, to hurry up and get back inside to help with supervision and fell over the curb.

Q Okay. So let's go back to the fall that occurred on February 24.

A Uh-huh.

Q Do you feel like you sustained any injury in that fall?

A Yes, I do.

Q And what injury or injuries do you believe you sustained?

A Back injuries, lower back injuries, especially. The January one was more of my right side, the leg, the arm, and my shoulder was sore. This area was sore (indicating).

Q And in the February fall, did you fall from a standing position?

A Yes.

Q And what kind of surface did you land on?

A The asphalt and the concrete and the curb that was there.

Q Had you been released from active treatment regarding the January injury when the February injury occurred?

A No, sir.

On February 24, 2023, the claimant was seen at Mercy Emergency Department.

Following is an emergency department note from that visit:

Pt reports that she comes to the ed today for a fall that occurred at work.

Pt reports that she was walking backwards towards a curb and she tripped on the curb causing her to fall backwards and onto her right side hitting her right head and the back of her head on the concrete. No visual abnormalities noted to these areas. Pt reports that she is having pain of constant all over generalized 9/10.

Pt is an a/ox4 with breathing even and unlabored. Call light in place. Pt denies any needs at this time. Family at bedside.

The claimant was instructed to take over-the-counter Tylenol and ibuprofen for pain and to ice and heat alternating every 20 minutes.

On March 2, 2023, the claimant was again seen by Dr. Ian Cheyne. The record from that visit, in part, states:

Additional History: Patient pain now only in the low back. She had another fall on 2/24 at school. She went to the ED, XR coccyx was negative. She has not started PT yet.

On March 2, 2023, the claimant also saw Dr. Thomas Cheyne. I note that Dr. Thomas Cheyne is a different doctor than Dr. Ian T. Cheyne. Following is a portion of Dr. Thomas Cheyne's clinic note:

Subjective: This patient is a 51-year-old who presents with coccyx pain as well as mild right lateral hip pain. She is an employee with Fort Smith public school system and had a fall on 2/24/2023. This was in a parking lot and she fell backward over a curb and landed on her buttocks on the curb. She had had another fall several weeks prior to that and is being treated for low back pain and is going to be starting physical therapy in the near future. With regard to the first fall she has been having radiation of pain from the right hip into the anterior medial aspect of the right proximal thigh which may well be sciatic in nature. She had x-rays after the more recent fall of the lumbar spine and pelvis with no fracture being noted.

Objective: She is quite tender over the coccyx. She is able to slowly bend to touch her lower legs. She walks on her toes and her heels with assistance. She has mild decreased sensation in the right anterior medial thigh as compared to the left. She has good strength and muscle tone in her legs and her DTRs are 1+ and equal bilaterally. Straight leg raise is negative bilaterally. She has mild tenderness over the greater trochanter of the right femur but has good range of motion of her hip.

I have received her lumbar spine and pelvic films and agree that there is no definite fracture.

Impression: Coccydynia.

Plan: She will temporarily stop her diclofenac, we will give her a Medrol Dosepak and then have her resume the diclofenac. She will stay at light activity, we will give her some restrictions to be allowed to sit or stand as needed and to limit the amount of walking she does. She will use heat therapy and avoid direct pressure on the coccyx as much as possible. If this does not improve within the next 2 to 3 weeks we may consider getting her into the pain clinic for a coccyx injection.

The claimant again failed to go to her physical therapy appointment that was ordered by Dr. Ian Cheyne on March 6, 2023. However, the claimant did begin physical therapy on March 15, 2023, having had two physical therapy sessions before again seeing Dr. Ian Cheyne on March 16, 2023. The medical report states, “She feels like it is improving slowly.”

On April 4, 2023, the claimant was again seen by Dr. Thomas Cheyne. Following is a portion of that clinic note:

This patient returns for follow-up of her coccydynia as well as right-sided sciatica. She has been taking her diclofenac, going to physical therapy and using her heat therapy. She has had a little improvement but continues to be symptomatic. She is not interested in having injections in the coccyx at this point. I would recommend getting an MRI scan of the lumbar spine and we will see her back after the scan. She will otherwise continue her conservative treatment for now.

The claimant continued with the physical therapy ordered by Dr. Ian Cheyne after her January 18, 2023, fall. The claimant again saw Dr. Ian Cheyne on April 13, 2023. In that medical report he stated, “Patient is continuing to show slow improvement.” Dr. Ian Cheyne also acknowledged the claimant had been seeing Dr. Thomas Cheyne in orthopedics, who had ordered a lumbar MRI. I note that the claimant has not been provided an MRI of her lumbar spine by the respondents at the time of the hearing in this matter.

On June 2, 2023, the claimant is seen by her primary care physician, Dr. Jeffrey Hamby. The claimant was assessed by Dr. Hamby for a variety of reasons including cervicalgia. A portion of the History of Present Illness section of that medical report follows:

Patient states she is having chronic cervical pain with no injury or trauma and started taking Tylenol 8 hour, using Diclofenac and some Tramadol she has had on hand to help with the pain. Patient is also using a Tens unit 30 minutes a day and seeing her Chiropractor for this as well. Most recent echo cardiogram was reviewed with the patient: no signs of heart failure. Need more of a report on the echo that was performed so will request more records on this. PT needs an MRI C-Spine for chronic cervical pain with bilateral radiculopathy down to her shoulders. Explained to patient that she does not need want her to go to the chiropractor until the MRI is back. Recommended patient go to Fort Smith Wellness for massage therapy. Return in 3 weeks.

On June 6, 2023, the claimant underwent an MRI of the cervical spine at Prime Medical Imaging. Following is a portion of that diagnostic report:

No acute abnormality evident at the craniovertebral junction.

Much of the bony spinal canal in the cervical spine is relatively narrow on a developmental basis.

At the C2-3 level, no significant disc abnormality or canal stenosis.

At C3-4, there is mild retrolisthesis by 2 or 3 mm. There is central disc herniation, moderately severe canal stenosis, there may be mild cord compression. Additionally, moderate bilateral foraminal spurring/exit foramina stenosis at this level.

At the C4-5 level, there is mild broad disc bulging. There is a left foraminal disc herniation producing moderately severe stenosis of the left exit foramen. Mild narrowing right exit foramen. Mild central canal stenosis.

At C5-6 level, there is a moderately large right paracentral disc herniation impressing upon the cord, producing moderately severe canal stenosis.

At C6-7 level, there is a small to moderate central disc herniation producing at least mild canal stenosis.

Facet arthrosis is present, most severe on the left at C4-5 level.

IMPRESSION:

Mul multilevel disc degenerative disease as outlined in greater detail above. Moderately severe canal stenosis results at both the C3-4 and C5-6 levels. Significant findings at additional levels as described.

On August 15, 2023, the claimant is seen at WR Family Clinic Fayetteville as a new patient. The record is unclear as to whom the medical provider for the claimant's visit is at that time. Following is a portion of that record:

History of Present Illness

Pt referred by PCP for cervical spine evaluation. She reports progressive neck pain after a fall at work in January of this year. She describes pain through the right side her neck which extends to the right shoulder but does not typically radiate down the arms. She does note bilateral hand numbness which is intermittent. She also reports worsening balance in the past year. She has tried treatment with PT but denies any relief with this.

Assessment

Assessed

1. Cervical spondylosis with myelopathy (721.1) (M47.12)
2. Cervical stenosis of spine (723.0) (M48.02)
3. Cervical spinal cord compression (336.9) (G95.20)

Discussion/Summary

Pt with R>L neck pain associated with worsening balance in the past year as described above. MRI shows severe canal stenosis at C3-4 d/t large disc-osteophyte complex. This narrows the AP canal diameter to 6mm with compression and deformation of the spinal cord. There is also at least moderate to severe canal stenosis at C5-6 and C6-7. Exam reveals BUE hyperreflexia concerning for early myelopathy. I explained the findings and treatment options, discussed that surgery is indicated to decompress the spinal cord as this degree of stenosis carries an increased risk of spinal cord

injury if left untreated. Will arrange for follow up in clinic with surgeon as soon as possible. Pt agrees with plan.

The claimant sustained admittedly compensable injuries to her low back, right knee, and right arm when she fell on January 18, 2023. The claimant also alleges a compensable cervical spine injury in that same January 18, 2023, fall. The claimant again fell on February 24, 2023, and alleges compensable injuries to her low back, right knee, right arm, coccyx, and cervical spine from that second fall. The claimant's allegations of a compensable cervical spine injury that she alleges to have occurred on January 18, 2023, and/or February 24, 2023, will be considered following consideration of her allegations of compensable low back, right knee, right arm, and coccyx injuries on February 24, 2023. At the time the claimant alleges those injuries she was backing up and fell, apparently striking the back right side of her body. The emergency department record from February 24, 2023, states, "...fall backwards and onto her right side, hitting her right head and the back of her head on concrete. No visual abnormalities noted to these areas. Pt reports that she is having pain of constant all over generalized 9/10." A coccyx x-ray was done by Dr. Ian Cheyne on March 2, 2023, which was negative. That same day, the claimant is also seen by Dr. Thomas Cheyne, who reports tenderness over the coccyx, but also reviews lumbar spine and pelvic x-rays and agrees that there is no definite fracture.

The claimant has the burden of proving her allegations of compensable injuries to her low back, right knee, right arm and coccyx from her February 24, 2023, fall. The claimant's situation is somewhat unusual in that she was still treating for her admittedly compensable low back, right knee, and right shoulder injuries from her first fall on January 18, 2023. However, I find no objective medical evidence of a new or different injury to her low back, right knee, or right arm after her February 24, 2023, fall. Nor do I find any objective findings of injury to her coccyx.

There was tenderness reported but no bruising was reported, or derangement from x-ray. The claimant is unable to prove by a preponderance of the evidence that she sustained compensable injuries to her low back, right knee, right arm, or coccyx in her fall on February 24, 2023.

The claimant did sustain admittedly compensable injuries to her low back, right knee, and right arm on January 18, 2023. Dr. Thomas Cheyne has recommended an MRI of the claimant's lumbar spine. In review of the claimant's medical records including that of Dr. Ian Cheyne and Dr. Thomas Cheyne, I do believe the recommended MRI to be reasonable, necessary medical treatment for the claimant's January 18, 2023, compensable back injury, as the claimant had responded to conservative treatment in an inordinately slow fashion.

The claimant also claims compensable cervical spine injury or injuries on January 18, 2023, and/or February 24, 2023. I have previously included portions of an MRI report of the claimant's cervical spine performed on June 6, 2023, after both of her January and February of 2023 falls. The claimant admits to having preexisting cervical spine difficulties and underwent an MRI of the cervical spine on September 9, 2022. Following is a portion of that diagnostic report:

FINDINGS:

The cervical tonsils in appropriate location cervical cord grossly normal signal.

C2-C3: No significant disc bulge.

C3-4: Broad-based central disc bulge and moderate spurring indenting subarachnoid space to 8.3 mm.

C4-5: No significant disc bulge. Facet arthropathy left greater than right. Minimal foraminal spurring.

C5-6: Central, slightly right paracentral disc protrusion indenting subarachnoid space and cord. Narrowing of subarachnoid space to 7 mm. Mild foraminal spurring.

C6-7: Broad-based central disc bulge mildly indenting subarachnoid space and cord. Narrowing of subarachnoid space 7.2 mm.

C7-T1: No significant disk bulge.

T2-T3: Small central protrusion.

IMPRESSION:

1. C5-C6 central right paracentral disc protrusion indenting subarachnoid space and cord. Causing central canal stenosis.
2. Broad-based central disc bulge spurring C3-4 with mild canal stenosis. Prominent foraminal spurs. Three broad-based central disc bulge C6-C7: Canal stenosis.
4. T2-T3 small central disc protrusion.

Medical records introduced into evidence clearly show significant pain and problems related to claimant's cervical spine prior to either of her 2023 falls. The claimant does not mention cervical or neck difficulties in her form AR-N signed by her on January 18, 2023. Nor does the claimant mention cervical or neck difficulties in an AR-C signed by the claimant on June 8, 2023, regarding her second fall. I will note that the claimant's attorney does assert a claim for cervical injury in a letter dated August 30, 2023. The claimant's medical records after her January 18, 2023, fall do begin on January 25, 2023, in a record from Dr. Ian Cheyne to consistently state, "Patient states she has some soreness on her left neck." However, that appears to be the extent of her cervical or neck complaints until she sees Dr. Hamby on June 2, 2023, when his report states, "Patient states she is having chronic cervical pain but no injury or trauma and started taking Tylenol 8 hour, using Diclofenac and some Tramadol she has had on hand to help with pain. Patient is also using a Tens unit 30 minutes a day and seeing her Chiropractor for this as well.... Pt needs an MRI C-Spine for chronic cervical pain with bilateral radiculopathy down to her shoulders." Dr. Hamby does at that time order an MRI of the cervical spine.

However, prior to that visit with Dr. Hamby it appears most of the claimant's difficulties primarily were located in her lower back.

In review of the claimant's September 9, 2022, cervical spine MRI prior to her two falls and the June 6, 2023, cervical spine MRI, they appear to be essentially the same. The Impressions section of the June 6, 2023, MRI states, "Mul multilevel disc degenerative disease as outlined in greater detail above." Any change that might exist appears to be from progression of the disc degenerative disease and not from either of the claimant's falls. The claimant is unable to prove that she sustained a compensable cervical spine injury from either of her two falls. Therefore, the claimant is also unable to prove her entitlement to medical treatment for her cervical spine.

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 the pre-hearing conference conducted on August 21, 2023, and contained in a Pre-hearing Order filed August 22, 2023, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries to her low back, right knee, right arm, and coccyx on or about February 24, 2023.

3. The claimant has proven by a preponderance of the evidence that she is entitled to medical treatment for her compensable low back injury of January 18, 2023, in the form of an MRI of the lumbar spine.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable cervical spine injury on January 18, 2023, and/or February 24, 2023.

5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her cervical spine.

ORDER

The respondents shall pay the costs associated with reasonable, necessary medical treatment for the claimant's compensable low back injury including an MRI of her lumbar spine as ordered by Dr. Thomas Cheyne.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**