

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G904652

NELA JIKATAKE,
EMPLOYEE

CLAIMANT

CARGILL, INC.,
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 14, 2021

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

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

Respondent represented by the HONORABLE LAURA J. PEARN, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on May 26, 2021. The Administrative Law Judge found that Claimant failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery by Dr. Arnold. 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 in the form of an arthroscopic procedure as recommended by Dr. Arnold.

I. HISTORY

The claimant, now 51 years old, was involved in a work-related accident on June 11, 2019. The claimant gave the following testimony as to how the work accident occurred:

Q ... When you fell, were you still working on the line?

A Yes.

Q And what happened that day?

A I was walking. I hit my toe on a pallet, my feet on a pallet. It was broken and I tripped.

Q And what happened when you tripped?

A I was in pain, so I waited until the pain subsided then I went to the nurse.

Q Okay. And how did you fall? How did you land?

A I only landed on my other hand. I didn't land on my knee or anything because when I fell down, all my weight was on my hand.

Q Which hand?

A My left.

Q Okay. And so where was your pain after the fall?

A It is still here on top (indicating), on my shoulder.

Q On the left shoulder?

A Yes.

A left shoulder x-ray taken on July 9, 2019, revealed degenerative changes but no fractures. There were no acute findings.

The claimant underwent a left shoulder MRI on August 1, 2019 which showed the following:

FINDINGS: No significant acromioclavicular joint osteoarthritis. No os acromiale is present. No rotator cuff tendon tear is present. Mild tendinosis of the rotator cuff is present. No tendon retraction or rotator cuff muscle atrophy is present.

The long head of the biceps tendon rests normally within the bicipital groove. The intraarticular portion of the long head of the biceps tendon is normal in appearance. No displaced labral tear is present. No glenohumeral joint cartilage defect is present.

The quadrilateral space is normal in appearance.

IMPRESSION:

1. Mild tendinosis of the rotator cuff.

A subsequent MRI on September 6, 2019 revealed tendinopathy of the suprapinatus and infraspinatus.

In Dr. John Heim's September 20, 2019 medical records, Dr.

Heim noted:

This patient has an adhesive capsulitis in the left glenohumeral joint. This is not going to get better with more time and more therapy. Her therapy has not helped so far and we are approaching greater than 3 months since the index injury. I'm recommending arthroscopic adhesiolysis with subacromial decompression and manipulation under anesthesia. I looked at her MRI and she shows no evidence of cuff tear. Once this procedure is performed we will get better motion but is up to her and her therapist to maintain this motion. She does not seem terribly motivated so I am a little apprehensive about this but nothing else is really going to help. ...

The claimant underwent the recommended procedure on September 23, 2019.

Dr. Heim assessed a 4% whole body impairment rating and released the claimant at maximum medical improvement on October 13, 2019. The claimant exercised her right to a one-time change of physician on January 3, 2020 from Dr. Heim to Dr. Christopher Arnold.

The claimant was initially seen by Dr. Arnold on January 21, 2020. In his medical records from the initial visit, Dr. Arnold noted, "I reviewed the MRI, which she brings with her dated September 6, 2019 and it does look like she has a high-grade partial tear of the suprapinatus." Dr.

Arnold also noted that he wanted the claimant to return after he had received a copy of her “op report” and MRI report from Dr. Heim.

The claimant returned to Dr. Arnold on February 4, 2020 with the requested medical records. Dr. Arnold assessed the claimant with a probable cuff tear and adhesive capsulitis and ordered a new MRI.

The claimant underwent a left shoulder MRI on February 19, 2020, which revealed the following:

FINDINGS: No significant acromioclavicular joint osteoarthritis is present. No os acromiale is noted.

There is mild increased signal within the conjoined tendon of the rotator cuff, which may represent residual minimal tendinosis. This appearance is improved compared to 9/6/2019. No rotator cuff tear is present. No rotator cuff muscle atrophy or tendon retraction is present.

The long head of the biceps tendon rests normally in the bicipital groove. Intra-articular biceps tendon is normal in appearance in appearance. No displaced labral tear or glenohumeral joint cartilage defect is present.

IMPRESSION:

1. No rotator cuff tendon tear, tendon retraction, or muscle atrophy.
2. Intact biceps labral complex.
3. Very mild increased signal within the conjoined tendon of the rotator cuff is present. This may represent very minimal, residual tendinosis but is much improved compared to 9/6/2019.

After reviewing the MRI, Dr. Arnold again noted in his April 7, 2020 records that the claimant had a partial tear and recommended a “scope with RTC repair”. Dr. Arnold wrote:

PLAN: She has failed therapy, anti-inflammatories, arthroscopy, and subacromial injection. I think the next step would be an arthroscopy and possible cuff repair. I think it is reasonable, given the profound cuff weakness, her failure to therapy, anti-inflammatories, injection, and arthroscopy and the MRI findings. At the current time, I would recommend arthroscopy, possible cuff repair. ...

Dr. Heim provided the following opinion regarding Dr. Arnold’s recommended treatment:

I have reviewed Ms. Jikatake’s medical records again to offer you my best assessment of her medical status based on my last visit with her.

The claimant developed an adhesive capsulitis of her left shoulder resulting in arthroscopic adhesiolysis and manipulation under anesthesia. She received post-operative physical therapy and despite inconsistent participation her results were good. She was released at MMI and was provided an impairment rating on 10/30/19. As often is the case, with this diagnosis, patients rarely fully recover to their pre-injury state. This is the purpose of the impairment rating.

It is my medical opinion that Ms. Jikatake does not need further treatment or diagnostic studies which is why I released her at maximum medical improvement.

A pre-hearing order was filed on March 31, 2021. The claimant contends that she is entitled to the additional medical treatment as recommended by Dr. Chris Arnold. All other issues were reserved. The respondents contend that this claim was accepted as compensable and benefits were paid. Claimant was provided treatment for this injury, which resulted in Dr. Heim performing an arthroscopic procedure on her left shoulder. She was released from his care at MMI on November 30, 2019 with a 4% whole body impairment. The rating was paid out to the claimant via a check for \$4500 in November of 2019. Respondents also contend claimant's voluntary resignation from employment with Cargill [on] July 16, 2019 results in claimant not being entitled to temporary total disability benefits beyond those already paid. Respondents further contend that they have provided the claimant with all reasonably necessary evaluation and treatment and Claimant is not entitled to additional benefits.

The parties agreed to litigate the claimant's entitlement to additional medical treatment recommended by Dr. Arnold.

After a hearing, an Administrative Law Judge filed an opinion on May 26, 2021. The Administrative Law Judge found that "Claimant failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery by Dr. Arnold." The claimant appeals this finding to the Full Commission.

II. ADJUDICATION

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).

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.*

Here, there are conflicting medical opinions. Dr. Arnold recommended that the claimant undergo an arthroscopic procedure and a possible cuff repair. Dr. Arnold was the claimant's treating physician for 3 months prior to recommending an arthroscopic procedure. Dr. Arnold treated the claimant conservatively with medication and an injection. After these treatment methods failed the claimant, Dr. Arnold ordered an MRI.

The MRI was read by Dr. Shawn Marvin who noted the following Impressions:

1. No rotator cuff tendon tear, tendon retraction, or muscle atrophy.
2. Intact biceps labral complex.
3. Very mild increased signal within the conjoined tendon of the rotator cuff is present. This may represent very minimal, residual tendinosis but is much improved compared to 9/6/2019.

It is noteworthy that Dr. Arnold also reviewed the actual images and not just Dr. Marvin's report. Based on his review of the images, Dr. Arnold determined that the claimant's left shoulder pain was "secondary to high grade partial RTC tear". It was only after the course of diagnostic testing and treatment that Dr. Arnold recommended the arthroscopic procedure, which he clearly believes is reasonable and necessary.

Despite the difference between Dr. Arnold's findings and Dr. Marvin's findings, there is no question that the MRI showed that the claimant continued to suffer from tendinosis in her left shoulder. This

diagnosis alone warrants granting the claimant additional medical treatment.

Additionally, Dr. John Heim, who the claimant was initially treated by offered an opinion on the claimant's need for additional medical treatment. Dr. Heim released the claimant at MMI on October 30, 2019, and assessed the claimant with a 4% permanent impairment rating. Without reviewing the claimant's February 19, 2020, MRI, Dr. Heim opined that the claimant "does not need further treatment or diagnostic studies which is why I released her at maximum medical improvement". Although Dr. Heim explained that patients with the claimant's diagnosis rarely fully recover to their pre-injury state, Dr. Arnold offered an explanation as to why the claimant is still experiencing left shoulder pain, i.e., a partial rotator cuff tear.

Therefore, for the foregoing reasons, we assess greater weight to Dr. Arnold's opinion and find that the claimant proved by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an arthroscopic procedure as recommended by Dr. Arnold.

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 additional medical treatment in the form of an arthroscopic procedure as recommended by Dr. Arnold. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

For the reasons set out below, I find that Claimant failed to prove by a preponderance of the evidence that the exploratory surgery offered by Dr. Arnold is reasonable and necessary medical treatment in connection with Claimant's compensable injury. As such, I would affirm and adopt the ALJ's decision in all respects and therefore respectfully dissent.

I. BACKGROUND

Claimant sustained a compensable left-shoulder injury on June 11, 2019. An X-ray of Claimant's left shoulder taken July 9, 2019, showed only degenerative changes—no fractures. A left-shoulder MRI taken August 1, 2019 showed “mild tendonosis” but “no rotator cuff tendon tear.”

Claimant had a second MRI in September 2019. The second MRI showed tendinopathy of the suprapinatus and infraspinatus tendons. Dr. Heim diagnosed Claimant with “adhesive capsulitis in the left glenohumeral joint.” He also noted that Claimant did not have a rotator-cuff tear. To correct the adhesive capsulitis, and essentially to help Claimant “get better motion,” Dr. Heim recommended “arthroscopic adhesiolysis with subacromial decompression and manipulation under anesthesia.” Although Dr. Heim was “a little apprehensive about” whether Claimant would actually maintain the increased motion through physical therapy (he felt Claimant “does not seem terribly motivated”), Dr. Heim performed this surgery in September 2019.

Following the surgery, Claimant reported greater range of motion. Dr. Heim noted that, although Claimant's range of motion was still somewhat limited, she had reached maximum medical improvement and assigned Claimant a permanent partial impairment rating of 4% to the body as whole, for which Respondents paid Claimant \$4,500.

Afterwards, in January 2020, Claimant changed physicians to Dr. Christopher Arnold, complaining of pain in her left shoulder. Dr. Arnold examined Claimant and thought “it does look like she has a high-grade partial tear of the suprapinatus.” Dr. Arnold assessed Claimant with a probable tear and adhesive capsulitis and ordered a new MRI.

Dr. Shane Marvin reviewed Claimant’s third MRI and found it revealed “no rotator cuff tear, tendon retraction, or muscle atrophy.” It did reveal “very mild increased signal within the conjoined tendon of the rotator cuff,” which “may represent very minimal, residual tendinosis but is much improved compared to 9/6/2019.” In other words, Dr. Marvin assessed that the problem that existed just before Dr. Heim’s surgery (mild tendinosis) “may” still exist but was “much improved.”

Dr. Arnold reviewed the MRI and noted that Claimant’s pain was “[caused by] high grade partial RTC tear.” Based on what Dr. Arnold himself described as “a possible tear,” he recommended arthroscopy and possible rotator cuff repair.” In April 2020, Dr. Arnold reported that Claimant has “full range of motion.”

In May 2020, Dr. Heim, who was at this point no longer Claimant’s treating physician, was asked to give an opinion regarding Dr. Arnold’s recommended surgery. Dr. Heim responded that despite the surgery he performed in September 2019, and physical therapy (in which Claimant’s

participation was inconsistent), Claimant had good results yet did not fully recover to her pre-injury state. “This,” Dr. Arnold correctly pointed out, “is the purpose of the impairment rating.”

As to whether Dr. Arnold’s proposed surgery was necessary, Dr. Heim wrote, “It is my medical opinion that [Claimant] does not need further treatment or diagnostic studies.” Dr. Heim did not review Claimant’s third MRI; however, Dr. Marvin, who had reviewed it, had already concluded that it did not show a torn rotator cuff as Dr. Arnold had suspected.

II. STANDARD

The law requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury received by an employee. Ark. Code Ann. §11-9-508(a). The burden of proving entitlement to additional treatment rests on the claimant. However, a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional medical treatment. *Ark. Health Ctr. & Ark. Ins. Dep’t v. Burnett*, 2018 Ark. App. 427, at 9-10, 558 S.W.3d 408, 414 (citing *Chamber Door Indus., Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997); *Ark. Dep’t of Cmty. Corr. v. Moore*, 2018 Ark. App. 60).

What constitutes reasonably necessary treatment is a question of fact for the Arkansas Workers' Compensation Commission. The

Commission has authority to accept or reject a medical opinion and to determine its medical soundness and probative force. Likewise, the Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008). Lastly, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation.

III. DISCUSSION

Dr. Heim, Dr. Marvin, and Dr. Lowery all agree that there is no tear in Claimant's left rotator cuff. Dr. Arnold is not even sure there is a rotator cuff tear. He consistently refers to it with words of uncertainty such as, "it does look like," "probable tear," and "possible repair." Accordingly, I would assign greater weight to the three doctors who agree there is no tear than to the one opinion that is stated with such uncertainty.

Accordingly, I respectfully dissent.

CHRISTOPHER L. PALMER, Commissioner