

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. F505737**

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| CYNTHIA DAVIS, Employee | CLAIMANT |
| WALMART ASSOCIATES, Employer | RESPONDENT NO. 1 |
| WALMART CLAIMS SERVICES, Insurance Carrier/TPA | RESPONDENT NO. 1 |
| DEATH & PERMANENT AND TOTAL DISABILITY TRUST FUND | RESPONDENT NO. 2 |

OPINION FILED JANUARY 29, 2021

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

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

Respondent No. 1 represented by R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas; although not present at the hearing.

STATEMENT OF THE CASE

On December 3, 2020, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 28, 2020, and a Pre-hearing Order was filed on that date. 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 the within claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury on February 25, 2005 to her cervical spine.

4. The claimant is entitled to a weekly compensation rate of \$342.00 for temporary total disability and \$257.00 for permanent partial disability.

5. Prior Opinions are *res judicata* and the law of this case.

6. The claimant reached MMI on September 16, 2005.

By agreement of the parties the issues to be litigated are limited to the following:

1. Whether the claimant is entitled to additional medical treatment in the form of an evaluation by Dr. Armstrong as recommended by Dr. Roman.

Claimant's contentions are:

“a. The claimant contends that her authorized treating physician has referred her to Dr. Armstrong, a neurosurgeon; however, in spite of being asked to follow up on the referral on two different occasions, the respondent still has not authorized the referral. Claimant contends that an evaluation by Dr. Armstrong is reasonably necessary.

b. The claimant contends that if as a result of an evaluation by Dr. Armstrong it is determined that she needs treatment, any period of disability associated with such treatment has been controverted and therefore, an award of an attorney's fee would be appropriate.”

Respondent No. 1's contentions are:

“a. Respondents contend that all appropriate benefits have been paid, including medical benefits;

b. Respondents contend that Claimant is not entitled to attorney fees.”

Respondent No. 2's contentions are:

“a) See above Proposed Stipulations No. 1 (a) – (f).

b) If the Claimant is requesting indemnity benefits at this time, the Trust Fund reserves the right to conduct additional discovery and, possibly, plead that the SOL is a bar to receipt of additional indemnity benefits.

c) The Claimant should state whether she is still working at this time or state the date upon which she was last employed.”

The claimant in this matter is a 59-year-old female who suffered a compensable injury to her cervical spine on February 25, 2005. Since that time, the claimant has received significant medical

treatment including surgical intervention. However, she was returned to work after surgery and continues to work at the time of the hearing in this matter. The claimant continues to undergo pain management treatment for her compensable injury. That treatment was provided by the respondent through Dr. Roman, who has offices in Little Rock and Morrilton, Arkansas. The claimant currently lives in Dyer, Arkansas which is some distance from both Little Rock and Morrilton, Arkansas.

It appears that the claimant's treatment with Dr. Roman primarily centers around injections and ablations or radiofrequency denervations. However, the claimant has not found relief under the care of Dr. Roman. Given the claimant's compensable injury related to her cervical spine and lack of progress treating with Dr. Roman, he has referred the claimant to Dr. Armstrong. Dr. Armstrong works in Northwest Arkansas which the claimant believes to be closer to her home. I note that Dr. Armstrong is a neurosurgeon, unlike Dr. Ramon. The claimant underwent surgical intervention due to her compensable cervical spine injury at the hands of Dr. Capocelli who is also a neurosurgeon.

It is the claimant's testimony that her condition has actually worsened out of the care of Dr. Roman. Following is a portion of the claimant's direct examination testimony:

Q Now, has your condition, your neck, changed any during the course of time that Dr. Roman has been treating you?

A Yes.

Q And how has it changed?

A It actually has gotten worse.

Q Do you have any idea how many times Dr. Roman can burn these nerves that he has been burning?

A I have asked him, and he says it's okay, but . . .

Q Are you concerned about getting these nerves burned over and over again?

A Yes, I am.

Q Are you having any new symptoms now that you were not having before he started burning these nerves?

A Yes.

Q What symptoms?

A My right arm. It has got a pain through here (indicating) and –

Q Okay. Wait a minute. Stop. You say you've got a pain through here. She can't get that on the record.

A Oh, my right arm -- I mean my left arm. Sorry. My left arm, it has like spasms, like nerve spasms. And there is times that it becomes weak where I can't hold nothing, and I asked Dr. –

Q Now, you can't tell me what Dr. Roman told you. I am just asking you about your symptoms.

A Okay.

Q Since he has been treating you, you have gotten worse and one of the things is you are having these problems in your left arm as you just described?

A Yes.

Q Are you having any other problems?

A Just my neck on the right- and left-hand side, I mean all the way back across the neck area from one side to another.

Q So those symptoms have gotten worse?

A Yes.

Q Are you having any problems with headaches?

A Yes.

Q When did that start?

A It started -- it's migraines and it started several years ago, but they have enhanced over time.

Q So they have gotten worse during the course of your treatment with Dr. Roman?

A Yes.

Q Would you like to be evaluated by a neurosurgeon as Dr. Roman has suggested?

A Yes.

Upon my review of the claimant's testimony and evidence submitted into the record, it is clear that the claimant is entitled to an evaluation by Dr. Armstrong, a neurosurgeon, as recommended by her current authorized treating physician, Dr. Roman.

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 October 28, 2020 and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an evaluation by Dr. Armstrong as recommended by Dr. Roman.

ORDER

Respondent No. 1 is responsible for payment of additional medical treatment in the form of an evaluation by Dr. Armstrong as recommended by Dr. Roman.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**