

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204037

JULIE R. INGLE,
EMPLOYEE

CLAIMANT

HAZEN SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOC.,
CARRIER/TPA

RESPONDENT

OPINION FILED MAY 24, 2023

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

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on December 13, 2022. The Administrative Law Judge found that the claimant has failed to satisfy the burden of proof that the additional medical, specifically the surgery recommended by Dr. Jesse Burks, is reasonable and necessary for the treatment of the compensable injury. After our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is

entitled to additional medical treatment to her left foot in the form of a limited tarsometatarsal arthrodesis as recommended by Dr. Jesse Burks.

I. HISTORY

The claimant, now 51 years old, worked for the respondent-employer as a cafeteria worker. The claimant sustained a compensable injury to her left foot and ankle in a workplace accident on January 8, 2021.

The claimant testified that the accident happened in the following manner:

Q Tell us a little bit about what happened and how you got hurt.

A We were shorthanded that day and I – me and my friend, a co-worker, was going outside to get some more breakfast stuff, and she had just went down the ramp, and I started down – it's a wood ramp – and I had started down it and about halfway down, my right leg went straight out and my left foot bent back behind me, and I slid the rest of the way down the ramp.

Q Did you actually fall to the ground?

A Yes. I kind of grabbed the rail and I tried to catch myself and I laid down on the side.

The claimant was first seen for complaints about her left foot injury at Baptist Health Stuttgart Medical Clinic on January 20, 2021. An x-ray taken of the claimant's left foot was negative. The claimant was

diagnosed with a left foot sprain and instructed to ice her foot, take NSAIDs for pain, and prescribed a walking boot.

The claimant came under the care of Dr. Kevin Goodson for her left foot injury starting on January 25, 2021. Dr. Goodson ordered x-rays of the claimant's left foot. The x-rays revealed the following:

No acute findings: No acute fracture, Incidental findings osteophyte at plantar aspect calc tuberosity. At Congruent ankle mortise. No significant degenerative joint changes.

Dr. Goodson diagnosed the claimant with a left foot contusion, noting that the clinical findings were consistent with a "midfoot bony contusion". Dr. Goodson braced the claimant with an orthosis and instructed her to wear it twenty-four (24) hours per day until her next follow-up visit.

The claimant returned to see Dr. Goodson on March 3, 2021.

The medical records from that visit contain the following history:

... Patient returns today for routine follow-up. States that she wore the short boot for almost 30 minutes before having to take it off due to significant tightness around the calf. She has been wearing the tall boot previously provided by her PCP since last being seen. Patient was having mild improvement however while at work on 2/23, she felt a pop with sharp pain along the dorsal midfoot. That sharp pain pain [sic] is now a constant dull ache. Denies any numbness or tingling.

X-rays taken during this visit revealed “No acute fracture. No periosteal reaction to suggest acute occult fracture of the midfoot.” Dr. Goodson ordered a left foot MRI for further evaluation.

The claimant underwent an MRI of her left foot on March 8, 2021, which showed the following:

Findings: Diagnostic quality is mildly degraded by patient motion.

Bones: No fracture or marrow signal abnormality.

Hallux sesamoids: Normal signal and positioning.

Joints: Midfoot alignment is normal. Minimal dorsal 1st tarsometatarsal joint marginal spurring. There is a small 1st MTP joint effusion.

Lisfranc ligament complex: Intact.

Muscles: Normal bulk and signal.

Tendons: The imaged flexor and extensor tendons are normal in course, caliber, and signal.

Soft tissues: Mild subcutaneous edema in the dorsal midfoot/forefoot.

IMPRESSION:

1. No stress fracture.
2. Minimal dorsal 1st tarsometatarsal joint marginal spurring.
3. Small 1st MTP joint effusion.

4. Mild subcutaneous edema in the dorsal midfoot/forefoot.

The claimant returned to see Dr. Goodson for a follow-up visit on April 14, 2021. Dr. Goodson referred the claimant to physical therapy with a recommended frequency of “1-2 times per week for 6 weeks”.

After eighteen (18) physical therapy sessions, the claimant returned to see Dr. Goodson on June 16, 2021. In the records regarding this visit, Dr. Goodson noted the following plan:

Plan: I had a lengthy discussion with the patient in regards to no frank evidence of fracture or soft tissue injury. Due to persistent symptoms, will initiate physical therapy with focus on modalities including iontophoresis, hot/cold, ultrasound, etc. Patient will continue to work at full duty as outlined at her last clinic visit. Patient understand[s] and is in agreement with plan. All questions were answered. She will call for future follow-up at her request.

In response to a letter dated August 9, 2021 from a claims adjuster with the Arkansas School Boards Association, Dr. Goodson, provided the following opinion:

As to the inquiry if patient Julie Ingle’s work-related injury is the major cause (i.e. greater than 50%) of her left foot pain, I believe that it is based on previous clinical and radiographic evaluation over the last 6+ months of care since initial presentation on January 25th, 2021. This is also based upon review of patient’s outside clinical records prior to presentation to my clinic.

...

The claimant continued to experience pain and sought treatment from Dr. Jesse Burks on December 2, 2021. Dr. Burks ordered x-rays which showed, “No distinct evidence of fracture. However there is an abnormal separation between the medial and intermediate cuneiforms.”

Regarding the x-rays, Dr. Burks noted:

I have reviewed with the patient that this could be an indication of rupture of Lisfranc’s ligament. Especially given her symptoms and the type of injury she sustained. On the oblique view there are also changes consistent with posttraumatic arthrosis. This could have been from subluxation at the second metatarsal intermediate cuneiform joint.

Dr. Burks ordered an MRI of the claimant’s left foot. The results of the MRI taken on December 14, 2021, showed the following:

FINDINGS:

Bones/Marrow: No evidence for occult fracture.

Joints/DJD: Moderate DJD noted at the second through the fifth TMT joints. Mild grade IV chondromalacia noted in the tarsal navicular at the talonavicular joint.

Tendons: The flexor and extensor tendons are normal in course caliber and signal.

Muscles/Soft Tissues: Moderate edema noted in the ventral aspect of the subcutaneous tissues of the midfoot and imaged forefoot.

Lisfranc Ligament: Intact. Increased T2 signal noted in the mid and distal aspect of the ligament consistent with sprain (coronal PD F5 images 6-9).

IMPRESSION:

Intact Lisfranc ligament. Increased T2 signal noted in the mid and distal aspect of the ligament consistent with sprain (coronal PD F5 images 6-9).

Mild DJD noted at the second through fifth tarsal-metatarsal joints. Mild grade IV chondromalacia noted in the tarsal navicular at the talonavicular joint.

No occult fracture or dislocation identified in the forefoot or imaged mid foot.

In the December 15, 2021 medical record, Dr. Burks noted, “Patient called complaining of significant pain in her foot. Rx’d prescription for Toradol 10 mg every 8 hours. Because of the severity of her pain and the fact that it occurred greater than a year ago, will most likely need to pursue tarsometatarsal arthrodesis.”

By letter dated January 31, 2022, Dr. Burks offered the following information and opinions regarding the claimant’s foot injury:

1. Her original diagnosis on 2021-02-08 was a foot sprain. When I evaluated her, my working diagnosis has been tarsal-metatarsal dislocation.
2. The pathology on the MRI and x-ray reveals increased separation between the medial and intermediate cuneiforms. This is injury related. I do not find any pre-existing condition.
3. In regards to the foot, I believe that all of her symptoms are directly related to the 2021-01-08 injury.
4. She has failed all forms of conservative treatment. Injections have provided temporary relief. It is too far out from the initial injury to perform a repair of the soft tissue. My

recommendation is limited tarsometatarsal arthrodesis of the affected areas.

5. Current treatment is indicated. This would include a limited tarsometatarsal arthrodesis. This is a result of the 2021-01-08 injury.
6. Additional treatment is indicated. Patient is not at MMI.
7. Patient is not at MMI.

On May 19, 2022, Dr. Gregory Ardoin conducted an

Independent Medical Examination which resulted in the following opinions:

1. Injury diagnosis left foot contusion. Not pre-existing.
2. Initial MRI pathology MRI left foot dated 3/8/2021 reveals intact Lisfranc ligament complex no stress fracture. There was some marginal osteophytes on the dorsal first tarsometatarsal joint and some mild subcutaneous edema noted. There was a small first MTP joint effusion noted but noting of significance relating to her area of pain. X-rays did not reveal any Lisfranc ligament widening at any point. There were some pre-existing osteophytes and early changes of osteoarthritis.
3. Patient has more evidence of degenerative erosive arthritis now however the contusion likely did not predispose her to this. This is made within a reasonable degree of medical certainty given her diagnosis of erosive osteoarthritis and morbid obesity.
4. Patient has significant tenderness in joints other than the second and third tarsometatarsal joints on the left foot which should be addressed prior to any considered surgery with selective joint injections to see where her pain may be coming from since she has arthritis in the TMT joints 1 through 5 as well as the talonavicular joint.

Patient's BMI also needs to be corrected prior to any considered foot and ankle surgery down to 40 or below.

5. I cannot state within a reasonable degree of medical certainty that the proposed limited midfoot arthrodesis is a direct result of the 1/8/2021 work-related injury.

6. There is no further treatment needed for the contusion that she sustained on 1/8/2021 with [sic] reasonable degree of medical certainty.

7. The patient is at MMI in regards to the foot contusion she sustained on 1/8/2021. The patient has no permanent impairment according to the Guides to the Evaluation of Permanent Impairment fourth edition [sic].

The patient has no work restrictions.

By letter dated October 25, 2022, Dr. Burks addressed Dr.

Ardoin's opinions as follows:

I have had the opportunity to review Ms. Ingel's [sic] Independent medical evaluation performed by Dr. Gregory Ardoin.

I continue to feel, in my professional opinion, that the nature of her injury directly contributed to the pain in her midfoot. They [sic] degenerative changes in the tarsometatarsal region of her foot are consistent with her description of the pain and also the injury.

This is a progressive condition, that we [sic] will at some point require surgical intervention. ...

Prior to her work accident, the claimant was diagnosed with and received treatment for left heel plantar fasciitis, erosive osteoarthritis, and degenerative arthritis. X-rays of the claimant's bilateral feet taken on March 3, 2020, revealed, "plain film bilateral feet show osteophytosis[;] both great toes hammertoe formation[;] there is normal metatarsophalangeal joints[;] there is significant posterior calcaneal spurring".

A Pre-hearing Order was filed on December 8, 2021.

"Claimant contends that she [is] entitled to additional medical treatment being recommended by Dr. Jesse Burks, specifically, surgery."

"Respondents contend that the recommended surgery is not reasonable and necessary for the claimant's compensable injury. Both Drs. Goodson and Ardoin have indicated only conservative treatment is recommended. The surgery did not pass precertification. It is Respondents' position that Claimant has been released as having reached maximum medical improvement and that additional medical treatment in the form of surgery is not reasonable and necessary."

The parties agreed to litigate the following issue:

(1) Whether Claimant is entitled to additional medical treatment after reaching MMI as recommended by Dr. Burks.

The parties were unable to stipulate to the claimant's average weekly wages. Prior to the start of the hearing, the parties made arguments

regarding the calculation of the claimant's average weekly wages and the Administrative Law Judge added this as a second issue to be litigated.

After a hearing, an Administrative Law Judge filed an opinion on December 13, 2022. The Administrative Law Judge found:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer-employee relationship existed on January 8, 2021, when the claimant sustained a compensable injury to her left foot and ankle.
3. The claimant earned an average weekly wage of \$416.72, sufficient to entitle her to a temporary total disability rate of \$278.00 and a permanent partial disability rate of \$209.00.
4. The claimant was released at maximum medical improvement as of May 19, 2022, with a zero percent (0%) permanent partial impairment assigned. The claimant continued to work for the respondent/employer.
5. The claimant has failed to satisfy the required burden of proof that the additional medical, specifically the surgery recommended by Dr. Jessie [sic] Burks, is reasonable and necessary for the treatment of the compensable injury.

The claimant appeals these findings to the Full Commission.

II. ADJUDICATION

A. Average Weekly Wage

A.C.A. §11-9-518 reads, in pertinent part, as follows:

(a)(1) Compensation shall be computed on the average weekly wage earned by the employee

under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment.

In *Magnet Cove School District v. Barnett*, 81 Ark. App. 11, 97 S.W.3d 909 (2003), the Court of Appeals calculated the average weekly wage of a teacher contracted to work 188 days by dividing her total compensation by the stated length of the contract which was thirty-nine weeks.

In the present matter, the terms of the claimant's employment contract with the respondent-employer for the 2020-2021 school year were for \$11.70 per hour, 8 hours per day for 180 days. The total contract amount was "up to \$16,848.00" between the dates of July 1, 2020 and June 30, 2021.

Regarding the dates that she worked that school year, the claimant testified on cross-examination as follows:

Q We're showing that the school year, your contract that year, that dates you would have worked would be between August 24th of '20 and June 2nd of '21. Do you have any reason to dispute that?

A No.

Q Was it your option to receive pay throughout the whole year monthly, every 12 months?

A That's their option. We have no choice.

The Full Commission finds that the claimant's average weekly wage should be calculated by dividing her salary of \$16,848 by 36 weeks (180 days/5 work days/week). Therefore, the claimant's average weekly wage is \$468.00 which translates to a temporary total disability rate of \$312.00 per week and a permanent partial rate of \$234.00 per week.

B. Additional Medical Treatment

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. Ark. Code Ann. §11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995). A claimant does not have to support a continued need for medical treatment

with objective findings. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

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). A physician's special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. *Id.*

Dr. Burks diagnosed the claimant with tarsal-metatarsal dislocation based on MRI results which showed increased separation between the medial and intermediate cuneiforms. Because the claimant has failed all forms of conservative treatment, Dr. Burks recommended that the claimant undergo a limited tarsometatarsal arthrodesis. Dr. Burks explained that previous injections have provided only temporary relief for the claimant. Additionally, Dr. Burks opined that it is too far out from the initial injury to perform a repair of the soft tissue. Thus, Dr. Burks' recommendation is that the claimant undergo a limited tarsometatarsal arthrodesis of the affected areas. The Full Commission finds that the claimant has proven by a preponderance of the evidence that a limited tarsometatarsal arthrodesis as recommended by Dr. Burks is reasonably necessary.

We are not unmindful of the opinions offered by Dr. Gregory Ardoin in this matter. The claimant was referred to Dr. Ardoin for an Independent Medical Evaluation. Dr. Ardoin opined that he cannot state within a reasonable degree of medical certainty that the proposed limited midfoot arthrodesis is a direct result of the January 8, 2021 work-related injury. According to Dr. Ardoin, there is no further treatment needed for the contusion that the claimant sustained on January 8, 2021. Dr. Ardoin further opined that the claimant has reached maximum medical improvement regarding the foot contusion she sustained on January 8, 2021.

Dr. Ardoin's opinion seems to limit the claimant's compensable injury to a contusion; however, Dr. Burks' working diagnosis for the claimant's injury is tarsal-metatarsal dislocation. Dr. Ardoin also attributes the claimant's symptoms to arthritis. However, Dr. Burks opined that "the pathology on the MRI and x-ray reveals increased separation between the medial and intermediate cuneiforms. This is injury related. I do not find any pre-existing condition." Dr. Burks further opined, "[i]n regards to the foot, I believe that all of her symptoms are directly related to the 2021-01-08 injury." We assess greater weight to the opinion of Dr. Burks who is the claimant's treating physician.

For the aforementioned reasons, we find that the claimant is entitled to a limited tarsometatarsal arthrodesis as recommended by Dr. Burks.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment provided in relation to her compensable left foot injury, including a limited tarsometatarsal arthrodesis. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500.00), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's findings that the claimant's average weekly wage in January 2021 was \$468.00 per week translating to a temporary total disability rate of \$312.00 per week. I must further dissent from the Majority's determination that the claimant has

proven by a preponderance of the evidence that she is entitled to additional medical treatment to her left foot in the form of a limited tarsometatarsal arthrodesis as recommended by Dr. Jesse Burks.

Arkansas Code Annotated section 11-9-518(a)(1) provides in pertinent part, "Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment." It is well settled in this State that a school employee's average weekly wage should be calculated by dividing her salary by the number of weeks she is under contractual obligation to work rather than the number of weeks over which she is paid, even when the number of weeks worked is fewer than fifty-two. *Magnet Cove Sch. Dist. v. Barnett*, 81 Ark. App. 11, 97 S.W.3d 909 (2003). Here, the claimant *actually worked* from August 24, 2020 to June 2, 2021 for a total of 40.43 weeks for a salary of \$16,848.00. Dividing the claimant's salary by the weeks worked under the claimant's contract for hire, the ALJ correctly determined the claimant's average weekly wage to be \$416.72.

With regard to the claimant's injury itself, what constitutes reasonably necessary treatment is a question of fact for the Commission, which has the duty to use its expertise to determine the soundness of medical evidence and to translate it into findings of fact. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005). The

Commission has authority to accept or reject a medical opinion and to determine its medical soundness and probative force. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998). When the Commission weighs medical evidence and the evidence is conflicting, its resolution is a question of fact for the Commission. *Medic One, LLC v. Colbert*, 2011 Ark. App. 555, 386 S.W.3d 58 (2011).

On January 28, 2021, Dr. Kevin Goodson diagnosed the claimant with a “midfoot bony contusion” and prescribed an orthotic boot to be used by the claimant 24 hours per day. (Cl. Ex. 1, P. 46). Dr. Goodson educated the claimant that they would “continue to treat symptomatically and this will continue to improve with time.” *Id.* Dr. Goodson is an orthopedic foot and ankle specialist.

On March 7, 2021, Dr. Goodson opined that the claimant should continue with conservative treatment and ordered an MRI for further evaluation. (Cl. Ex. 1, P. 53). Upon review of the claimant’s MRI, Dr. Goodson determined that there was “no evidence of occult fracture,” and “reiterated that these bony contusions can often take several months to resolve.” (Cl. Ex. 1, P. 61). The claimant’s care plan included wearing a rigid soled shoe at all times and taking an NSAID twice daily. *Id.* On June 16, 2021, Dr. Goodson “had a lengthy discussion with the patient in regards to no frank evidence of fracture or soft tissue injury.” (Cl. Ex. 1, P. 118).

Dr. Gregory (“Troy”) Ardoin conducted an independent medical evaluation (“IME”) of the claimant’s injury and found that the claimant suffered from “mild degenerative changes of the tibiotalar joint with mild joint space narrowing.” (Cl. Ex. 1, P. 150). Dr. Ardoin’s findings included “no evidence of any Lisfranc injury or midfoot sprain,” and her left foot contusion had resolved *Id.* In short, there was “nothing of significance relating to her area of pain.” *Id.* In his IME, Dr. Ardoin opined that he could not “state within a reasonable degree of medical certainty that the proposed limited midfoot arthrodesis is a direct result of the 1/8/2021 work-related injury.” (Cl. Ex. 1, P. 151). Dr. Ardoin opined in his May 23, 2022 report that the claimant had reached MMI for her January 8, 2021 injury, sustained no permanent impairment, and was under no ongoing work restrictions. *Id.* Like Dr. Goodson, Dr. Ardoin is an orthopedic foot and ankle specialist.

Unlike Dr. Goodson and Dr. Ardoin, Dr. Jesse Burks is a podiatrist. Dr. Burks first opined that the claimant would require tarsometatarsal arthrodesis. (Cl. Ex. 1, P. 134). Of the three doctors reviewing the same MRI, Dr. Burks was the only doctor who concluded that the claimant would need surgery. Importantly, Dr. Burks is a podiatrist, while Drs. Goodson and Ardoin are orthopedic foot and ankle specialists and are much better qualified to diagnose the claimant’s orthopedic needs than a podiatrist. I afford much greater weight to the matching opinions of the two orthopedic

foot and ankle specialists that treated the claimant, Dr. Goodson and Dr. Ardoin, than that of Dr. Burks, a podiatrist.

The majority places weight on the premise that Dr. Burks is the claimant's treating physician. It should be pointed out that Dr. Goodson was also the claimant's treating physician and as her original treating physician is the best person to determine if surgery is reasonable and necessary. In addition, Dr. Goodson was the claimant's treating physician from January 2021 until June 2021 and Dr. Burks only saw and examined the claimant three times on December 2, 2021; December 14, 2021; and January 19, 2022.

For the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner