

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204642

MARGARET A. FREEMAN, EMPLOYEE	CLAIMANT
MILLER COUNTY JUDGE, EMPLOYER	RESPONDENT
ASS'N OF ARKANSAS COUNTIES/ AAC RISK MG'T SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 14, 2024

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

Claimant represented by the HONORABLE NEAL L. HART, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed July 15, 2024. The administrative law judge granted the respondents' motion for an Independent Medical Evaluation. After reviewing the entire record *de novo*, the Full Commission finds that an Independent Medical Evaluation is reasonable in accordance with Ark. Code Ann. §11-9-511(a)(Repl. 2012).

I. HISTORY

The parties stipulated that Margaret A. Freeman, now age 61, "sustained an admittedly compensable injury to her left ankle, left foot, left leg, and right knee" on June 15, 2022. According to the record, Ms.

Freeman treated at CHRISTUS Health Ark-La-Tex on June 15, 2022: “59-year-old female patient presents emergency department for complaints of left ankle pain after falling today. The patient fell down some stairs today resulting in her left ankle injury.” Physical examination showed “Moderate abrasion to the right lateral shin, **Other** – Limited range of motion to the left ankle with joint effusion and moderate ecchymosis; deformity to the left medial ankle with significant tenderness and tenting of the skin[.]”

An x-ray of the claimant’s left ankle was taken on June 15, 2022 with the impression, “Post reduction left ankle x-ray independently reviewed and interpreted by me demonstrates trimalleolar fracture in good alignment with significant improvement from prereduction x-ray.”

Kellie L. Flaherty, PA provided a Differential Diagnosis on June 15, 2022:

59-year-old female presents to the ED by EMS after fall down a couple of steps at the bottom of the stairs as detailed per HPI. She denies other injury besides abrasion to the lateral right ankle and shin, and more significantly the deformed and tenting painful and swollen left ankle. Upon initial evaluation there are 2 abrasions/small lacerations overlying the deformed joint however there is not definite communication with the underlying fracture. Patient’s x-ray reveals a displaced trimalleolar fracture dislocation of the left ankle. Orthopedics was consulted and recommended reduction and splint placement in the ED followed by CT for further evaluation of the extent of fracture. Procedures documented as above. I assisted my ED attending Dr. Phillips in performing these procedures. At the time of reduction this was confirmed to be an open fracture, grade 1....

Dr. Howard R. Brown performed surgery on June 16, 2022: “Left ankle irrigation and debridement with open reduction internal fixation of trimalleolar fracture including a posterior fragment.” The post-operative diagnosis was “Open fracture ankle, trimalleolar....The patient will be nonweightbearing for at least 6 weeks, she will need at least 24-48 hours of IV antibiotics, and then p.o. antibiotics when she goes home with Keflex and Bactrim DS. As stated she will be nonweightbearing, and in a fracture boot.”

The claimant was discharged from CHRISTUS Health Ark-La-Tex on June 20, 2022. The diagnosis was “(1) Trimalleolar fracture of left ankle.” The parties stipulated that the respondents “paid medical and indemnity benefits.”

Dr. Brown reported on September 7, 2022, “**RADIOGRAPHIC:** Three views of the ankle reveal hardware in place. Medial malleolus and posterior malleolus are healing. Lateral malleolus is also healing. Ankle mortise is intact. There is minor micro subcortical cyst formation consistent with RSD....The patient is improving, but slowly.”

Dr. Richard B. Sharp examined the claimant on February 23, 2023 and assessed “Causalgia of left lower limb....Continue therapy. Continue medications.” The claimant continued to follow up with Dr. Sharp.

The claimant began treating with Dr. Gregory Ardoin on April 3, 2023:

Margaret Freeman is a 60 year old female who presents to discuss concerns about their Ankle, that began on 06/15/2022.

Patient fractured her ankle at work after falling down some stairs. She had a grade 1 open fracture....Patient had a closed reduction in the emergency department and then had surgery on 6/16/2022 for debridement of the open fracture and open reduction internal fixation of the trimalleolar ankle fracture....

She had a fairly routine postoperative course however she developed complex regional pain syndrome (CRPS). Patient has gone on to her extensive physical therapy....Any sensitivity below the knee touch to the leg causes severe pain. Burning type pain in her foot....

Foot and ankle exam: Left foot and ankle exam reveals altered color purpleish reddish leg from mid leg all the way down to the toes....

Impression: 1. Left ankle trimalleolar fracture dislocation grade 1 open status post debridement, open reduction and internal fixation.

2. Resultant CPRS not controlled on Lyrica alone....My recommendation is to transition care over to pain management specialists (sic) that specializes in RSD and willing to perform sympathetic blocks for this. I think she needs trial of 3 to 6 injections. I will make a referral to Dr. Walker or Dr. Frankowski and hopefully they will be able to help this patient get the CRPS under control. Physical therapy for CRPS should also be continued....

The claimant began treating with Dr. Gary Frankowski on April 20, 2023. Dr. Frankowski assessed "1. 60-year-old patient with history of left foot and ankle injury along with reconstructive stabilization surgery. Patient with neuropathic chronic pain with tactile allodynia. Does not meet criteria for Budapest criteria for CRPS. But definitely meets criteria for neuropathic

pain.” Dr. Frankowski recommended conservative management, medication, and a TENS unit.

An Electrodiagnostic Report was done on July 18, 2023 with the following impression:

This is an abnormal study. There is electrophysiologic evidence of

1. Mild Lt. superficial peroneal nerve entrapment/neuropathy at or about ankle affecting the myelin and axons of the sensory nerve fibers.
2. Pt also have demyelinating Lt. sural nerve entrapment/neuropathy at or about ankle.
3. There is no additional focal entrapment or radiculopathic process. Patient has weakness with all the muscles tested but will benefit with continuation of therapy.

The claimant participated in a Functional Capacity Evaluation on January 10, 2024: “The results of this evaluation indicate that a reliable effort was put forth, with 51 of 51 consistency measures within expected limits....Ms. Freeman completed functional testing on this date with **reliable** results. Overall, Ms. Freeman demonstrated the ability to perform work in the **LIGHT** classification of work[.]”

Dr. Ardoin reported on January 18, 2024:

Margaret Freeman is a 61 year old female. Since their last visit, patient reports feeling Worse. Patient presents today with chief complaint of left foot burning pain coolness numbness weakness. She had ankle fracture repair back in June 2022 work-related injury. Patient had a nerve block that lasted for 2 weeks. She now has nerve injury neuralgia nerve pain syndrome associated with it. Is not really getting better. She takes medications prescribed by Dr. Frankowski.

She uses a dorsiflexion assist AFO brace. It wakes her up at night burns and tingles....

Foot and ankle exam: Steppage gait on the left. Patient has weakness to plantarflexion and dorsiflexion. She is able to plantarflex and dorsiflex however but she has about 3-4 out of 5 strength in dorsiflexion and plantarflexion. The foot is cool on the left however she has great palpable pulses. She has calf atrophy on the left as compared to the right of about 2 cm difference in mid circumference calf....

Impression: Left ankle fracture with nerve injury. Likely from nerve block with resultant neuritis and foot drop weakness both anterior and posterior muscles.

Plan: Patient is at MMI in regards to orthopedic manages his nerve pain (sic). I do not see any surgery that I can do to help her with that. She needs to continue treatment with the pain management physician Dr. Frankowski....

Primary impairment will be given according to the Guides to the Evaluation of Permanent Impairment fourth edition, fourth edition page 83 table 62. Ankle joint space narrowing of less than 3 mm cartilage interval 6% whole person 15% left lower extremity and 21% left foot.

The parties stipulated that “the claimant’s treating physician, Dr. Ardoin, opined she reached maximum medical improvement (MMI) on January 18, 2024, and assigned her a permanent anatomical impairment rating of 15% to the left lower extremity, which the respondents have accepted and are paying.”

The record indicates that the claimant followed up with Dr. Frankowski on January 18, 2024. Dr. Frankowski refilled the claimant’s medication, and he also ordered a mental health evaluation with regard to the claimant’s chronic pain. Dr. Frankowski planned, “We also presented to our patient and her husband about using a spinal cord stimulator to help

with [her] chronic neuropathic pain. We discussed the trial to see how much it helps and then the consideration of permanent device. It was described as kind of a pacemaker for the spinal cord in regards to processing this chronic pain.”

A pre-hearing order was filed on May 3, 2024. According to the pre-hearing order, the claimant contended the following: “The claimant contends she was involved in an admittedly compensable work accident on June 15, 2022, in which she sustained injuries to multiple body parts, including her left foot, left ankle, left leg, and right knee. Thereafter, Dr. Ardoin performed surgery on her left ankle, and the claimant contends she now suffers from residual, documented nerve damage, neuralgia, neuritis, left lower leg weakness, left foot drop, possible complex regional pain syndrome, and neuropathic pain. Dr. Gary Frankowski, a pain management specialist the claimant contends the respondents chose, has opined she requires additional medical treatment in the form of a spinal cord stimulator. The claimant contends Dr. Frankowski’s recommendation constitutes reasonably necessary medical care related to her compensable injuries and, therefore, the respondents should be required to provide it. The claimant states she has a scheduled injury. She contends the respondents’ chosen physician has recommended additional medical care intended to improve her condition, and that she is not currently working as

she is unable to work due to her compensable injuries. The claimant further contends that since the respondents have to date directed all her medical care, on these facts compelling her to see yet another doctor for an IME is not reasonably necessary and, therefore, the respondents' request should be denied. The claimant contends her attorney is entitled to payment of a statutory fee on any and all controverted indemnity benefits; and she respectfully reserves the right to amend and/or otherwise alter the above contentions as discovery progresses. All other potential issues except the threshold issue concerning the respondents' entitlement to an IME are expressly reserved for litigation at a later date including, but certainly not limited to, issues involving permanent impairment. The claimant also specifically reserves the issue of controversion, as well as any and all issues not specifically addressed herein, for future determination and/or litigation. This is a claim for additional compensation, and the claimant hereby renews her request for an award of any and all benefits to which she may be entitled pursuant to the Arkansas Workers' Compensation Act (the Act)."

The respondents contended, "The respondents contend that Dr. Frankowski is continuing to treat the claimant for pain management, and he has 'suggested' a spinal cord stimulator 'may' be appropriate. The respondents are simply requesting an IME , which they contend is in



essence a second opinion in order to determine whether this invasive surgical recommendation is appropriate for treatment of the claimant's compensable injuries. The respondents further contend the ALJ has the statutory authority to grant their motion for an IME/second opinion, especially based on these facts given the invasive nature and arguably ineffective clinical efficacy of Dr. Frankowski's recommendation herein. The respondents contend they have not controverted any medical or indemnity benefits in this claim to date, and specifically reserve this and any and all other issues not specifically litigated herein for further determination and/or litigation."

The parties agreed to litigate the following issues:

1. Whether the respondents are entitled to an IME concerning whether the spinal cord stimulator Dr. Frankowski has recommended is related to, and constitutes reasonably necessary treatment for, her compensable injuries.
2. The parties specifically reserve any and all other issues for future determination and/or litigation.

The claimant followed up with Dr. Frankowski on May 7, 2024:

"Patient with severe neuropathic pain left lower extremity. Patient is having acute flareup over the past few weeks the pain is intensified mainly at night causing her to be nauseated feel like she has to throw up. She is also having more right-sided leg pain she has to rely on the right leg when she is ambulatory and she uses a cane. We discussed about potentially

performing a spinal cord stimulator but that was denied by the insurance adjuster....She rates her pain as 8 out of 10 on the pain severity scale.”

An administrative law judge filed an opinion on July 15, 2024. The administrative law judge found, among other things, that the respondents were entitled to an Independent Medical Evaluation to be performed by Dr. Carlos Roman. 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).

In the present matter, the claimant contends that Dr. Frankowski's recommendation of a spinal cord stimulator constitutes reasonably necessary medical treatment. The administrative law judge concluded in part:

I do not find the fact Dr. Frankowski is the physician who has recommended the surgical insertion of a spinal cord stimulator

into the claimant's body – apparently as a last-ditch, “hail-Mary” effort to treat the claimant's continued complaints of pain and weakness based on a rather vague diagnosis apparently devoid of sufficient objective medical evidence – is dispositive on these facts.

The Full Commission notes that no treating physician of record, including Dr. Frankowski, has described any portion of the claimant's medical treatment following the compensable injury to be a “hail-Mary effort.” It is also well-settled that an employee who has sustained a compensable injury is not required to offer objective medical evidence to prove she is entitled to additional benefits. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408. *See also Chamber Door Indus., Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997); *Ark. Dep't of Cmty. Corr. v. Moore*, 2018 Ark. App. 60. Moreover, the Full Commission notes from the record that there were many prominent objective medical findings demonstrated following the compensable injury. These conspicuous objective medical findings included joint effusion, ecchymosis, tenting of the skin, trimalleolar fracture, subcortical cyst formation consistent with Reflex Sympathetic Dystrophy, purple and red coloring in the claimant's lower left leg, an abnormal Electrodiagnostic Study, and cooling and atrophy in the claimant's left leg.

Ark. Code Ann. §11-9-511(Repl. 2012) provides, in pertinent part:

(a) 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.

In the present matter, the respondents request that the claimant participate in an Independent Medical Evaluation in accordance with Ark. Code Ann. §11-9-511(Repl. 2012) and Ark. Code Ann. §11-9-811(Repl. 2012). We find that the respondents' request is reasonable in accordance with Ark. Code Ann. §11-9-511(a)(Repl. 2012). We direct the claimant to participate in an Independent Medical Evaluation to be performed by Dr. J. Carlos Roman. The place of examination shall be reasonably convenient for the claimant pursuant to Ark. Code Ann. §11-9-511(b)(Repl. 2012). The Full Commission finds that the Independent Medical Evaluation is not contrary to the Court of Appeals' holding in *Burkett v. Exxon Tiger Mart*, 2009 Ark. App. 93, 304 S.W.3d 2, because the parties have not yet "litigated their case."

The Full Commission therefore directs the claimant to present for an Independent Medical Evaluation to be performed by Dr. J. Carlos Roman in accordance with Ark. Code Ann. §11-9-511(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

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MICHAEL R. MAYTON, Commissioner