

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G109153

WHITNEY HARDER, Employee	CLAIMANT
WASHINGTON REGIONAL MEDICAL CENTER, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED MARCH 4, 2022

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney at Law, Ozark, Arkansas.

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

STATEMENT OF THE CASE

On December 7, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 3, 2021, and a Pre-hearing Order was filed on that same 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 this claim.
2. The relationship of employee-employer-carrier existed between the parties on October 22, 2011.
3. The claimant sustained a compensable cervical spine injury on October 22, 2011.

By agreement of the parties the issue to be litigated was limited to the following:

1. Whether the claimant is entitled to additional medical treatment by Dr. Luke Knox, including physical therapy.

Claimant's contentions are:

“The Claimant, Whitney Harder, sustained a compensable neck injury on October 22, 2011, while working for Washington Regional Medical Center in Fayetteville, Arkansas.

The Claimant was recommended a six-month follow-up appointment with Luke Knox, M.D. Despite this, the Respondents have filed to offer a follow up appointment.

The Claimant has ongoing pain and discomfort in her neck and is requesting additional medical treatment.

Due to the controversion of entitled benefits, the Respondents are obligated to pay on half of the Claimant’s attorney’s fees.

The Claimant contends that she is owed medical benefits as well as Temporary Total Disability benefits from May 19, 2020 through a date yet to be determined.

Claimant reserves the right to raise additional contentions at the hearing of this matter.”

The respondents’ contentions are as follows:

“Respondents contend that Claimant has received all appropriate benefits associated with her October 22, 2011 neck injury. She reached MMI on February 7, 2020 and received a 6% rating to the body as a whole, which was an accepted rating. Additional medical treatment is not reasonable and necessary.”

The claimant in this matter is a 34-year-old female who sustained a compensable cervical spine injury on October 22, 2011. The claimant was at that time employed by the respondent as a critical care nurse. On direct examination, the claimant described the incident in which she received her compensable injury, her reporting of the injury, and her immediate medical treatment as follows:

Q How did you hurt yourself at work?

A I was assisting another nurse with a combative patient who had been having neurological issues and was not in her right state of mind. While we were attempting to restrain her, she managed to get a leg loose and kicked me in the side of the head.

Q Did you report the incident?

A Yes, I did immediately.

Q Who did you report the incident to?

A To my charge nurse.

Q Did you go seek medical attention after that?

A Yes, she sent me down to the ER and I went home later that night.

Q Where was your pain located at that time?

A In my neck and I had a headache, as well.

The claimant began treatment with Dr. Gary Moffitt at Arkansas Occupational Health Clinic in October of 2011. Dr. Moffitt provided conservative care for the claimant including physical therapy three times a week for two weeks at Lee Physical Therapy. Dr. Moffitt ordered an MRI of the claimant's cervical spine which she underwent on December 7, 2011 at Washington Regional Medical Center. Following are the impressions from the diagnostic report authored by Dr. Eric Sale.

IMPRESSION:

1. SHALLOW CENTRAL DISC PROTRUSION AT C5/6
CREATES MILD TO MODERATE CANAL STENOSIS.
2. DIFFUSE ANNULAR DISC BULGE AT C3/4 PRODUCES
BORDERLINE CANAL STENOSIS.

After her MRI the claimant underwent a second round of physical therapy with six more visits at Lee Physical Therapy in December of 2011. In June of 2012 the claimant was referred by Dr. Moffitt to Dr. Larry Armstrong at Northwest Arkansas Neuroscience Institute in Fayetteville for a surgical evaluation. Dr. Armstrong recommended continued physical therapy and his report states, "She should deal to avoid any type of surgical intervention and she is free to work from our standpoint and to be managed by Dr. Moffitt." The claimant was again sent for another round of physical therapy three times per week for two weeks in July of 2012. At the end of July 2012 the claimant was again given approval for an additional six physical therapy sessions.

On August 14, 2012 the claimant was again seen by Dr. Moffitt. The claimant reported improvement in her cervical spine complaints and was recommended to do home exercises by her physical therapist.

On September 29, 2015 the claimant began to see Dr. Chuck Nalley at Ozark Orthopaedics. At that time the claimant complained of right-sided neck pain and muscle spasm which occurs three to eight months apart and lasts anywhere from four to seven days. Dr. Nalley prescribed her Flexeril and an anti-inflammatory for use during an episode. Dr. Nalley explained to the claimant “that degenerative disc pain is a real phenomenon and it is not unusual that she is experiencing transient symptoms with this diagnosis.” Dr. Nalley’s clinic note also states “Since her injury in 2011 she said she has undergone probably 30 physical therapy sessions.”

The claimant continued to treat conservatively under the care of Dr. Nalley in 2015, 2016 and the beginning of 2017. On April 10, 2017 the claimant had a second MRI of the cervical spine at Ozark Orthopaedics. That diagnostic report from the claimant’s second MRI was authored by Dr. Jennifer Turner. Following is the Impression section of that report:

IMPRESSION:

1. Multilevel degenerative disc disease causing multilevel stenosis as above, most significant at C5-6 where there is a disc osteophyte complex causing anterior impression and slight deformity of the cord without any underlying cord signal changes. In addition there is a mild bilateral neural foraminal and a mild central canal stenosis at C5.
2. At C3-4, there is a mild right-sided neural foraminal stenosis.
3. At C4-5, there is a mild right-sided neural foraminal stenosis.
4. At C6-7, there is a mild left sided neural foraminal stenosis.

In May of 2017 the claimant was seen by Dr. George Deimel at Northwest Medical Center and underwent an epidural steroid injection.

On August 24, 2017 the claimant began to see Dr. Luke Knox. The claimant’s conservative treatment was continued including physical therapy, cervical traction, and massage. In March of 2018 Dr.

Knox referred the claimant to Interventional Pain Specialists where she underwent a Marcaine disc space injection at C5/6 performed by Dr. Jared Ennis on April 23, 2018.

On May 7, 2018 the claimant underwent her third cervical spine MRI at the referral of Dr. Knox. The diagnostic report from that MRI was authored by Dr. Eric Sale. Following is the Impression section of that report:

IMPRESSION:

1. MULTILEVEL CERVICAL SPONDYLOSIS WITH SMALL CENTRAL DISK PROTRUSIONS AT C3-C4 AND C5-C6. MINIMAL CENTRAL DISK PROTRUSION AT C6-C7.

2. MILD TO MODERATE CANAL STENOSIS AT C5-C6 AND MILD CANAL STENOSIS AT C3-C4.

On June 6, 2018 the claimant was again seen by Dr. Armstrong after his review of her new cervical MRI. Following is a portion of Dr. Armstrong's medical report from that visit:

Plan

At this point my recommendation is to continue with conservative care without surgical intervention. I know she is looking for improvement in her symptomatology however with episodes that last couple weeks occurring 3 to 4 times a year I doubt that these episodes will diminish in frequency and or severity. During these episodes she can have trigger point injections as was recommended by the worker's comp nurse or she could go to physical therapy which is more of what I would recommend and continued care under Dr. Knox is spine program. I would avoid surgical intervention until absolutely necessary. I know additionally worker's Comp would like to close out her claim and would like projections for MI but I cannot make those based on the fact I do not think she should be called MMI the present time because she is going to continue to have problems over the years from this.

On June 27, 2018 the claimant was again seen by Dr. Knox. Following is a portion of that medical record:

HPI: Ms. Whitney Harder was seen in the Northwest Arkansas Neurosurgery Clinic on 06/26/18. She has apparently recently seen Dr. Armstrong and they discussed the possibility of surgery, but they decided to hold for the time-being.

DISCUSSION/PLAN: We will go ahead and continue to treat her with physical therapy and continue with her exercise program. I recommended that she check out a TENS unit. She is going to look into CBD oil, and I also prescribed Flexeril for the cervical spasm.

We will get her involved with physical therapy/Total Spine to consider interferential treatment of her cervicgia, and I will plan to follow her up in three months.

On August 26, 2019, the claimant was again seen by Dr. Knox. Following is a portion of that medical record:

HPI: Ms. Whitney Harder was seen in the Northwest Arkansas Neurosurgery Clinic on 08/26/19 for follow-up on 08/26/19. She continues to be followed for her right neck pain and a disc herniation at C5-6.

She has not done maintenance in four months and I strongly urged that she get back into the swing of things, specifically with the maintenance program as well as the cervical traction.

PLAN: I plan to follow her up in six months and reassess her condition at that time.

On February 7, 2020 the claimant was seen by Dr. Michael Calhoun. Following is a portion of that medical record:

History of Present Illness

The patient is a 32 year old female who presents with neck pain. The patient was initially injured on October 22, 2011. She was working as an intensive care nurse when a combative patient kicked her in the head. She did begin having neck pain and was evaluated by Dr. Moffitt. He treated her with physical therapy but she continued to be symptomatic. A cervical MRI was obtained on December 7, 2011. This documented a shallow central disc herniation at C5-C6 with mild stenosis. The patient was referred to Dr. Larry Armstrong. He did not suggest surgery and released her to work.

In 2015 she was referred to Dr. Nalley, who according to the patient, did nothing. The patient was referred to Dr. Deimel who performed a cervical epidural steroid injection with no improvement.

Another cervical MRI was obtained in April 2017. This documented multiple level degenerative disc and the continued C5-6 disc osteophyte complex in the midline with the continued mild

stenosis.

The patient was then referred to Dr. Luke Knox who initially evaluated the patient in August 2017. He started her on the David Spine Program. He has continued to follow her every 6 months, she has continued in the spine program for over 3 years. Another cervical Spine MRI was obtained in May 2018. This showed the continued degenerative disc throughout the cervical spine and the disc osteophyte complex centrally at C5-6. The patient underwent an intradiscal Mercaine Injection at C5-6 by Dr. Jared Ennis on April 23, 2018. She had significant improvement in her symptoms. The patient was then referred back to Dr. Armstrong. Once again, he told her to not undergo surgery for as long as possible.

I have reviewed both of the MRIs 2017 and 2018, and there is no significant neural improvement. The patient occasionally takes Flexeril for spasms in her neck. She will have episodes with her severe spasm once the neck or the other which can last from 7-14 days. He [sic] can affect either side, but the left may be slightly more affected. When she has these episodes, she has numbness in the middle, right, and small finger of both hands.

Current Plans:

The patient has a degenerative osteophyte and a small central disc herniation at C5-6. There is no significant neural impingement. She has no true radicular complaints or radicular findings on physical exam. I would not suggest a C5-6 fusion at this time or any time in the future based on her present physical exam and MR findings.

To answer your specific questions:

1. Within a reasonable degree of medical certainty, has Ms. Harder reached MMI following her injury of October 22, 2012?

Yes

2. If Ms. Harder is at MMI, please address impairment rating for her neck injury of October 22, 2011 according to the fourth edition of the AMA guidelines for permanent impairment.

Because she suffered a disc herniation not requiring surgery with residual, she has suffered a 6% impairment of the whole person.

3. If Ms. Harder is not at MMI, please provide recommendations for further treatment and MMI projections. The patient is at MMI. She has been involved in the David spine program for over 3 years, that this is well beyond what I would consider medically reasonable.

On July 21, 2021, the claimant is again seen by Dr. Knox. Following is a portion of that medical record:

HPI: Ms. Whitney Harder was seen in the Northwest Arkansas Neurosurgery Clinic on 07/21/21 for further evaluation of recurring neck and right arm pain. She is having recurring episodes of cervical spasm with radiation into the right hand, describing primarily a C6 radiculopathy.

She has previously been noted to have significant disc space changes at 3-4 and 5-6. I have always felt that the 5-6 level was probably the culprit of her persistent complaints. She has entertained the idea of surgery in the past, but she has managed to get by without. She had to transition from being a nurse to an IT tech. She works at Washington Regional in the IS Department.

PLAN: We will go ahead and reinstitute physical therapy and I would like to see her transition to a maintenance program as quickly as possible.

On October 11, 2021 the claimant was seen by Dr. Wayne Bruffett. Following is a portion of that medical record:

Whitney is a 34-year-old nurse who got injured at work in October 2011. She apparently was restraining a combative patient who kicked her in the head. The patient apparently was supine in bed. She was off work for a few weeks I believe. She has had nonoperative treatment intermittently through the years. She had an MRI scan shortly after the event and had follow-up MRI scans in 2017 in 2018. She is seen several different providers. She saw Dr. Nalley and also Dr. Knox. Most recently Dr. Knox has recommended physical therapy for her.

She is seeing me for an IME. The question posed is whether the therapy is reasonable and necessary and associated with her 2011 injury.

Assessment/Plan

Status post work injury in 2011 cervical spine

The question posed for me for this IME is whether the proposed therapy treatment is reasonable and necessary and associated with the 2011 injury. The answer in my opinion is no. Her work injury was 10 years ago. She has certainly plateaued in her recovery. Reasonable treatment after such an event and injury would probably be a few months or so? Certainly not

10 years. She is at maximum medical improvement and no further active treatment for work injury that occurred 10 years ago is indicated. Treatment at this point would need to be covered by her regular insurance or whatever arrangement she has made for medical care.

On October 29, 2021 the claimant was again seen by Dr. Knox. Following is a portion of that medical record:

HPI: Ms. Whitney Harder was seen in the Northwest Arkansas Neurosurgery Clinic on 10/29/21 for follow-up. She continues to be evaluated for recurring neck pain. Apparently, she underwent a recent Independent Medical Evaluation by Dr. Bruffett, and I appreciate his evaluation and opinions.

As previously noted, I have taken care of Whitney for many years. She comes in with recurring neck pain due to an injury occurring in 2011, while working as a nurse. She requires repeated evaluations and physical therapeutic endeavors concerning recurrent neck pain. She has been able to avoid surgery through the years.

PLAN: I would recommend that she continue and go ahead with physical therapy. We will plan to follow her up as needed. She is to contact us in the future if needed. Otherwise, I would recommend that she continue with the physical therapeutic endeavors as previously detailed.

The claimant has asked the Commission to determine if she is entitled to additional medical treatment recommended by Dr. Luke Knox, including physical therapy. The claimant gave direct examination testimony about her belief that she needed physical therapy recommended by Dr. Knox and about her cervical spine symptoms as follows:

Q Why is it you waited so long between appointments between your last visit with Dr. Knox and up to July 21st of 2021?

A I'm not sure how to phrase this.

Q You can say what your understanding is of the status of your case if that's what you're trying to explain.

A It was my understanding that treatment was no longer being covered.

Q Did you pay for the visit with Dr. Knox yourself on July 21st of 2021?

A I filed it under my own insurance.

Q How is your neck doing at this time?

A I still continue to have spasms from pain.

Q On a scale of one to ten at this time back in July of 2021, what would you rate your pain?

A I'm sorry; what was that date again?

Q Your last appointment when you went back to Dr. Knox in July 21st of 2021.

A The pain differs versus day-to-day and versus when I'm in acute spasm. Day-to-day it gets up to a three or four. During an acute spasm it's a ten.

Q Now, on the appointment on July 21st of 2021 – I keep having to look at the date. I'm sorry. At that appointment were you prescribed any type of treatment?

A Yes, physical therapy.

Q And looking to Claimant's 177, it was his opinion the need for treatment was in relation to your initial injury?

A Yes.

Q Is that correct?

A That is correct.

Q Have you been to PT since then?

A No, I have not.

Q Why not?

A Because it is my understanding that it will not be covered. And it is – would be out of pocket for me.

Q How is your back now?

A I'm not in an acute spasm right now so I'm at about a three or four.

Q When was your last acute spasm?

A I had a mild one about three weeks ago; an acute one – it has probably been three or four months.

Q Are you experiencing any pain or discomfort right now?

A Yes.

Q On a scale of one to ten, what would you rate that pain and discomfort?

A Right now it's about a two.

Q How does physical therapy help with this pain and discomfort?

A It gives me the opportunity to build up the strength in the surrounding muscles and musculoskeletal system so that I can move more comfortably without pain – without as much pain.

Q What is it you're asking the Court for today?

A Continued medical treatment.

On cross-examination the claimant was asked about her current cervical spine symptoms and the fact that she had no treatment from February 7, 2020 to July 21, 2021 as follows:

Q You had no treatment at all from February of '20 when you saw Dr. Calhoun up until you saw Dr. Knox in July of 2021. Is that correct?

A That's correct.

Q You told me in your deposition that you had moderate spasms once a month. Is that correct?

A Yes.

Q And that you get severe ones three to four times a year. Is that right?

A That's accurate; yes.

Q And you only take ibuprofen three or four times a year when they're severe. Is that correct?

A That is correct. I do have a muscle relaxer that I do also

take at night occasionally.

Q Has that been since your deposition?

A No, that was back – I may have forgotten to mention it.

Q We have documentation from Total Spine Physical Therapy, and it looks like you started going there September of '17.

Does that sound right?

A Yes, it does.

Q And they have documented that you had 41 regular visits of therapy and 83 visits of self-guided maintenance therapy.

Does that sound accurate?

A I honestly do not – I'm sure that's if that's what the report says.

Q And, of course, it would have included all of the therapy that you had between 2011 and '17; is that right?

A The only physical therapy I had prior to that was a handful of times with Dr. Moffitt; yes.

I note that Page 12 of Respondent's Exhibit 1 is a letter from Total Spine Physical Therapy indicating that the claimant had 124 visits to Total Spine Physical Therapy in a combination of regular and self-guided maintenance visits since September 20, 2017. While the claimant testified that "the only physical therapy I had prior to that was a handful of times with Dr. Moffitt, yes," medical records introduced and acknowledged in this opinion show numerous physical therapy visits prior to her 124 physical therapy visits with Total Spine Physical Therapy.

Arkansas Code Annotated §11-9-508(a) requires that, "The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eye glasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee." What constitutes reasonably necessary treatment under Arkansas Code Annotated §11-9-

508(a) is a fact question for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W. 6 750 (1984).

I do not believe that the physical therapy recommended by Dr. Knox is reasonable and necessary medical treatment for the claimant's compensable injury. In Dr. Armstrong's January 6, 2018 medical record he does recommend physical therapy or trigger point injections when the claimant has an episode. However, Dr. Armstrong also states, "I know she is looking for improvement in her symptomology. However with episodes that last couple weeks occurring 3 to 4 times a year I doubt that these episodes will diminish in frequency and or severity."

Dr. Calhoun assigned the claimant a permanent impairment rating of 6% to the body as a whole due to her compensable injury and found the claimant to be at maximum medical improvement on February 7, 2020. In that medical report Dr. Calhoun stated, "She has been involved in the David spine program for over three years, this is well beyond what I would consider medically reasonable." I agree with Dr. Calhoun. It should be noted that I believe the David spine program mentioned by Dr. Calhoun is referring to Dr. David Luke Knox. Clearly the claimant has some cervical symptoms and periodic episodes of increased pain due to the permanent derangement in her cervical spine and physical therapy is not going to change that. The claimant had those same difficulties during her multitude of physical therapy sessions and continues to have them when she went nearly a year and a half without any treatment. The claimant is unable to prove that the physical therapy recommended by Dr. Knox is reasonable and necessary medical treatment for her compensable cervical spine injury.

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 the pre-hearing conference conducted on November 3, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment by Dr. Luke Knox, including physical therapy as the claimant has failed to prove that physical therapy is reasonable and necessary medical treatment for her compensable cervical spine injury.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE