

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G903696

DONNA HASSELL, Employee	CLAIMANT
WALMART, INC., Employer	RESPONDENT
WALMART CLAIMS SERVICES, Carrier/TPA	RESPONDENT

OPINION FILED MARCH 17, 2021

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

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

Respondent represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On February 24, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 4, 2020 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 opinion of August 12, 2020 is final.

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

1. Claimant's entitlement to additional medical treatment for her cervical injury; specifically, surgery by Dr. Baird.

The claimant contends she is entitled to payment for cervical surgery made necessary by her compensable cervical injury. Claimant contends that her neck was asymptomatic prior to the incident of February 4, 2019, and that her neck pain has remained since the compensable neck of February 2019. Therefore, she is entitled to payment for additional medical treatment relating to her compensable neck injury. Claimant reserves all other issues.

Respondent contends the surgery by Dr. Baird on her cervical spine was due to the claimant's pre-existing cervical condition and not to the compensable injury. Specifically, respondent contends that the claimant's neck injury of February 4, 2019 was a cervical strain, a temporary aggravation of a pre-existing condition, and therefore her need for further treatment, specifically the treatment by Dr. Baird is due to the pre-existing neck condition and not to the temporary aggravation.

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 November 4, 2020 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 for her compensable cervical injury,

this includes surgery performed by Dr. Baird.

FACTUAL BACKGROUND

Claimant is a 58-year-old woman who began working for respondent in January 2002 as an Asset Protection Associate. While performing that job claimant was primarily responsible for monitoring an individual store and walking the store daily to apprehend shoplifters.

In 2003 claimant was promoted to a District Loss Prevention Supervisor which is now known as a Market Asset Protection Manager. Claimant was responsible for fourteen stores in Arkansas and Oklahoma. She testified that she traveled daily from store to store and sometimes stayed overnight. During store tours she walked continually, moving and lifting merchandise. Claimant testified that she was responsible for the safety of each store and as a result monitored things on a daily basis.

On February 4, 2019, claimant was driving to work in a company vehicle when she was struck from behind while stopped at a traffic signal. As a result of this accident claimant had sharp pain in her right hip, right knee, neck, and low back. The parties stipulated that claimant suffered compensable injuries to her right knee, neck, and low back as a result of the February 4, 2019 accident.

Following the February 4 accident claimant was initially evaluated by J. Daniel Nicholas, PA. Nicholas diagnosed claimant's condition as a cervical and lumbar strain with right hip and right knee pain. Nicholas subsequently prescribed medical treatment in the form of medication, a steroid injection, and physical therapy. When claimant's condition did not improve, she was referred to Dr. Luke Knox, neurosurgeon, for an

evaluation. In a report dated April 25, 2019, Dr. Knox noted that claimant had a history of various conditions including connective tissue disease; Raynaud's phenomenon; arthralgia of multiple sites; and frequent headaches. Dr. Knox assessed claimant as suffering from back pain, sciatica of the right side, pars defect, and bilateral hand numbness. Dr. Knox also referred claimant to Dr. Camp for a pain management evaluation and he treated claimant with a lumbar epidural steroid injection.

Eventually, claimant was referred by Dr. Knox to Dr. Armstrong for a neurosurgical consult. Dr. Armstrong performed surgery in the form of a fusion at the claimant's L4-5 level. Medical records indicate that subsequent to that surgery claimant continued to have complaints involving her low back and hip as well as her cervical spine.

Claimant was eventually referred to Dr. Clinton Baird in Tulsa, Oklahoma. Dr. Baird performed a sacroiliac joint fusion on February 7, 2020.

This claim was the subject of a prior hearing on July 22, 2020. At that time claimant was requesting additional medical treatment for her low back and SI joint. In an opinion filed August 12, 2020, this administrative law judge found that claimant had met her burden of proving by a preponderance of the evidence that she was entitled to additional medical treatment for her low back and SI joint; including the surgery which had been performed by Dr. Baird. That opinion was not appealed and is now final.

Since the time of the last hearing claimant has continued to treat with Dr. Baird for her compensable injury, including pain in her cervical spine. In a report dated July 27, 2020, just five days after the last hearing, Dr. Baird stated:

Further she complains of neck pain and arm pain on the left more than the right.

Dr. Baird's assessment of claimant's cervical complaints included cervical radiculopathy and cervical spondylosis. Based upon claimant's failure to respond to conservative treatment, Dr. Baird recommended an anterior cervical discectomy and fusion for C4-C7. Dr. Baird performed this surgical procedure on September 23, 2020.

Respondent denied liability for the additional medical treatment and surgery performed by Dr. Baird on claimant's cervical spine. As a result, claimant has filed this claim contending that she is entitled to additional medical treatment for her cervical injury, specifically the surgery performed by Dr. Baird.

ADJUDICATION

Claimant contends that she is entitled to additional medical treatment for her cervical injury, specifically the surgery performed by Dr. Baird. 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). The employee has the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005).

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 proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable cervical injury.

Respondent contends that claimant's neck injury on February 4, 2019 was a strain

and a temporary aggravation of a pre-existing condition. There is no question that claimant had pre-existing complaints of neck pain. The medical records indicate that as far back as August 4, 2010 claimant was complaining to her primary treating physician, Dr. John Nolen, of hand and neck pain. In his report of that date Dr. Nolen indicates that claimant's hands and neck hurt so bad that she could hardly move them. In a subsequent report dated February 26, 2013, Dr. Nolen indicated that claimant was complaining of pain and numbness in her arms and hands to the point that her hands would go white, go numb, and tingle and then turn black.

Claimant also testified that she had a pre-existing diagnosis of connective tissue disorder. According to claimant's testimony, this caused pain in her joints which would move around to various parts of her body. Claimant was prescribed medication for this condition; however, according to claimant's testimony she had not been taking medication for connective tissue disorder for at least one year prior to her accident in February 2019.

Claimant was involved in a prior motor vehicle accident in 2015. Claimant was evaluated by Dr. Beam on May 9, 2015, with complaints of pain in her neck. His medical record indicates that claimant had a history of chronic neck pain and at that time was complaining of neck pain with numbness and tingling radiating into her left upper extremity. Dr. Beam diagnosed claimant's condition as cervical strain and cervical radicular syndrome.

As a result of her neck complaints following the 2015 motor vehicle accident, claimant also sought chiropractic treatment from Dr. Santos. Dr. Santos' medical records indicate that he treated claimant through February 24, 2017, for various issues including neck pain for which he provided manipulation.

Significantly, the medical records do not contain any complaints of neck pain from claimant's last visit with Dr. Santos on February 24, 2017 until after the February 4, 2019 motor vehicle accident, a period of almost two years.

Following her February 4, 2019 injury, claimant has undergone various testing of her cervical spine including x-rays and CT scans which have revealed degenerative changes. Respondent submitted into evidence a report from Dr. Theodore Hronas, a radiologist, dated October 19, 2020 who reviewed claimant's test results. Dr. Hronas stated:

In summary, there are multi-level chronic age-related degenerative changes of the cervical spine with evidence of anterior and posterior osseous spurring/ridging that develops over a long period of time as the result of chronic stress and aging. Specifically, there are no objective findings of an acute injury as the result of the work-related accidental injury described on 02/04/2019.

The respondent accepted as compensable an injury to claimant's cervical spine as a result of the accident on February 4, 2019. An employee who has sustained a compensable injury is not required to furnish objective medical evidence of her continued need for medical treatment. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W. 3d 408.

Significantly, Dr. Baird has addressed this issue in a letter dated February 17, 2021. In that letter Dr. Baird stated:

Ms. Donna Hassell has been under my medical supervision as of January 14, 2020. I have treated her for cervicalgia; cervical radiculopathy that required an operation on her cervical spine; an

ACDF at the C3-C7 levels. Although the patient has had previous injury to her cervical spine consisting of degenerative disc disease. While working, the injury to her cervical spine was exacerbated as a direct result of the injury incurred while at work. The surgery performed was necessary and without it the patient would not have improved. (Emphasis added.)

I find that the opinion of Dr. Baird is credible and entitled to great weight. Although claimant did suffer from pre-existing degenerative changes in her cervical spine and she had sought medical treatment for neck complaints prior to February 4, 2019, there is no indication that claimant had sought medical treatment for any cervical complaints within almost a two-year period prior to February 4, 2019. Following her admittedly compensable cervical spine injury, the claimant has consistently complained of some cervical issues. While her cervical complaints have been more prominent at some times subsequent to February 4, 2019 than at others, claimant was undergoing significant medical treatment for other work-related injuries and the medical records do not support a finding that claimant suffered only a temporary aggravation of a pre-existing condition. Instead, the medical records support a finding that claimant has continued to have complaints involving her cervical spine as a result of the February 4, 2019 accident which eventually resulted in surgery by Dr. Baird.

Accordingly, based upon the evidence presented, particularly the February 17, 2021 opinion letter of Dr. Baird which I find to be credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable cervical spine injury. This includes the surgery that was performed by Dr. Baird on September 23, 2020.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable cervical injury; this includes the surgery performed by Dr. Baird.

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 \$397.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE