

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G001983

SHERRY GANO, Employee	CLAIMANT
WASHINGTON REGIONAL MEDICAL CENTER, Employer	RESPONDENT #1
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED MAY 13, 2021

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

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

Respondent #1 represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

Respondent #2 represented by DAVID L. PAKE, Attorney, Little Rock, Arkansas; although not participating in hearing.

STATEMENT OF THE CASE

On April 28, 2021, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 17, 2021 and a pre-hearing order was filed on that same date. 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 prior opinions and order are final.

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

1. Claimant's entitlement to additional medical treatment for her shoulder as recommended by Dr. Arnold.

The claimant contends she is entitled to additional medical treatment by Dr. Chris Arnold. The claimant reserves all other issues.

Respondent #1 contends that any treatment recommended by Dr. Arnold for the left shoulder is unreasonable, unnecessary, and does not arise out of the compensable injury.

Respondent #2 defers to the outcome of litigation on the medical issue and waives its appearance at the hearing.

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 a pre-hearing conference conducted on March 17, 2021, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an evaluation from Dr. Christopher Arnold.

FACTUAL BACKGROUND

The claimant is a 63-year-old woman who began working for respondent in September 2008 as a lead cashier and lead person in its cafeteria. Claimant suffered an admittedly compensable injury to her left shoulder and cervical spine while attempting to dump a five-gallon bucket of ice into a Coke machine on July 20, 2009.

The claimant has an extensive history of medical treatment for her compensable injuries. Her treatment has included a cervical fusion at C4-5 and C5-6 by Dr. Blankenship on March 2, 2010. Dr. Blankenship subsequently found that claimant had reached maximum medical improvement and assigned her an impairment rating of 9% to the body as a whole that was accepted and paid by respondent #1. Claimant underwent scar revision surgery by Dr. Kirsch on September 15, 2010, and a second scar revision surgery by Dr. Vural on September 9, 2014. Claimant also began seeing Dr. Regina Thurman for pain management beginning on November 17, 2010, and continued to treat with Dr. Thurman over the course of the next several years. In 2019 she began seeing Dr. Gaines who had taken over for Dr. Thurman. Claimant continues to receive pain management treatment from Dr. Gaines.

With respect to her left shoulder, claimant continued to have issues and has been evaluated by various physicians, including Dr. Powell and Dr. Ackerman. On December 18, 2018, she was evaluated by Dr. Christopher Arnold, orthopedic surgeon. Dr. Arnold ordered an MRI scan of the left shoulder which revealed a partial tear of the supraspinous as well as mild osteoarthritis. Dr. Arnold gave claimant an injection in the left shoulder which was ineffective. Dr. Arnold then offered claimant surgery on her left shoulder, but claimant chose not to undergo the surgery due to various complications, including a 90%

blockage in her left carotid artery.

This claim has been the subject of prior hearings, most recently a hearing on January 8, 2020. In an opinion filed February 13, 2020, this administrative law judge found, *inter alia*, that claimant had suffered a loss in wage earning capacity in an amount equal to 40% to the body as a whole and that she had reached maximum medical improvement for her left shoulder injury on February 12, 2019, based upon the report of Dr. Arnold. That opinion was not appealed and is now final.

Claimant has not seen Dr. Arnold since February 12, 2019. She contends that her left arm pain is worsening and wishes to return to Dr. Arnold for an evaluation. Respondent has denied that request and a hearing on this issue resulted.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof.

Claimant's last visit with Dr. Arnold occurred on February 12, 2019, at which time he found that claimant had reached maximum medical improvement for her left shoulder injury. Significantly, he did not state that claimant would not need additional medical treatment in the future for her left shoulder. To the contrary, he recommended surgery on claimant's shoulder but she chose to decline surgery at that time due to complications, including a 90% blockage of her carotid artery. Dr. Arnold stated that claimant would

continue to be observed and that she should call his office if symptoms worsened or her condition did not improve.

She is very versed in shoulder surgery and complications that can arise. She has had multiple complications. She has over 90% blockage in her left carotid. She is hesitant to undergo surgery. She has a partial tear discussed risk versus benefits of scope. She would like to hold off on surgery at the current time and continue to observe. Will send her for fce/impairment rating in regards to left shoulder.

The patient was advised to call the office if symptoms or do not improve.

In fact, according to claimant's testimony, her condition has not improved but instead has worsened. I also note that on April 1, 2021, Ms. Brooks wrote a letter to Dr.

Arnold stating:

You last saw Sherry in February of 2019 and had recommended surgery. However, she has a blockage in her left carotid and had been advised by her neurologist not to have surgery. In that clinic note of February 12, 2019, you indicate she should call the office if her symptoms worsen or do not improve. She tells me the symptoms have not improved, and she was trying to get back in to see you, but the workers' compensation insurance company will not authorize the visit. My question to you is whether you believe there are treatments short of surgery that would be helpful to her shoulder, and if you believe it would be helpful for you to see her again to evaluate those options?

In response to this inquiry, Dr. Arnold hand wrote a note on the April 1 letter stating:

We need to see.

Given Dr. Arnold's statement in his February 12, 2019 report that he would

continue to observe claimant's condition and indicating that claimant should contact his office if her condition worsened or did not improve, his response to Ms. Brooks' inquiry of April 1, 2021 and claimant's testimony that her condition has worsened, I find that she has proven by a preponderance of the evidence that she is entitled to an additional evaluation by Dr. Arnold.

I do note that in response to claimant's request to return to Dr. Arnold respondent had claimant's medical records reviewed by Dr. Shane McAlister, radiologist. In a report dated March 1, 2021, he stated:

I have considered all of the above submitted medical records and imaging findings/results. In my opinion, there is no objective reported finding of acute/sub-acute bony or soft tissue post traumatic injury from the incident of 2009 documented. There was no reported traumatic findings seen by the interpreting Radiologists nor was any seen on this review.

First, I note that respondent has already accepted a compensable injury to claimant's left shoulder. A claimant who has suffered a compensable injury is not required to furnish objective evidence of her continued need for medical treatment. *Arkansas Health Center v. Burnett*, 218 Ark. App. 427, 558 S.W. 3d 408. Furthermore, I note that Dr. McAlister is a radiologist whereas Dr. Arnold is an orthopedic surgeon. In addition, Dr. McAlister has never evaluated the claimant whereas Dr. Arnold has treated claimant on numerous occasions and recommended surgical treatment for her compensable injury. Based upon these facts, I find that Dr. Arnold's opinion is entitled to greater weight.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an evaluation by Dr. Arnold.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$411.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE