

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G906115

MICHAEL HENDRICKS, Employee	CLAIMANT
ALTES SANITATION SERVICE, Employer	RESPONDENT
LIBERTY MUTUAL INSURANCE CO., Carrier/TPA	RESPONDENT

OPINION FILED JULY 14, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW KETCHAM, Attorney, Little Rock, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 21, 2021, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 14, 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 employee/employer/carrier relationship existed among the parties on September 5, 2019.
3. The claimant sustained a compensable injury to his left shoulder and elbow on September 5, 2019.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$215.00 for total disability benefits and \$161.00 for permanent partial disability benefits.

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

1. Additional medical treatment as recommended by Dr. Kelly.

The claimant contends he is entitled to additional medical treatment as recommended by Dr. Kelly.

The respondent acknowledges stipulating to a compensable injury to claimant's left elbow and shoulder. However, respondent contends that the radial tunnel syndrome complaints are to a different body part than the left elbow and shoulder and it is not compensable. In the event the radial tunnel syndrome is compensable, respondent contends that the surgery proposed by Dr. Kelly is not reasonable and necessary.

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 his 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 April 14, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant's radial tunnel syndrome is related to the compensable injury to claimant's left elbow and therefore respondent is liable for payment of benefits associated

with that compensable injury.

3. Claimant has met his burden of proving by a preponderance of the evidence that the surgery proposed by Dr. Kelly is reasonable and necessary medical treatment for his compensable injury.

FACTUAL BACKGROUND

Claimant worked for the respondent on a sanitation truck. He suffered an admittedly compensable injury to his left shoulder and elbow on September 5, 2019.

Claimant described his accident at the hearing:

We ride on the back of the truck and all of the steps on the back of the truck are a little different, different placed. My truck, I have been on it for a year and a half, and when we get close to a stop and when he starts slowing down, we just step down and go grab it.

Well, I was on a different route filling in for somebody and he slowed down and there was trash on my side. When he started slowing down, I stepped off to go get it, but instead of stopping, he was turning a corner. That wasn't our stop and I just didn't know it. So I ran and caught the truck and I jumped to memory. My feet landed in the middle of nothing and I was hanging from the underside of that truck by my arm.

After some initial treatment, claimant came under the care of Patrick Walton, PA, at Mercy Clinic in Fort Smith with his first visit on December 13, 2019. Walton noted that since claimant's injury in September he had suffered from lateral and medial elbow pain and had been treated with an injection which provided little benefit. He noted that an MRI scan revealed tendinosis of his extensor tendons over the lateral epicondyle which was

consistent with tendinitis. Walton diagnosed claimant's condition as lateral epicondylitis of the left elbow and cubital tunnel syndrome of the left upper extremity. Walton recommended that claimant use Voltaren gel as well as other medications and perform exercises for strengthening.

Claimant's next visit with Walton occurred on January 17, 2020, and he noted that claimant had not undergone any therapy. He again noted that claimant was tender over the lateral epicondyle and was positive at the elbow for cubital tunnel. Walton ordered an EMG/NCV to evaluate for cubital tunnel.

Following the EMG/NCV, claimant returned to Walton on February 4, 2020, and Walton noted that the study was negative for any ulnar nerve problems. His diagnosis remained lateral epicondylitis of the left elbow and because of claimant's continued complaints recommended a surgical procedure.

On March 5, 2020, claimant was evaluated by Dr. Steven Smith for chronic lateral epicondylitis. Dr. Smith recommended a left elbow epicondylectomy with tendon debridement which he performed on March 6, 2020. Following that surgical procedure the claimant underwent physical therapy and continued to have complaints involving his left elbow area.

In his report of July 14, 2020, Dr. Smith noted that although claimant was still complaining of pain, which Dr. Smith attributed to radial nerve irritation, he was releasing claimant to return to work with no permanent impairment and instructed him to return for treatment as needed.

Claimant testified that he did not return to work after he was released by Dr. Smith because he had been informed that his employment had been terminated. Claimant did

return to Dr. Smith for continued complaints involving his left elbow area on August 27, 2020. Dr. Smith was of the opinion that claimant might be suffering from radial tunnel syndrome and referred claimant to Dr. Kelly to determine whether claimant needed a radial tunnel decompression.

In a letter report dated September 23, 2020, Dr. Kelly indicated that he was of the opinion that claimant did suffer from radial tunnel syndrome and recommended a radial tunnel release procedure.

Respondent has denied liability for the radial tunnel release procedure recommended by Dr. Kelly and claimant has filed this claim contending that it is reasonable and necessary medical treatment for his compensable injury.

ADJUDICATION

Claimant is requesting additional medical treatment in the form of surgery for radial tunnel syndrome as recommended by Dr. Kelly. Respondent contends that while it accepted compensability of an injury to claimant's left elbow and shoulder, the radial tunnel syndrome is not the same body part and is therefore not compensable. Alternatively, respondent contends that the medical treatment proposed by Dr. Kelly is not reasonable and necessary.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment in the form of surgery for radial tunnel syndrome as recommended by Dr. Kelly.

First, I find that the radial tunnel syndrome is the result of the compensable injury

to claimant's left elbow. In reaching this conclusion, I first believe it is important to note claimant's testimony regarding his injury on September 5, 2019. As claimant testified, he was essentially hanging from the back of the sanitation truck by his left arm which admittedly resulted in a compensable injury to his left elbow and shoulder. According to claimant's testimony he complained to all of his treating physicians of pain both above and below the elbow area from the time of his initial medical treatment.

Claimant did undergo surgery for lateral epicondylitis of his left elbow. However, the medical records from Dr. Smith and Walton subsequent to that surgery indicate that claimant continued to have complaints of pain involving his elbow area. In addition, the physical therapist notes indicate that claimant continued to complain of pain involving his left elbow and forearm area. In the May 4, 2020 physical therapist note, claimant reported increased lateral elbow pain with "constant stinging down my forearm to my hand with my elbow straight." Likewise, on May 14, 2020, claimant complained of continued soreness in his left elbow and mild pain across the forearm with wrist flexion. The physical therapist note of July 2, 2020 indicates claimant complained of a "hot spot" at his mid forearm which he indicated had existed since before the surgery.

In addition, I note that following claimant's surgery he continued to complain of pain involving his left elbow to Dr. Smith. In the report of July 14, 2020 in which Dr. Smith noted that claimant's lateral epicondylitis had improved and he released claimant to return to work, he also noted that claimant "has a little bit of radial nerve irritation but I really think we can transition him back to work."

Claimant subsequently returned to Dr. Smith on August 27, 2020, and Dr. Smith noted:

He is complaining still of burning pain, more in the proximal forearm, concerning, to my mind, for radial tunnel syndrome.

I am going to refer him to Dr. Kelly for another opinion to see if the patient needs a radial tunnel decompression.

In his report of September 23, 2020, Dr. Kelly noted claimant's history of pain involving his left arm and that claimant had undergone a tennis elbow release. He further noted that following that procedure claimant's pain had isolated in the area of his radial tunnel and that testing was positive for radial tunnel syndrome. As a result, he recommended a radial tunnel release.

The radial nerve extends in the arm through the elbow. Here, claimant began having complaints involving his left elbow area immediately after the accident and respondent has accepted as compensable an injury to claimant's left elbow. Claimant's radial tunnel syndrome is related to that compensable left elbow injury according to the evidence presented in this case in the form of claimant's testimony and the medical records submitted. I find that claimant's radial tunnel syndrome is specifically related to claimant's left elbow injury and is a compensable consequence of that injury. Therefore, respondent is liable for medical treatment associated with that injury.

Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left elbow injury. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). While it is true that the EMG/NCV was negative, Dr. Kelly addressed this issue in a follow-up letter dated October 12, 2020, in which he stated:

I am addressing this letter pertaining to the denial for approval of radial tunnel release on Michael Hendricks. The reason given for denial of the radial tunnel is that he had no NCV findings of radial tunnel syndrome. First of all, this person had a right tennis elbow release completed for lateral elbow pain. This, of course, was unsuccessful, as he has obvious radial tunnel on his physical examination. Second of all, twenty five percent of people can have a false negative EMG/NCV study on a radial tunnel at the elbow. This gentleman clearly falls into this category. His pain is centered on the radial nerve and his physical exams is conclusive of this. This gentleman is not going to get any better without a radial tunnel release. The fact he had a cubital tunnel release completed by another surgeon elsewhere and that his pain persisted, proves this.

I find that the opinion of Dr. Kelly is credible and entitled to great weight and therefore find that claimant has met his burden of proving by a preponderance of the evidence that the surgical procedure in the form of a radial tunnel release is reasonable and necessary medical treatment for claimant's compensable left elbow injury.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that his radial tunnel syndrome is related to his compensable left elbow injury. Claimant has also proven by a preponderance of the evidence that the radial tunnel release proposed by Dr. Kelly is reasonable and necessary medical treatment for his compensable injury.

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 \$304.90.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE