

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H204710**

ALICE E. LAWRENCE, Employee	CLAIMANT
SEARCY COUNTY JUDGE, Employer	RESPONDENT
AAC RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED **NOVEMBER 30, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Harrison, Boone County, Arkansas.

Claimant represented by NEAL L. HART, Attorney, Little Rock, Arkansas.

Respondents represented by JASON M. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 26, 2023, the above captioned claim came on for a hearing in Harrison, Arkansas. A pre-hearing conference was conducted on August 3, 2023, 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 this claim.
2. The employee/employer/carrier relationship existed on June 16, 2022.
3. The compensation rates are \$413.00 for temporary total disability and \$310.00 for permanent partial disability.

Before testimony began at the hearing, the parties also announced two additional stipulations:

4. An accident occurred on June 16, 2022, and respondents have accepted a left leg injury.

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5. Temporary total disability payments were paid through March 2, 2023, and there have been no temporary total disability payments since that date.

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

1. Compensability regarding claimant's back injury.
2. If compensable, whether claimant is entitled to medical treatment.
3. Whether claimant is entitled to temporary total disability benefits.
4. Attorney's fees.

The parties requested that the third issue be modified to read "whether claimant is entitled to additional temporary total disability benefits for a back injury, a leg injury, or both.

All other issues are reserved by the parties.

The claimant contends that "She suffered a compensable injury to her left lower extremity, low back, and other body parts after she was run over by a garbage truck at work. The low back was and is, at the very least, an aggravation of a preexisting condition, and is, therefore, respondents' continued responsibility, for medical care purposes, payment of indemnity benefits, and for any and all other benefits related thereto and allowed by the Act. The workers' compensation doctor is Justin Cutler, D.O., a Harrison orthopedic surgeon. While respondents continue to pay for Dr. Cutler's medical care, they have denied at least two of his treatment recommendations, namely a C-brace for claimant's leg and a referral to pain management for left lower extremity pain. This constitutes reasonable, necessary, and related medical care, and respondents should be required to provide it. Claimant continues to treat with Dr. Cutler at respondent's expense; she remains in a healing period and in an "off work" capacity secondary to her various injuries; at least one of her injuries is scheduled; and she has not returned to work. She is, therefore, entitled to an award of additional temporary total disability benefits from the date last paid (approximately May 10, 2023) through a date to be

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determined. Claimant's counsel is entitled to payment of a statutory attorney's fee on all controverted indemnity benefits. Claimant respectfully reserves the right to amend and/or otherwise alter the above contentions as discovery progresses. All other potential issues are expressly reserved for litigation at a later date including, but not necessarily limited to, anatomical impairment, permanent total disability, wage-loss disability, vocational rehabilitation, Section 11-9-505(a) benefits, and any other additional benefit allowed by law. This is a claim for additional compensation, and claimant renews her request for an award of any and all benefits to which she may be entitled, under the Arkansas Workers' Compensation Act."

The respondents contend that "The claimant's left lower extremity was accepted, and all appropriate benefits have been paid. The claimant's back condition is preexisting and there is no objective evidence to support a compensable injury to the lower back. The treatment suggested by Dr. Cutler is for the back and symptoms related to the back. The claimant's period of disability, if there is one, is related to her back which is not compensable."

After the entry of the prehearing order, respondents filed a motion for an independent medical examination (IME), said motion being filed on September 28, 2023. Claimant objected on September 29, 2023.

From a review of the entire record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant 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 August 3, 2023, and contained in a pre-hearing order filed that same date are hereby accepted as fact, as are

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the stipulations announced at the beginning of the hearing.

2. Respondents' motion for an independent medical examination is granted.
3. This matter will be held in suspense pending the completion of the independent medical examination.

FACTUAL BACKGROUND

As set forth above, the hearing on the motion by respondents for an IME and the claimant's case in chief were combined. The parties were advised that if I determined that an IME was reasonable and necessary, no decision would be rendered on the other issues presented. If I decided that the IME was not reasonable and necessary, then a decision on those issues would be rendered. Neither party objected to this manner of handling this matter.

HEARING TESTIMONY

Claimant was the only witness at the hearing. She gave a detailed vocational history, including describing the physical requirements of the jobs that she had worked following her high school graduation in 1996. She also described the requirements of the job that she was doing with respondent, Searcy County, prior to her accident on June 16, 2022. On June 16, 2022, she was performing her normal job of picking up trash. She had gotten out of the F-350 truck to shut the back doors of the cage that is built onto the truck. As she was out of the vehicle, another truck pulled behind the one that she had exited and honked its horn. The driver of the vehicle in which she was riding pulled forward, hitting her and knocking her in front of the back tire. The wheel of the tire went up on her left foot. Claimant tried to roll away from the vehicle. Claimant testified that she screamed, causing the driver of the vehicle to stop. At that time, the wheel was on her lower back and then the driver backed down her leg again. Because she was afraid that the driver might roll over her again, she got out of way of the wheels of the truck. Claimant said she could not put weight on her leg. Because of

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where the accident took place, claimant got into the truck and returned to the main road where a call was made to 911 and an ambulance came to where aid was administered. Claimant was then flown to Springfield, Missouri where she was treated and released to see her family doctor; there were no broken bones in her leg.

After seeing her family physician, Dr. Jose Abiseid, she was referred to Dr. Justin Cutler, an orthopedist in Harrison, Arkansas. Claimant's main issue at that point was still with her leg, and she was treated conservatively with medication and physical therapy. Because it is thirty-six miles from her home to the physical therapist, claimant has not been receiving physical therapy, but has been doing her exercises at home. Dr. Cutler administered an injection to her back which helped with the pain. Dr. Cutler also sent claimant for an MRI on her back. Claimant testified that Dr. Cutler wanted her to be seen by a pain management specialist and to have a C-brace to improve her walking; these have been denied by the respondent. Dr. Cutler had not released claimant to return to work as of the date of the hearing.

Claimant saw Dr. Edward Saer after having been referred by Dr. Cutler. Dr. Saer has treated claimant for her back injuries in the past. Claimant believed that he was not interested in seeing her for her 2022 injury.

When asked to describe her current symptoms, claimant said she still has swelling. She cannot feel her leg from her knee down and has no control over it. She stated she has numbness up to her hip. She has shooting pains and muscle spasms in her back, but a large part of her leg is numb and without sensation. She uses her walker constantly. She believes her symptoms are getting worse over time. Claimant said she gets relief when she lies down and doesn't do much to aggravate her condition. The problem with her leg gives her problems sleeping. Claimant admitted that she had had problems with her left leg associated with her prior back problems, but the surgeries alleviated the leg problems.

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She said the problems with her leg are different now because of the numbness.

On cross-examination, claimant admitted that she had degenerative conditions in her back which were diagnosed as early as 2007. Claimant stated that she had been fused on her pelvis up to L1 (but later corrected herself to say L-4 was the top of the fusion).

When asked to relate the events of the injury, claimant said that the bed of the truck struck her and pushed her off balance, causing her to fall on her right side. Her left leg was closer to the tire, but she testified that her body was facing the front of the truck, directly in front of the tires, and then clarified that it was a dual tire truck. In order to get away from the tires, she tried to roll under the truck but was pinned and could not get away from it. Claimant testified that she had tire tread on her back where the driver stopped. Claimant admitted that she had no damage to her organs, nothing was broken and had no ligament tear.

While in Springfield, claimant said the emergency room personnel did not focus on her back because she told them her problems were with her left leg. She recognized the diagram of her complaints and agreed that she told the trauma team “Patient reports her left leg was run over by a dump truck. Patient denies any other injury. Isolated left leg injury.”

Claimant stated when she began seeing Dr. Cutler, he was treating her specifically for her left leg issues and believed that the problem with her left leg now is related to her back. The walker she was using on the day of the hearing had been prescribed to her from her surgery in 2016 or 2017. When asked about Dr. Cutler’s narrative in which he reported that she “reports accident occurring on June 16, where she ended up underneath a garbage truck. Truck ran up her left leg all the way up to her thigh. Backed off of it.” She said that narrative was wrong. She did not know why Dr. Cutler did not note that she was using a walker on July 26, 2022, because she was.

Claimant repeated that she did not like how Dr. Saer was acting during her visits with him but

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knew of no reason why he would not want to help her or had any animosity toward her. She disagreed with Dr. Saer's opinion that her continued symptoms did not relate to her back injury. Because Dr. Cutler did not agree with Dr. Saer's opinion, a third opinion regarding claimant's back was requested by Dr. Cutler.

On redirect-examination, claimant clarified that she had a fusion from S1-L4, not L1. She was aware that Dr. Cutler reviewed the MRI of her spine and believed there was a large lateral disc herniation at L5-S1.

REVIEW OF THE EXHIBITS

In addition to the motion for an independent medical examination and claimant's response to that motion, claimant submitted medical records of her treatment after the June 16, 2022, injury, while respondent submitted records that predated that injury, except for an MRI performed on July 7, 2022, and the emergency room records from Cox Health dated June 16, 2022.

Claimant began with conservative care for her leg injury with Dr. Cutler on July 19, 2022. She did mention in that initial visit that she was having numbness and tingling with some sharp shooting pains in her left thigh and left lower extremity. The emphasis on claimant's treatment remained with her left leg until after Dr. Cutler ordered an MRI and an EMG, which were performed on September 8, 2022. Upon seeing the results, Dr. Cutler requested an MRI on her lumbar spine.

On October 3, 2022, an MRI was performed at North Arkansas Regional Medical Center.

The impression was:

1. Indeterminate intermediate intensity signal material within the left lateral recess at L5/S1 contacting and possibly encasing the traversing left S1 nerve root. Unable to exclude scar tissue given the prior surgery. Correlate with any left S1 radicular symptoms.
2. Prior decompression and interbody/posterior fusions at L4/L5 and an L5/S1. Mild adjacent segment disease at L3/L4 with grade 1 retrolisthesis and mild bulging of the disk. No narrowing at L3/L4.

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Because she had been previously treated by Dr. Saer for back issues—including performing two spinal surgeries—Dr. Cutler referred claimant to see him again. She was examined by Dr. Saer on October 25, 2022, who recorded in his assessment:

“She does not have a definite bony injury in her lumbar spine and there is no definite nerve root compression. She certainly could have an injury to the peroneal nerve or a neuropraxia to the femoral nerve or perhaps even the lumbar plexus. I do not see anything in her spine now that looks like she needs further treatment. Continuing therapy is probably her best bet.”

Claimant returned to Dr. Cutler on November 9, 2022, and expressed her dissatisfaction with Dr. Saer, reporting that Dr. Saer asked her repeatedly about an EMG when she had already told him that she had one. Dr. Cutler still believed that the EMG and MRI of the lumbar spine are consistent with new herniations from her injury. He suggested a second spine evaluation and performed an injection into claimant’s left LI joint.

Instead of seeing a different neurosurgeon, the next record was another EMG ordered by Dr. Saer, this time performed at Ortho Arkansas in Little Rock on December 15, 2022. The impressions from this test were:

1. Abnormal electrodiagnostic study.
2. There is electrodiagnostic evidence suggestive of a non-localizable left peroneal neuropathy with no focal slowing seen at the fibular head and no active denervation in any peroneal and elevated muscles tested. In addition, there were inconsistencies seen between functional and volitional activity throughout the study as patient seen doing activities such as ambulating, able to get onto exam table on own accord, rotate on table, extend and flex legs, but volitional activity was minimally seen.
3. There is no electrodiagnostic evidence of any other focal nerve entrapment, generalized peripheral neuropathy or left lumbar radiculopathy.
4. Of note, EMG is not a completely sensitive study, and does not evaluate small sensory pain fibers. Thus, lack of active denervation on today's study does not exclude an active radiculopathy. Clinical correlation is needed to determine the significance of today's electrodiagnostic examination findings.

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Dr. Saer reviewed the results of the EMG on December 16, 2022 and again reassured claimant that he saw nothing for which she needed surgery.

Claimant returned to Dr. Cutler on February 6, 2023; his notes from that date through his August 16, 2023, office visit repeatedly included a recommendation that claimant be seen by another specialist. That final visit concluded with the following impression/plan:

“Patient is status post being run over by a dump truck with complete loss of function in the left lower extremity. Is being reported from workers comp that she had a previous low back injury with a nerve root impingement. This is nothing like that type of injury. This is a completely additional ordeal. Patient has no functional use of her left lower extremity. Patient requires substantial amount of assistance and cannot drive or even ambulate without significant help. Patient would greatly benefit from a C brace to help control her hip, knee, and ankle motions. This will allow her to have more independence with activities of daily living. Even where patient did have a documented previous back injury for many years ago, this is an injury that has more than aggravated those problems. In reality, this is a completely new injury causing severe nerve function dysfunction to her entire left lower extremity.”

ADJUDICATION

As set forth above, the first question to be decided is whether an independent medical examination is reasonable and necessary in this matter.

Arkansas Code Annotated section 11-9-511(a) provides, in relevant part:

An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the Commission may require from time to time if reasonable and necessary. The threshold question is whether the examination is reasonable and necessary. (Emphasis added.)

Rule 30 (1) of the Arkansas Workers' Compensation Commission provides:

An independent medical examination shall include a study of previous history and Medical Care information, diagnostic studies, diagnostic x-rays, and laboratory studies, as well as an examination and evaluation. This service may be necessary in order to make a judgment regarding the current status of the injured or ill worker, or to determine the need for further health care. (Emphasis added.)

When viewing the medical evidence considering the standards set forth above, I believe respondents have shown that an IME is reasonable and that it would be necessary to make an informed judgment in this case about claimant's need for further health care that is attributable to her compensable injury.

As I outlined in the review of the medical records, there is a sharp difference of opinion between Dr. Cutler and Dr. Saer about the cause of claimant's continued left leg pain. Claimant believed that Dr. Saer was uninterested in helping her; respondents maintain that Dr. Cutler is actively advocating for claimant. I do not care to ascribe motives to either doctor that affect their opinions. I recognize that a conflict in the opinions of the doctors is no reason, in and of itself, to order a "tiebreaker" IME. The Commission has authority to accept or reject 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).

However, with all that said, I am concerned about the equivocal nature of the impressions on the lumbar MRI of October 3, 2022, and the EMG test performed on December 15, 2022. It may well be that claimant could undergo another dozen such tests and no one could be any more definite than were the two radiologists that recorded their impressions. Still, I believe the results of these tests are at the root of the disagreement between Drs. Cutler and Saer. As such, I find the request by respondents for an IME to be reasonable—as does Dr. Cutler, as witnessed by his repeated recommendation for another evaluation—and necessary for me to make an accurate assessment as to claimant's need for additional medical care.

Because I am granting the motion for an IME, this matter will be held in suspense pending the receipt of the report from the physician conducting the IME. This matter will be referred to the Medical Cost Containment Division of the Commission to select that physician.

ORDER

Respondents' motion for an IME is granted. The cost of said examination is to be borne by respondents, including mileage for claimant's travel. Further, the parties should provide the physician selected by the Medical Cost Containment Division the medical records, including any diagnostic testing previously performed in order for that physician to have a complete record of what has transpired to this point. If the physician selected believes additional diagnostic procedures are necessary to properly evaluate the claimant, such should be promptly authorized by respondent.

It is further ordered that the issues raised by claimant are held in suspense, pending receipt of a narrative from the specialist selected.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE