

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G900609

CALLA DUVALL, Employee	CLAIMANT
AMERICAN AIR FILTER, Employer	RESPONDENT
SENTRY INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED MARCH 23, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 9, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 28, 2021 and an amended pre-hearing order was filed on November 15, 2021. 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 among the parties on January 8, 2019.
3. The claimant sustained a compensable injury to her right shoulder and right

upper extremity on January 8, 2019.

4. The claimant was earning an average weekly wage of \$1,107.12 which would entitle her to compensation at the rates of \$695.00 for total disability benefits and \$521.00 for permanent partial disability benefits.

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

1. Claimant's entitlement to medical treatment from Dr. Hagan as recommended by Dr. Arnold.

2. Compensability of PTSD.

3. Claimant's entitlement to medical treatment as a result of PTSD.

4. Claimant's entitlement to temporary total disability benefits as a result of PTSD.

5. Attorney's fee.

At the time of the hearing claimant stated that the requested temporary total disability period would be from April 8, 2020 through March 22, 2021.

The claimant contends she is entitled to treatment by Dr. Hagan as recommended by her authorized treating physician, Dr. Arnold. Claimant contends she has developed PTSD as a result of her compensable work injury, and that she is entitled to related medical and temporary total disability as a result of that condition. She contends her attorney is entitled to an attorney's fee. The claimant reserves all other issues.

The respondents contend they have paid and continue to pay all appropriate benefits. Claimant does not have a valid CRPS diagnosis supported by objective medical findings. To the extent claimant can establish a valid CRPS diagnosis, she has already been evaluated and treatment for her complaints by Dr. Miedema, Dr. Morse, and Dr. Ennis. Respondents deny claimant has suffered PTSD as a result of her work injury, and

contend that with regard to any temporary total disability associated with that condition, respondents assert that the claimant unreasonably refused suitable employment. With respect to claimant's request for temporary total disability benefits, respondents contend that claimant would be limited to 26 weeks of benefits for a mental injury. In addition, respondents also contend that claimant refused suitable employment; therefore, she is not entitled to temporary total disability benefits.

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 witnesses and to observe their 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 July 28, 2021 and contained in an amended pre-hearing order filed November 15, 2021 are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment from Dr. Hagan.
3. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of post traumatic stress disorder as a result of her January 8, 2019 injury.

FACTUAL BACKGROUND

Claimant is a 51-year-old woman who began working for respondent in October 2018. At the same time claimant worked for respondent, she also worked 20 hours per

week at an apartment complex as a property manager. Claimant testified that respondent hired her to work as a “select packer”.

The parties have stipulated that claimant suffered a compensable injury to her right shoulder and right upper extremity on January 8, 2019. Claimant suffered a traumatic and horrific injury that day when a utility knife she was using to separate material between rollers on a machine got caught and her right arm and then her entire body was pulled into the machine. Claimant testified that the cutoff switch to the machine was not effective and the team leader, who was driving a forklift at the time, had to come and shut off the machine. Claimant estimated that she was in the machine for 15-20 minutes before the machine could be taken apart to get her out.

Claimant was taken to the hospital by ambulance with various complaints. Claimant was diagnosed with a nondisplaced fracture of her right middle finger; a displaced fracture of the fourth metacarpal on the right hand; and a displaced fracture of the fifth metacarpal bone. Claimant has undergone two surgical procedures by Dr. Benafield for her right hand injury, with the first occurring on January 22, 2019 and the second on August 13, 2019.

In addition to her right hand injuries, claimant was also diagnosed with a torn rotator cuff by Dr. Cox and surgery was recommended. Claimant did not undergo that surgery from Dr. Cox due to a diagnosis of complex regional pain syndrome (CRSP). She has primarily been treated by Dr. Ennis for this condition and his treatment has included injections. Claimant has also been treated by Dr. Morse with medication for headaches.

Claimant eventually received a change of physician to Dr. Chris Arnold who recommended surgery to repair the torn rotator cuff. Before proceeding with surgery, he

recommended a medical clearance from Dr. Morse and Dr. Ennis. In a report dated February 8, 2021, Dr. Morse indicated that claimant was receiving treatment from Dr. Ennis for CRPS and he would defer to Dr. Ennis' judgement with respect to surgery on claimant's shoulder. In a report dated February 5, 2021, Dr. Ennis indicated in regard to the proposed shoulder surgery that it was a decision claimant would have to make since the surgery could exacerbate sympathetic symptoms/pain.

Dr. Arnold performed an arthroscopic procedure on claimant's right shoulder on March 8, 2021. Following this procedure claimant underwent physical therapy and continued to complain of right shoulder pain. Dr. Arnold referred claimant to Dr. Hagan for an evaluation for neurogenic pain. He indicated in a report dated July 26, 2021 that it was difficult to determine whether claimant's shoulder stiffness was due to neurogenic pain or scar tissue. Dr. Arnold eventually ordered an MRI scan based on his belief that claimant suffered from adhesive capsulitis and the MRI was read as showing findings consistent with adhesive capsulitis. Dr. Arnold performed an arthroscopic lysis of adhesions and manipulation on October 11, 2021.

The claimant returned to work for respondent shortly after her compensable injury, but was placed in the office performing modified duty work. She continued working for respondent for over a year until April 2020. On March 24, 2020, claimant sought treatment from Dr. Gene Chambers, clinical neuropsychologist, who diagnosed claimant with post traumatic stress disorder (PTSD) as a result of her January 8, 2019 injury. Dr. Chambers took claimant off work from April 2020 through March 22, 2021. Dr. Chambers has provided treatment with counseling to the claimant.

In response to the diagnosis by Dr. Chambers, respondent had claimant undergo

an evaluation by Dr. Garrett Andrews, neuropsychologist. In a report dated September 15, 2020, Dr. Andrews opined based on neuropsychological testing that claimant met the criteria for Definite Malingering.

Claimant has filed this claim contending that she is entitled to medical treatment by Dr. Hagan. She also contends that she suffered a compensable injury in the form of PTSD as a result of her compensable injury and is entitled to temporary total disability benefits and medical benefits for her PTSD.

ADJUDICATION

The first issue for consideration involves claimant's request for medical treatment from Dr. Hagan. An 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. A.C.A. §11-9-508(a). Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

The first mention of Dr. Hagan is in a report of Dr. Arnold dated April 20, 2021. This was after Dr. Arnold had performed the arthroscopic procedure to repair claimant's torn rotator cuff. Claimant was still complaining of shoulder pain following her surgery and Dr. Arnold indicated that he would refer to Dr. Hagan for claimant's neurogenic pain. Dr. Arnold again indicated that claimant should undergo an evaluation by Dr. Hagan in reports dated May 19, 2021 and May 28, 2021. In a report dated July 26, 2021, Dr. Arnold

stated that it was difficult to determine whether claimant's shoulder stiffness was due to neurogenic pain or to scar tissue.

Notably, in a report dated August 10, 2021, Dr. Arnold indicated that claimant continued to have subjective complaints throughout her right upper extremity. He stated that claimant was receiving treatment for those complaints from Drs. Knox and Ennis. He ordered an MRI scan of claimant's right shoulder because there were indications of adhesive capsulitis. He also noted that her biggest complaint was neurogenic pain or CRPS and stated: "I cannot render opinion on this I would defer all of this to her pain specialist." Claimant's pain specialist was Dr. Ennis who has continued to treat claimant for CRPS complaints. Dr. Arnold made no mention of Dr. Hagan in the August 10, 2021 report.

The MRI performed on September 3, 2021 had findings consistent with adhesive capsulitis. In his report of September 7, 2021, Dr. Arnold recommended an arthroscopy for lysis of adhesions. With respect to claimant's CRSP complaints, Dr. Arnold indicated that he would defer to either Dr. Hagan or Dr. Ennis. He also stated:

She sees Dr. Ennis for RSD but she does not think this is working. If Dr. Ennis gives the clearance for surgery we could move forward otherwise she needs to see Dr. Hagan. (Emphasis added.)

Dr. Ennis gave the clearance for surgery and it was performed by Dr. Arnold on October 11, 2021. As stated in Dr. Arnold's report of September 7, 2021, he would defer to Dr. Hagan or Dr. Ennis for claimant's CRSP complaints. Claimant had not seen Dr. Hagan, but was treating with Dr. Ennis for CRSP since December 12, 2019. Dr. Ennis gave clearance for another procedure which Dr. Arnold performed on October 11, 2021.

Dr. Arnold's last report mentioning Hagan indicated that claimant only needed to see him if Dr. Ennis did not give clearance for surgery. The surgery was performed after clearance was given by Dr. Ennis. Therefore, per Dr. Arnold's statement, there was no need for claimant to see Dr. Hagan.

With respect to this issue, I note that Dr. Ennis has been treating claimant for her pain associated with CRSP since December 12, 2019. He is familiar with her complaints and the treatment provided by him and the other medical providers. Given this as well as Dr. Arnold's last statement that claimant only needed to see Hagan if she was not given clearance for surgery, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to medical treatment by Dr. Hagan. Claimant is currently receiving treatment for her CRSP from Dr. Ennis.

The next issue for consideration involves claimant's contention that she suffers from PTSD as a result of her January 8, 2019 injury. A.C.A. §11-9-113 provides in pertinent part:

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

At the request of Dr. Ennis, claimant was evaluated by Dr. Gene Chambers, a

licensed psychologist. Dr. Chambers authored a report dated April 8, 2020, in which he noted claimant's history of injury. He also indicated that claimant was given various psychological tests, including the DAPS-Detailed Assessment of Posttraumatic Stress. Based on those test results, Dr. Chambers diagnosed claimant as suffering from PTSD and recommended psychotherapy treatment which he has provided. In response to Dr. Chambers' diagnosis, respondent had claimant undergo an evaluation by Dr. Garrett Andrews, neuropsychologist. While at Dr. Andrews' office, claimant underwent a battery of neuropsychological tests. In his report dated September 15, 2020, Dr. Andrews reached the following conclusion:

Inconsistent performance during the testing was identified by the internal performance validity measures; she failed multiple performance validity checks. The results are not reflective of her actual cognitive functioning ability.

On the psychological portion of the assessment, her performance indicated an over reporting approach to the task. The results of the MMPI-2-RF are not valid for general interpretation and indicate that the reported psychological distress is over reported or exaggerated. The results of this test are not reliable and cannot be interpreted.

Given her performance, no verifiable diagnosis can be made with regard to psychiatric or psychological sequela because of her injuries or resulting stress.

Dr. Andrews went on to indicate that according to the Slick et al. Malingering Criteria, his diagnostic impression was "Definite Malingering."

Following her review of Dr. Andrews' report, claimant apparently returned to Dr. Chambers and attributed her test results with Dr. Andrews to a variety of factors. These

included having to drive herself to Little Rock with her non-dominant hand; being in pain from a lack of injections; never actually seeing Dr. Andrews; Dr. Andrews considering claimant's request for breaks as a negative factor; and Dr. Andrews' intention to look for indices of malingering. In response to her explanation, Dr. Chambers wrote a report dated December 28, 2020 noting these explanations and concluding that under the circumstances, claimant was not capable of providing a valid effort during her testing.

Notably, claimant acknowledged that at her deposition she indicated that she did not have any issues with Dr. Andrews' staff until after she received the test results:

Q And at the deposition before you got the test results, you informed me that you didn't have any issues with any of the staff that evaluated you at Dr. Andrews' office; correct?

A His results wasn't in at that time.

Dr. Andrews responded to Dr. Chambers' criticisms in a report dated December 29, 2020. He noted that claimant had driven herself to the examination, was on time and did not require assistance. He also noted that claimant was alert, oriented, and appropriate throughout the exam. He noted that breaks were encouraged, that breaks did not interfere with the examination or its validity, and were not seen as a negative. He also noted:

Furthermore, Ms. Duvall spent a total of approximately 6 hours in my office on the day of the exam, which included neurocognitive assessment, personality assessment, validity assessment, and face-to-face psychiatric interview. At no time did she raise concerns about her drive to the clinic, lodging, a pain injection, or negatively reacting to any assessment of stimuli.

Dr. Andrews then discussed claimant's test results and noted that her performance resulted in a 99% certainty of malingering both her cognitive and emotional difficulties.

He went on in his report to state:

In conclusion, Ms. Duvall failed multiple empirically supported validity indicators across multiple domains. Her performance meets the criteria for definite malingering with mixed presentation (Neurocognitive, Somatic, and Psychiatric) as compared to the criteria set forth by Sherman, Slick, and Iverson in 2020. When compared to the criteria from 1999, her performance would fall under 99% certainty of malingering. Chronic pain, depression, stress, PTSD, ADHD or other psychiatric illnesses cannot and does not account for her performance.

It should be noted that Dr. Chambers did testify that his testing included validity testing; however, those test results are not included in his report and he did not specifically address them at his deposition. I also note that Dr. Chambers did not make his diagnosis of PTSD based upon the criteria established in the most recent issue of Diagnostic and Statistical Manual of Mental Disorders.

I find based upon the evidence presented, that Dr. Andrews' opinion is entitled to greater weight than the opinion of Dr. Chambers. Dr. Andrews' report clearly contains validity testing results showing that claimant failed multiple "empirically supported validity indicators across multiple domains" with a 99% certainty of malingering. Dr. Chambers testified that he did not consider the tests given by Dr. Andrews to be invalid or improper, and he did not dispute the tests produced the results that Dr. Andrews reported. Instead, Dr. Chambers indicated that based on various factors, claimant was not capable of producing a valid effort. However, as previously noted, claimant had no issues with Dr. Andrews or his staff until after she received the test results. Furthermore, as noted by

Dr. Andrews in his report of December 29, 2020, at no time during her exam did claimant raise any concerns about pain, her drive to the clinic, lodging, et cetera. Accordingly, I find that Dr. Andrews' opinion is entitled to greater weight and find that based upon Dr. Andrews' opinion and neuropsychological testing results, that claimant has failed to prove by a preponderance of the evidence that she suffers from post traumatic stress disorder as a result of her compensable injury. While the claimant did certainly suffer a traumatic and horrific injury on January 8, 2019, she has failed to prove by a preponderance of the evidence that she suffers from post traumatic stress disorder as a result of that incident.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment from Dr. Hagan. Claimant has also failed to prove by a preponderance of the evidence that she suffers from post traumatic stress disorder as a result of her compensable injury. Therefore, she is not entitled to additional temporary total disability benefits or medical treatment for PTSD. Claimant's claim for additional compensation benefits is hereby denied and dismissed.

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$1,012.55.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE