

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G902831**

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| ZAHIDA MADI, EMPLOYEE | CLAIMANT |
| WALMART ASSOCIATES INC., EMPLOYER | RESPONDENT |
| WALMART CLAIMS SERVICES, INSURANCE CARRIER | RESPONDENT |

OPINION FILED JULY 19, 2021

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Springdale, Washington County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On May 20, 2021, the above captioned claim came before the Workers' Compensation Commission in Springdale, Arkansas, for a hearing. A prehearing conference was conducted on March 18, 2021, and a pre-hearing order filed on March 19, 2021. A copy of the prehearing order (with modifications announced at the hearing) was marked as Commission's Exhibit No. 1 and no objection was made to it being a part of the record as modified.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on January 17, 2019.
3. The respondents have controverted the claim in its entirety in regard to claimant's hip injury.
4. The compensation rates are \$435.00 for temporary total disability and \$326.00 for permanent partial disability.

5. There is no dispute over previously paid benefits.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury to her hip on January 17, 2019.
2. Whether claimant is entitled to medical benefits for her hip injury.
3. Whether claimant is entitled to temporary total disability benefits.
4. Whether claimant has reached maximum medical improvement and if so, on what date.
5. Attorney's fees.

All other issues are reserved.

The claimant contends that she sustained a compensable injury to her right hip on January 14, 2019, while working for Walmart in Bentonville, Arkansas. To date, the respondents have not provided medical treatment for this injury. The claimant sought treatment on her own through Dr. Jacobelli and on November 5, 2020, underwent an MRI scan which revealed a labral tear in the claimant's right hip. Due to the controversion of entitled benefits, the respondents are obligated to pay one half of the claimant's attorney's fees.

The respondents contend that the current treatment for the claimant's right hip does not arise out of the compensable injury.

From a review of the record, including the medical reports, and having heard testimony and observed the demeanor of claimant, the only witness called to testify, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on December 9, 2020, and contained in a pre-hearing order (as modified at the hearing) filed that

same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right hip on January 17, 2019.

FACTUAL BACKGROUND

Hearing Testimony

Claimant testified that she worked for Walmart since 2001. She said she hurt herself at work on January 14, 2019. She was working alone in the deli during a rush near closing time. (TR.7) She said she was trying to help the customers and she went to get some additional help. As she was coming back, she slipped on something that was on the floor. (TR.8) She said she fell on her knees with her right foot forward and her left knee on the ground. (TR.9)

During her testimony, claimant frequently pointed at a portion of her body; while it was possible to follow her testimony in person, the written record can be a bit confusing. At one point, claimant said “here-on the left hip, sorry and all the way here.” I asked her to clarify that she as pointing at her right thigh and then calf and she affirmed that was where she was pointing. She said she felt immediate pain in the area (TR.10), but she was concentrating on the customers. She said she had pain in her back, her hip, and all the way to her toenails. (TR.11) She said her right hip and right leg hurt that night and more in the morning, which is when she reported it. She was trying to avoid reporting an injury. (TR.12) Claimant reported to the healthcare professional, that she first saw, that she was having pain located in the right hip. She was given restrictions and returned to light duty work. She had hip pain during that time (TR.13), and she said she had numbness in her right hip. (TR.14) She also reported to Dr. Knox that she was having hip pain, but he did not treat it. (TR.17) Claimant was then treated by Dr. Castellvi and then by Dr. Jacobelli. (TR.18) She reported to Dr. Jacobelli that her hip pain was a seven or eight out of ten at

that time. (TR.19) Claimant stated that she had an MRI in November of 2020 and following that MRI, she had a steroid injection and physical therapy for the injury to her right hip. (TR.20) Claimant said that her hip was still hurting, and she is still doing the exercises that Dr. Jacobelli prescribed.

Claimant stated that Walmart offered her a position to return to work in the self-check section. Claimant said she asked for a chair because she couldn't stand all the time, so she was given a chair, but she had to "jump from here to here because I was by myself. I couldn't do it." (TR.23) She said she tried to sit as a cashier, but she could not do it because she could not sit for a long time. She believed that she would be sitting for at least two hours before she had a break and then another two hours before there was a break. She stated that she could not sit one hour as a cashier because it was not comfortable. She said she would have loved to do it, but she could not because of her pain. (TR.24) Claimant said that she believed that the longest she could remain seated in a job was maybe half an hour. During an eight-hour workday, she thought she could sit for half an hour and then "I have to sit comfort for a long time, then I go half an hour" (TR.25) She said she had not worked since July 2019; although Walmart offered her a job sitting as a cashier, she did not believe she could do that job. (TR. 26)

On cross examination, claimant said she believed she was still considered an employee of Wal Mart but was not working. She had drawn some disability benefits but lost it because she did not follow what she should do. (TR.29-30)

Claimant said she was provided a long round stool to sit on as a cashier. When asked if she had the option of standing to do the check out, she said she could not because of severe pain. Claimant testified that is why she asked about a stool and was given a stool, but that did not work for her because of severe pain (TR. 3) and if she wanted to move to another register, she could not

take the stool with her. She specifically denied a fall after January 17, 2019. (TR.32)

Overall, I found parts of claimant's testimony to be troubling. For instance, her testimony that she could not sit for more than a half hour (TR. 25) was belied by the fact that I watched her sit during the hearing for a longer period than that before she was asked by Respondent's counsel to stand to demonstrate where she was hurting. (TR. 33) Also, denying a fall after the January 17, 2019, incident contradicts a specific medical record. However, my decision in this case does not hinge on claimant's credibility, but on her lack of objective proof that the hip injury shown in an MRI in November 2020 occurred in January 2019.

Review of the Medical Exhibits

Because the parties did an excellent job coordinating before the hearing, the medical records were presented in chronological order without repeating a single document, first by the respondent's exhibits (except one report) and then by those submitted by the claimant. My review will be conducted in chronological order.

The first thirty-three pages are records from the Arkansas Occupational Health Clinic by APRN Dalana Rice. These are not particularly helpful except to record what claimant said about her hip pain during the visit. From January 23, 2019 (R.X.4) through the April 3, 2019 (R.X.32) report, claimant consistently complained of pain in her right hip. In the initial examination, Nurse Rice noted:

“Pain on motion is present over the gluteal area. An abrasion is not present. Bruising is not present. Erythema is not present. An open wound is not present. Pain to palpation is present over the gluteal area. A rash is not present. Swelling is not present. Range of motion is normal. Spasm is not present.” (R.X.10)

Two months following the incident where claimant fell, she was referred for an MRI on her lumbar spine, but the treatment at that point was that “she continues to take over the counter

pain relievers, and apply ice and heat as needed for symptoms.” (R.X.25) Following the MRI, Nurse Rice referred her for evaluation/treatment by pain management (R.X.32) and I believe that it is because of that referral that she next saw Dr. Mark Miedema at Ozark Orthopedics. Thus, for over two months, nothing of substance was done to specifically address the hip pain other than “one round of physical therapy” (R.X.25) (No reports from the physical therapist were included in the exhibits submitted by the parties).

The March 29, 2019, MRI report from Dr. Samuel Pagliamite concludes with the following impression:

1. Mild-to-moderate degenerative change involving the lumbar spine without disc herniations.
2. Severe bilateral neural foraminal stenosis involving the L5/S1 level.
3. No high-grade central canal stenosis is identified.
4. Grade 1-2 anterolisthesis of L5 relative to S1 without identification of pars defects. Correlation with plain films is recommended. (R.X.26)

Some three months after the injury, claimant was seen by Dr. Miedema on April 24, 2019. In the section regarding the review of the lumbar spine, nothing is mentioned regarding localized pain in claimant’s hip, but the report did mention “low back pain radiating into the right leg with numbness in her leg.” Dr. Miedema recommend a “right L5-S1 transforaminal epidural injection for therapeutic purposes.” (R.X.36) This procedure was performed on May 13, 2019. (R.X.41-42) Claimant reported a modest degree of relief at the follow-up visit on May 29, 2019, but she was not interested in pursuing further treatments or a surgical opinion. (R.X. 45) She was released to return to work with permanent light duty restrictions of “no bending/lifting/twisting >20 pounds and no standing for more than >30 minutes at one time.” She was assessed a 10% impairment to the whole person by Dr. Miedema (R.X.46). Claimant was released to return to work on June 3, 2019 (R.X.47), but returned on June 5, 2019, to request

a surgical opinion due to ongoing pain. There was no mention of a hip injury in the June 5, 2019, report (R.X.48) nor in the June 11, 2019, visit with Dr. Miedema. (R.X.52) A Functional Capacity Evaluation was recommended, and claimant was to remain off work while awaiting a surgical opinion; Dr. Miedema changed his opinion and found that claimant had not reached maximum medical improvement. (R.X.54)

Claimant returned to see Nurse Rice at Arkansas Occupational Health Clinic on June 13, 2019, and in the history of the present illness, she recorded that “claimant’s primary problem was pain located in the lower back.” (R.X.58) There was no mention of the hip pain other than what was apparently already entered in the computer for claimant; I came to that conclusion because the neck pain which had resolved long before this visit was still listed as a chief complaint. (R.X.58) Claimant asked to be removed from work entirely so she could heal from her injury and when Nurse Rice declined to accommodate that request, the two of them discussed short-term disability. Nurse Rice noted that claimant was referred to a neurosurgeon but was unclear as to when her appointment would be. Claimant was referred to have a case manager assigned. (R.X.59)

Claimant was next seen by Dr. Luke Knox at Northwest Arkansas Neurology Clinic. In the history of the present illness, Dr. Knox recorded nothing regarding claimant’s hip except there was low back pain that radiated into the right hip and buttock and down the thigh area. (R.X.61) In his assessment and plan, Dr. Knox did not mention any localized problem with claimant’s hip. (R.X.63) Dr. Knox concluded that he did not believe it would be wise to consider surgical options on the claimant at this time and recommended that the functional capacity evaluation be conducted, after which she was to return to his office. (R.X.64)

On July 18, 2019, claimant was given a functional capacity evaluation at Real Rehab in

Johnson, Arkansas. Physical therapist Stuart Jones of Functional Testing Centers, Inc. conducted the evaluation and concluded “the results of this evaluation indicate that an unreliable effort was put forth, with 28 of 48 consistency measures within expected limits. Analysis of the data collected during this evaluation indicates she did not put forth consistent effort.” However, it was noted that claimant produced low and inconsistent grip and pinch strength and significantly higher and lower force with the right and left hand during rapid grip testing. I find this largely irrelevant because claimant is not pursuing a claim for injury to her upper extremities. Regarding the right hip, claimant “describes her pain as being in her low back and right hip. She reports additional areas of pain that include, the entire right leg when working.” (R.X.70) It was noted that claimant sat through the forty-two-minute interview “with pain behaviors and with postural adjustments (R.X.72).” Following the walking task, claimant complained of low back and right hip pain. (R.X.75) When it came time to do the carrying, stooping, crouching, kneeling, climb stairs/step-ups, claimant complained of “pressure in her low back and right hip” during the stooping portion of the test but there was no other mention of any hip pain. It was determined that she had the ability to stand at the occasional level and to sit at the constant level. (R.X.79)

Dr. Knox reviewed the Functional Capacity Evaluation on July 22, 2019, and concluded that claimant had reached the point of maximum medical improvement as there were no options available to her that would benefit her continued complaints. He noted that she had “persistent right hip discomfort”. Dr. Knox assigned a 7% permanent partial disability to her body as a whole. He did not believe that it would be worthwhile to recommend any further treatment options as he believed claimant was extremely unmotivated to improve. (R.X.86)

Respondent’s final exhibits are the notes from Dr. Alejandro Daniel Castellvi from August 10, 2020. These will be discussed following a review of Dr. Castellvi’s records from

January 6, 2020, which were contained in claimant's exhibits.

Claimant's exhibits begin with records from Dr. Ahmed Al-Khatib at Benton NeuroCare dated November 6, 2019. Claimant reported to him that she had fallen while working for respondent and had low back pain and pain over her right buttock and right leg. Dr. Al-Khatib evaluated claimant for "lumbosacral radiculopathy, plexopathy, sciatic neuropathy, and peripheral polyneuropathy." (CL.X.3) Claimant was sent for an electromyography which concluded that "this is an abnormal study. There is electrophysiological evidence suggestive of a mild chronic right L5-S1 radiculopathy." (CL.X.6) For reasons unexplained in the records, claimant stopped seeing Dr. Al-Khatib after this one visit.

The next medical records are from a November 25, 2019, visit to Mercy Clinic Physicians Plaza where claimant was seen by Paula Stevens, APRN. In the history of the present illness, Nurse Stevens notes "she describes her back pain as a burning and aching sensation that radiates from the right hip and winds down the posterior and lateral aspect of the thigh and calf to the foot." (CL.X.11) The pain was also mentioned as radiating from the right lumbar region into the right hip and running down the right leg. (CL.X.12) A CT scan on claimant's lumbar spine was performed on November 25, 2019, and the results were consistent with the previous radiological test that had been performed, in that it showed "severe bilateral foraminal stenosis at L5-S1." (CL.X.27)

On January 6, 2020, claimant saw Dr. Castellvi at Mercy Clinic. Her complaint at that time was "a lower right extremity radiculopathy and significant back pain and buttock pain." (CL.X.34) In the assessment and plan, Dr. Castellvi did not recommend any more conservative therapy but rather an anterior lumbar intrabody fusion. Claimant had a trip scheduled and told her doctor that she would contact his office if she desired to proceed with the surgery. (CL.X.38)

Returning now to respondent's exhibits, claimant apparently decided against the surgery because she next saw Dr. Castellvi some eight months later on August 10, 2020; there are no records submitted between the January 6, 2020, visit and this one. In his history of the present illness, Dr. Castellvi said that claimant's follow-up had been delayed due to COVID. "Today, patient also has complaints of right hip and groin pain. Patient had a recent fall and believed that this is when she injured her hip. She is here in the clinic today to discuss surgery as well as for evaluation of the right hip pain." (R.X.91) Dr. Castellvi's progress notes conclude with an indication that claimant had decided to proceed with surgery, but before scheduling the surgery, x-rays were ordered of her right hip and she was to be evaluated by orthopedic surgery "once she has her hip evaluated and treated, patient will call back to schedule her surgery." (R.X.95)

On October 29, 2020, claimant saw yet another physician, Dr. Dominic Jacobelli. I see nothing in Dr. Jacobelli's report that indicates that this is a referral from Dr. Castellvi; rather, his report begins with the claimant's chief complaint being pain in her hip and then states that she was new to the clinic. (CL.X.45) Claimant requested an MRI of her right hip; she received a "white greater trochanter steroid injection under ultrasound guidance." (CL.X.49)

The MRI that Dr. Jacobelli ordered was conducted on November 5, 2020, and showed:

1. Small to moderate grade tear of the gluteus medius tendon with tendinopathy and differential tendon reaction.
2. Tendinopathy verses low grade partial tear of the gluteus minimus.
3. Small anterosuperior labral tear. (CL.X.52)

Claimant returned to Dr. Jacobelli on November 11, 2020, with a primary complaint about left knee pain (which is not relevant to this proceeding), but she did also discuss her hip pain. Dr. Jacobelli said "there appears to be a moderate grade tear of the gluteus medius with abnormal edema-like signal near the attachment and differential tendon reaction." (CL.X.56)

Dr. Jacobelli talked to the claimant about referring her to a surgeon “for her hip since she did not get a lot of relief from the injection, she would like to hold off on that for now.” The office note ends with “I will see her back in about six weeks to check on her knee.” (CL.X.57) No subsequent records were offered.

ADJUDICATION

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

There is no question that claimant fell while at work at respondent’s place of business on January 17, 2019, suffering an injury to her lower back; indeed, respondents have accepted the back injury as compensable. However, after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proof in that she failed to prove there are objective findings establishing an injury to her right hip that was caused by the fall on January 17, 2019.

In its post-trial brief, Respondents asserted “The claimant did not complain of hip pain until she saw Dr. Castellvi on August 10, 2020.” To the contrary, the medical reports contain several instances in which claimant related that her right hip was hurting. Her treating physicians before Dr. Castellvi -- Drs. Miedema, Knox, and Al-Khatib (as well as APRN Rice) -- all recorded that claimant complained of hip pain. However, it appears all those doctors believed

the pain claimant reported in her hip was due to her compensable back injury, as all mentioned radiculopathy. Dr. Miedema called it “lumbosacral radiculopathy” (R.X.38), Dr. Knox termed it “low back pain that radiates into the right hip and buttock and down the thigh area,” (R.X. 82) and Dr. Al-Khatib ordered an EMG of her lower right extremity, (CL.X.3) which was “suggestive of mild chronic right L5-S1 radiculopathy.” (CL.X.6) And long before his August 10, 2020, report, Dr. Castellvi signed off on an “Assessment and Plan” following claimant’s examination on November 25, 2019, where it is noted there was a “complaint of low back pain and right lower extremity radiculopathy” and objectively found “Grade 2 L5 spondylolisthesis with moderate and severe biforaminal stenosis and partial impingement of the right exiting nerve root.” (CL.X16)

Thus, it does not appear that any of these doctors suspected there was a different cause for claimant’s right hip pain other than the radiculopathy from her lower back injury, and therefore, there is no objective medical evidence of an injury localized to the right hip itself prior to the MRI which was performed on November 5, 2020. (Cl. X 51) Dr. Jacobelli did not attempt to relate what he found in late 2020 to claimant’s fall in January 2019; he did not provide the objective finding establishing the injury as to the specific time and place of the injury that claimant is required to present in support of her claim.

In closing, I considered that the tearing and tendinopathy shown by the November 5, 2020, MRI was there all along, and missed by several highly trained doctors who focused on claimant’s low back injury as the source of the pain in her hip. However, I cannot overlook this sentence in Dr. Castellvi’s August 10, 2020, report: “Patient had a recent fall and believes this is when she has injured her hip.” (R.X. 91) I recognize that claimant speaks English as a second language, but except for a couple of instances where she asked for clarification of a question that

used a word or phrase she did not understand (TR 15, 30), she had no apparent difficulty expressing herself in English. She has been in this country for twenty years and a citizen for fifteen years. (TR.6) Under no reasonable interpretation of the word “recent” can I make the fall she described to Dr. Castellvi on August 10, 2020, relate back to the January 17, 2019, injury at her place of employment. I also noticed in the August 10, 2020, report (R.X.91), claimant’s follow-up had “been delayed due to COVID.” Using CV-19 as a reason for delay is problematic, as it was not until the middle of March 2020 that CV-19 restrictions began; she had not rescheduled with Dr. Castellvi following the visit on January 6, 2020, for over two months until the pandemic started. While the back surgery was discussed again (R.X. 94), as of the date of the hearing, claimant still has not undergone the recommended anterior lumbar fusion. A recent fall that had created increased hip pain would better explain why she decided to return to the doctor in August 2020 -- still during the pandemic -- rather than a consultation for a surgery she apparently does not want to undergo.

ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right hip on January 17, 2019. Therefore, her claim for compensation benefits for an injury to her right hip is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$468.50.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE