

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G903696

DONNA HASSELL, EMPLOYEE CLAIMANT

WAL-MART ASSOCIATES, INC., EMPLOYER RESPONDENT

**WAL-MART CLAIMS SERVICES,
INSURANCE CARRIER/TPA RESPONDENT**

OPINION FILED SEPTEMBER 6, 2023

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JAMES A. ARNOLD, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed June 7, 2023. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on March 15, 2023, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to a spinal cord stimulator trial as recommended by Dr. Baird.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the June 7, 2023 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.





SCOTTY DALE DOUTHIT, Chairman



MICHAEL R. MAXTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The issue at hand is whether Claimant has proved by a preponderance of the evidence that she is entitled to a spinal cord stimulator trial as recommended by her treating physician, Dr. Baird.

Medical Background

The Parties have agreed that Claimant has suffered compensable injuries to her right knee, neck, and lower back as a result of a motor vehicle accident the Claimant was involved in while working for the Respondent. On June 4, 2019, Claimant had an L4-L5 fusion of her spine performed by Dr. Armstrong. Following this procedure Claimant exercised her one-time right to change physicians and began treating with Dr. Baird. Dr. Baird subsequently performed two additional surgeries on Claimant's spine and continues to receive medical treatment from Dr. Baird.

As Claimant's authorized physician, Dr. Baird recommended that Claimant undergo a spinal stimulator trial. With the recommendation to undergo this procedure Dr. Baird had Claimant psychologically evaluated by Dr. Arizaga to determine if Claimant was a good candidate for such procedure. Dr. Arizaga recommended Claimant for surgery. Respondent then requested Claimant be further psychologically evaluated by Dr. Back. Dr. Back performed an MMPI-2 on the Claimant concluding that Claimant

was not a good candidate for the surgery and diagnosing her with somatic symptom disorder.

Analysis

To show entitlement to additional medical treatment, Claimant must prove that the treatment is reasonably necessary in connection with her compensable injury. Ark. Code Ann. §11-9-508(a)(1). What constitutes reasonable and necessary treatment under this section is a question of fact for the commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 857. Here, Claimant has been consistently treating with her authorized physician Dr. Baird for her compensable injury and was referred by her physician to obtain a psychological examination. This psychological examination was necessary to determine whether the Claimant would be a successful candidate for this surgery. Dr. Arizaga found Claimant to be a good candidate for surgery. Dr. Arizaga delivered a four-page comprehensive evaluation of Claimant's psychological profile. She states in part:

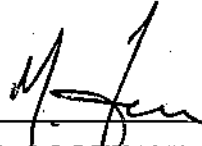
"[Claimant] demonstrates decisional capacity related to the recommended treatment at the time of this evaluation. She has reasonable expectations related to outcomes for the procedure and how they can impact her quality of life. She does not expect this intervention to resolve her pain but wants improvement in her Quality of Life. She has tremendous support from family and church community. Additionally, she has healthy coping skills. Given the intensity and persistence of her pain, understanding of potential

outcomes, expectations, demeanor, and coping style, she is a good candidate to receive this intervention and there is a reasonable probability of success." (Claimant's Exhibit p. 76).

Dr. Back, in contrast, provides Claimant's verbatim statements in her visit and the results of the MMPI-2, making no personal observations on the Claimant other than the Behavioral Observations in which he states "[Claimant] was grimacing, shifting weight from one hip to another, often near tears. She asked permission to stand up. Ambulation was slow, with a slight limp." (Respondent's Exhibit p. 13).

When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice, and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Dr. Arizaga presented a detailed holistic view on the Claimant's understanding of the procedure and psychological state based on her interpretations as a psychiatrist of addiction medicine. In my opinion, Dr. Arizaga's opinion should be given more weight than that of Dr. Back.

For the foregoing reasons, I dissent and believe that Claimant has proved she is entitled to further treatment in the form of a spinal stimulator trial.

A handwritten signature in black ink, appearing to read "M. Scott Willhite", written over a horizontal line.

M. SCOTT WILLHITE, Commissioner