

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H104907

CEDRIC BENNETT, CLAIMANT  
EMPLOYEE

PINE BLUFF SCHOOL DISTRICT, RESPONDENT  
EMPLOYER

ARKANSAS SCHOOL BOARDS ASSOCIATION, RESPONDENT  
INSURANCE CARRIER/TPA

OPINION FILED JANUARY 15, 2025

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed August 7, 2024. The administrative law judge found that the claimant failed to prove he was entitled to additional medical benefits. After reviewing the entire record *de novo*, the Full Commission finds that he was entitled to additional medical treatment as recommended by Dr. Lovett.

I. ADJUDICATION

Cedric Bennett, now age 63, testified that he had been employed with the respondents, Pine Bluff School District, for 28 years. The parties stipulated that the employee-employer relationship existed on June 2, 2021.

The claimant testified that he fell from a ladder after being hit by a rolling school bus. The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on June 2, 2021. The ACCIDENT INFORMATION section of the Form AR-N indicated that an accident occurred at 2:00 p.m. on June 2, 2021. It was written on the Form AR-N that the claimant injured his "left hand, left elbow, tailbone, back, bumped head....Mechanic fell off of a ladder while changing a bulb on the rear of the school bus."

The claimant treated at Jefferson Regional Medical Center on June 2, 2021:

FELL ABOUT 5 FEET OFF A LADDER. AT WORK, WORKING ON A SCHOOL BUS, WHEN BRAKE GOT RELEASED AND BUS ROLLED ONTO HIM KNOCKING HIM OFF THE LADDER. BUS ROLLED OVER LEFT HAND. COMPLAINS OF LEFT HAND, LEFT ELBOW AND LOWER BACK PAIN. HIT HEAD. NO LOSS OF CONSCIOUSNESS. NO NECK PAIN.

The diagnosis on June 2, 2021 was "Hand crush injury, left, initial encounter. Left elbow pain. Acute low back pain. Work related injury."

The claimant treated at MedExpress on June 8, 2021. Physical examination showed swelling in the claimant's left hand and the ball of his left foot. The assessment at that time included "Cervicalgia" and "Low Back Pain." An emergency physician's diagnosis on June 8, 2021 was "Post concussive syndrome. Cervical strain. Wrist sprain. Foot contusion." The

claimant was treated conservatively. A CT of the claimant's cervical spine was taken on June 8, 2021 with the impression, "No fracture."

The record indicates that the claimant treated with Dr. Victor Vargas beginning June 17, 2021:

In brief, Patient presented today for an evaluation of lower back pain.  
Patient is a 60-year-old male, who presents to my clinic for the first time to have an evaluation of injury at work.  
The patient said that he was knocked off a ladder by the school bus.  
He said that he fell from the ladder landed on the back he complains of pain in the lumbar spine.  
He was taken to the Jefferson regional hospital he had a CT scan of the head and [had] an evaluation and he was told that no fractures happened.  
He was prescribed pain medications and muscle relaxer.  
He said that he has continued with pain and tingling and numbness. He has prior back pain.  
Also complains of pain in the left hand with pain and swelling that has been gradually improving.  
Also numbness and tingling...  
X-rays of the lumbar spine AP, lateral, in standing position were done in the clinic today, reviewed and interpreted which showed there is acceptable alignment.  
Multilevel mild or small anterior osteophyte formation.  
There is a sclerosis of the posterior elements and I cannot rule out unilaterality spondylolysis at L5 without spondylolisthesis.  
X-rays of the left hand multiple views that show no evidence of fractures or dislocations mild osteoarthritic changes of the carpal joints. Osteoarthritis of the radial carpal joint with a sclerosis and osteophyte formation of the styloid process of the radius and the scaphoid.

Assessment  
Low back pain.  
Degenerative disc disease.  
Facet arthropathy.

Possible L5 spondylolysis.  
Left wrist sprain.  
Left wrist mild to moderate osteoarthritic changes.

Dr. Vargas planned physical therapy, an LSO brace, medication, and additional diagnostic testing.

An MRI of the claimant's lumbar spine was taken on July 7, 2021 with the following impression:

1. Disc bulge at L5-S1 contacts and displaces the traversing left S1 nerve root.
2. Spondylolysis at L5. Marrow edema signal is noted in the pars interarticularis on the right.

Dr. Vargas performed a lumbar steroid injection on July 7, 2021.

Dr. Vargas reported on July 16, 2021:

Cedric Bennett is a 60 year old male who presents to discuss concerns about their Back, that began on 06/02/2021....  
Patient is a 60-year-old, male. The patient said that he was knocked off a ladder by the school bus. Patient presented today for follow-up.  
He also wants to be evaluated for left foot pain and a neck pain.  
The patient has been seen before and after asked to be evaluated for a left wrist pain and lower back pain.  
The patient stated that he is complaining of 1 month of pain at the ball of the foot that increases with weightbearing and throbbing sensation sometimes with tingling.  
Also he complains of neck pain that has been going on for 2 to 3 months and is getting worse....  
He said that the lower back pain is unchanged, the injection helped only for 2 days. The physical therapy made the back pain worse.  
Continue with numbness in the left lower extremity....  
Assessment  
Low back pain.

Degenerative disc disease. With protrusion of the disc L5-S1 then goes in close contact with the traversing nerve roots.  
Facet arthropathy.  
L5 spondylolysis.  
Left wrist sprain.  
Left wrist mild to moderate osteoarthritic changes.  
Left foot pain secondary to metatarsalgia.  
Neck pain with degenerative disc disease....  
Recommended management of the pain with physical therapy....  
The patient is not at maximum medical improvement.  
I found no evidence of objective findings of injury on the [complaints] of the left foot and the cervical spine.  
Previously we have evaluated the lower back pain which is an exacerbation of pre-existing condition.

Upon referral from Dr. Vargas, Dr. Gary Frankowski performed a Left Transforaminal Epidural Steroid Injection L5-S1 on July 30, 2021.

The claimant followed up with Dr. Vargas on August 4, 2021:

I have discussed with the patient that we have found no objective finding of injury of the lumbar spine however has been treated for an aggravation of the pre-existing condition but he has had transient relief of the symptomatology.  
I am considering that the patient has exhausted the options of treatment conservatively to mitigate his symptoms of pain. However, the pain is multifactorial and I am considering probably more more likely than not his symptoms are due to the pre-existing condition.  
Consequently, I think the patient is having relief of the symptomatology with the physical therapy and I highly recommended to continue physical therapy for the cervical spine and lumbar spine with extension of 3 weeks.  
After that I would consider that the patient has exhausted the options of treatment for conservative treatment and he can be considered at MMI when he finished a 3 more weeks of physical therapy prescribed today....  
The patient is entitled to 0% impairment as a whole person.  
Based on the Guides to the Evaluation of Permanent

Impairment. Fourth Edition. From the American Medical Association.

Dr. Vargas reported on or about September 8, 2021:

Patient presented today to the clinic however he has been released in the previous visit at MMI. The patient stated that he finished physical therapy last week. He complains of some headaches. I explained [to] the patient that the patient was released at maximal medical improvement last visit and I have no further recommendations and he is supposed to return to work on full duty no restrictions on 8/25/2021. For further details refer to my previous visit on 8/4/2021.

The claimant began treating with Dr. Heather L. Whaley at Pain Treatment Centers of America on October 26, 2021. Dr. Whaley's assessment included "Spondylosis" of the lumbosacral region and cervical region. Dr. Whaley prescribed medication.

The claimant testified that the respondent-carrier did not authorize additional medical treatment after May 6, 2022.

The claimant presented for treatment at Legacy Spine & Neurological Specialists on August 16, 2022: "This 61-year-old male presents with low back and neck pain. He reports that his low back and neck pain have been present for about a year and has progressively gotten worse. He reports that the pain is in his low back and will radiate posteriorly down both legs to his feet....In order to evaluate these complaints, we must obtain an MRI of the lumbar and cervical spine to rule out any structural abnormalities including lumbar and cervical stenosis, as well as for

procedural planning purposes. We will also obtain x-rays of the lumbar and cervical spine. We will have him follow up with one of our neurosurgeons once we have obtained the necessary imaging. In the meantime, he will continue his medication regimen.”

The claimant underwent an “MR Cervical Spine w/o Contrast” at Pavilion MRI on September 7, 2022. The findings included “straightening of the cervical lordosis.” The following conclusion resulted: “Retrolisthesis, central protrusion with effacement of the ventral cord at the C3-4 and C4-5 levels as well as uncovertebral hypertrophic degenerative changes and right facet hypertrophy at the C4-5 level with abutment of the exiting right C5 nerve.”

An MRI of the claimant’s lumbar spine was also taken on September 7, 2022 with the following conclusion:

Dominant findings are noted at the L5-S1 level with anterolisthesis, a broad-based disc bulge, central protrusion with leftward orientation, posterior annular tear, left foraminal protrusions and moderate to severe right and moderate left-sided facet hypertrophy with chronic bilateral spondylolysis contributing to abutment of bilateral exiting L5 nerves and abutment of bilateral descending S1 nerves with possible mass effect upon the descending left S1 nerve.

Dr. Dominic Maggio reported in part on September 14, 2022, “We will proceed with a left-sided L5-S1 selective nerve root block.”

Dr. Maggio stated on October 13, 2022, "We will proceed with bilateral SI joint injections per the Legacy protocol." The record does not indicate that Dr. Maggio's treatments were effective.

Dr. Maggio noted on January 5, 2023, "We will proceed with a left-sided SI fusion." The record indicates that Dr. Maggio performed an SI-joint fusion on February 28, 2023. The claimant reported some post-surgical improvement in his physical condition.

The record contains a Change of Physician Order dated November 17, 2023: "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Cedric Bennett to change from Victor Vargas, M.D. to Angela Lovett, M.D[.]"

Dr. Angela Lovett examined the claimant on December 4, 2023. Dr. Lovett performed a trigger point injection.

A pre-hearing order was filed on April 15, 2024. According to the pre-hearing order, the claimant contended, "The claimant contends that he achieved a change of physician through the Commission to Dr. Angela Lovett. Respondents paid the initial evaluation but have since controverted entitlement to ongoing treatment."

The respondents contended, "Respondents contend that all appropriate benefits have been paid with regard to claimant's injuries sustained on June 2, 2021. Respondents took the position that additional



medical treatment is not reasonable and necessary on May 6, 2022. If claimant obtained treatment prior to that date the carrier was unaware of, the treatment was unauthorized. Additionally, claimant has preexisting problems with his cervical spine, so if he needs additional treatment for his neck, it is not due to the June 2, 2021 injury.”

The parties agreed to litigate the following issue: “1. Claimant’s entitlement to ongoing/additional medical treatment.”

After a hearing, an administrative law judge filed an opinion on August 7, 2024 and found that the claimant failed to prove he was entitled to additional medical benefits. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

## II. ADJUDICATION

The 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. Ark. Code Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat’l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101

S.W.3d 252 (2003). What constitutes reasonably necessary treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984). An employee who has sustained a compensable injury is not required to offer objective medical evidence to prove he is entitled to additional benefits. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408.

An administrative law judge found in the present matter, “3. The claimant failed to prove by a preponderance of the evidence that he is entitled to additional medical benefits.” The Full Commission finds that the claimant proved he was entitled to additional medical treatment as recommended by Dr. Lovett. The claimant testified that he had been employed with the respondents, Pine Bluff School District, since 1996. The parties stipulated that the employment relationship existed on June 2, 2021. The claimant testified that, while performing employment services for the respondents, he fell from a ladder after being hit by a rolling school bus. The medical evidence of record corroborated the claimant’s testimony. There was no stipulation with regard to compensability, but the respondents state on appeal that the claimant “sustained compensable injuries to his lower back, neck, left hand and foot” on June 2, 2021.

Following the work-related accident as a result of which the claimant sustained compensable injuries to his lower back, neck, left hand, and foot,

the claimant received authorized, conservative treatment from Dr. Vargas beginning June 17, 2021. Dr. Vargas pronounced maximum medical improvement and 0% permanent anatomical impairment on August 4, 2021. It is well-settled, however, that an employee may be entitled to additional medical treatment after the end of his healing period, if said treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The claimant testified that the respondent-carrier did not authorize additional medical treatment after May 6, 2022. The claimant began treating at Legacy Spine & Neurological Specialists on August 16, 2022. As a result of his treatment at Legacy Spine & Neurological Specialists, the claimant eventually underwent an SI joint fusion performed by Dr. Maggio on February 28, 2023. Nevertheless, the Full Commission reiterates that the record contains a Form AR-N, EMPLOYEE'S NOTICE OF INJURY signed by the claimant on June 2, 2021. Once the employee has received his Form AR-N, subsequent unauthorized medical expenses are not the employer's responsibility. See Ark. Code Ann. §11-9-514(c)(3)(Repl. 2012); *Tempworks Management Services v. Jaynes*, 2023 Ark. App. 147, 662 S.W.3d 280. The Full Commission finds in the present matter that the claimant's treatment at Legacy Spine & Neurological Specialists was unauthorized and shall not be the respondents' responsibility. Said

unauthorized treatment includes the surgical treatment provided by Dr. Maggio.

The claimant received a statutory change of physician to Dr. Lovett on November 17, 2023. Dr. Lovett examined the claimant on December 4, 2023, and she performed a trigger point injection. The record indicates that the claimant received benefit from Dr. Lovett's treatment. The Full Commission finds that that treatment provided by Dr. Lovett was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We find that Dr. Lovett's treatment recommendation was causally related to the June 2, 2021 compensable injury and was not related to a prior injury or pre-existing condition.

After reviewing the entire record *de novo*, therefore, the Full Commission finds that the claimant proved he was entitled to additional medical treatment as recommended by Dr. Lovett. We find that Dr. Lovett's treatment recommendations are reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant is entitled to additional medical treatment as recommended by Dr. Angela Lovett.

Ark. Code Ann. § 11-9-508(a) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." The claimant has the burden of proving by a preponderance of the evidence the additional treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010).

What constitutes reasonably necessary treatment is a question of fact for the Commission. *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445 (2023). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it

sought to remedy. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

The claimant was initially seen at Jefferson Regional Medical Center on June 2, 2021, where he complained of left hand, left elbow, and low-back pain. He did not complain of neck pain at that time.

Approximately six weeks after his on-the-job injury, on July 16, 2021, the claimant treated with Dr. Victor Vargas, complaining of, among others, lumbar sacral pain. Dr. Vargas diagnosed the claimant with “[d]egenerative disc disease with protrusion of the disc L5-S1 then goes in close contact with the traversing nerve roots” and facet arthropathy, believing this condition to be an exacerbation of a pre-existing condition. Dr. Vargas recommended physical therapy and a left transforaminal injection at L5-S1 as a diagnostic and therapeutic tool.

The claimant returned to Dr. Vargas for a follow-up on August 4, 2021. Dr. Vargas opined:

I have discussed with the patient that we have found no objective finding of injury of the lumbar spine however has been treated for an aggravation of the pre-existing condition but he has had transient relief of the symptomology.

I am considering that the patient has exhausted the options of treatment conservatively to mitigate his symptoms of pain.

However, the pain is multifactorial and I am considered probably more likely than not his symptoms are due to this pre-existing condition.

Consequently, I think the patient is having relief of the symptomatology with the physical therapy and I highly recommended to continue physical therapy for the cervical spine and lumbar spine with extension of 3 weeks.

After that I would consider that the patient has exhausted the options of treatment for conservative treatment and he can be considered at MMI when he finished 3 more weeks of physical therapy prescribed today.

**Work status**

The patient will be off work until 8/25/21 where he will return to work on full duty no restriction.

**Impairment rating**

The patient is entitled to a 0% permanent impairment as a whole person. Based on the Guides to the Evaluation of Permanent Impairment. Fourth edition. From the American Medical Association.

Subsequent to his release by Dr. Vargas, the claimant used his personal health insurance to obtain additional medical treatment, ultimately undergoing a left SI-Joint fusion performed by Dr. Dominic Maggio on

February 23, 2023. Prior to conducting surgery, Dr. Maggio obtained an MRI on September 7, 2022, which revealed

degenerative disease. Of note at L5-S1 there is a grade 1 anterolisthesis. There is moderate to severe left-sided, and moderate right-sided neural foraminal stenosis. No central canal stenosis. No other areas of significant central canal or neural foraminal stenosis. There is preserved lumbar lordosis.

These records reflect no objective findings of ongoing traumatic injury. The record is clear that all treatment after Dr. Vargas's release of the claimant was for the claimant's degenerative disc disease.

When the claimant began treating with Dr. Lovett on December 4, 2023, he reported chronic low back pain and chronic sacroiliac joint pain. Dr. Lovett also assessed the claimant with radiculopathy and spondylolysis of the lumbar region and performed a trigger point injection at L4L5S1 [sic]. As with the claimant's previous physicians, Dr. Lovett did not indicate any findings of acute injury, but rather her treatment clearly focused on the claimant's pre-existing degenerative condition.

The evidence is clear that any aggravation of the claimant's pre-existing degenerative condition had resolved when Dr. Vargas released him at MMI in August of 2021.



The claimant's subsequent doctors opined that the claimant suffered from degenerative changes and made no note of any traumatic injury. The administrative law judge in this matter gave appropriate weight to Dr. Vargas's opinion and accurately ruled that all treatment following August of 2021 was for the claimant's pre-existing condition.

Accordingly, for the reasons set forth above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner