

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G906984

VERONICA MARTINEZ-MONTALVO, Employee	CLAIMANT
TYSON POULTRY, Employer	RESPONDENT
TYNET CORPORATION, Insurance Carrier/TPA	RESPONDENT

OPINION FILED FEBRUARY 12, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

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

Respondents represented by R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On November 17, 2020, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 2, 2020, and a Pre-hearing Order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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. On all relevant dates, the relationship of employee-employer-carrier existed between the parties on November 8, 2018.
3. The claimant sustained a compensable injury to her back on November 8, 2018.
4. The claimant reserves the issue of compensability of an injury to her left shoulder on November 8, 2018.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether the claimant sustained a compensable injury to her cervical spine on November 8, 2018.

2. Whether the claimant is entitled to medical treatment for her cervical spine.
3. Whether claimant is entitled to additional medical treatment for her back.

Claimant's contentions are:

“Claimant contends she has compensable work injury to her neck, back and left shoulder from being hit with an iron bar while working. Claimant contends she is entitled to medical treatment for her neck and back. The claimant reserves all other issues.”

Respondents' contentions are:

“Respondents contend that the alleged neck and left shoulder injuries are not compensable.”

The claimant in this matter is a 48-year-old female who sustained a compensable injury to her back on November 8, 2018. The claimant has asked the Commission to determine if she also sustained a compensable injury to her cervical spine in that same November 8, 2018 incident. The claimant was employed by the respondent on a chicken breast production line. The claimant gave direct examination testimony about the November 8, 2018 incident in the events shortly after the incident as follows:

Q What happened on November 8, 2018?

A That day what happened is that when we came back after lunch, we turned on the machines and I was removing a bone because like I said, you needed to remove the bone so no bone will go out in the final product. Then as I was doing that, I put them apart in a place where you are supposed to put them, I felt a metal door that fell on my back and neck and it hit me on my back and my neck, and it was because that door was supposed to be locked. It was supposed to have a padlock, but it seems someone forgot to put the padlock where it was supposed to go and that is how the door fell and it fell on me.

Q And what kind of force did the door hit you have with?

A That door is a very high door, and it is a very long door, so because it was locked, it fell with full force and it just fell on me and I think -- well, it was because it was unlocked, so it is very long and very high and it just fell on me.

Q And is this a door or a bar or a guard? What is it?

A It is a metal door that covers the machine. It covers one of the machines and it is a long door, and it covers it so there are no accidents.

Q What happened immediately after the accident?

A After this happened, well, I felt that it hit me and then everything went blurry and someone else came to help me. And someone called my supervisor Mark and they helped me to get underneath that door that hit my back and my neck and the back of my neck and they took me out of there so they could take me to the nurses office.

Q And at the nurses office, did you complete any sort of statement about what had happened?

A Yes. Yes, we did.

Q And do you write or read English?

A No. Everything was in English.

The respondent introduced a document found at Respondent's Exhibit 2, Page 1 titled "Team Member Statement of Injury/Illness." That document is a form written in English and the handwritten responses are also written in English. Here, the claimant does not read, write or speak English, however she did acknowledge in testimony that she signed the document. A portion of that Team Member Statement of Injury/Illness states, "Describe in detail the job you were doing at the time of the injury (or what is causing your pain or problem)?" The handwritten answer states, "I was checking the breast at the time. I got the breast to show my supervisor. Then I put it back, that's when the guard hit my middle of my back." Another question states, "Describe fully how the injury happened (or what your pain or problem is)?" The handwritten answer states, "I had a breast, and I was going to show my supervisor, that's when, the guard hit my back."

On November 9, 2018, the claimant was seen by Dr. David Sitzes. Following is a portion of the progress note from that visit found at Claimant's Exhibit 1, Pages 3-5:

HPI: "I was checking breast and I was going to show my supervisor when I got hit in my back with guard," a metal bar weighing 10 – 15# fell on her from a suspended position. This structure was long, flat and wide enough to strike the lower half of her neck and the upper thoracic spine simultaneously.

Prior Treatment: Saw Occ Health nurse, given Ibuprofen otc 2 tabs and ice x 30 minutes, but this was followed by severe pain reported in mid to lower midline thoracic spine and throbbing headache. Initial presentation to MCOM was on 11-8-18. She returns today for recheck.

ASSESSMENT:

Work-related trauma.

Contusions of thoracic and cervical spine - - essentially resolved.

Muscle contraction headache - - resolved.

PLAN:

At MMI, DC.

On February 5, 2019, the claimant was seen by Irma Perez, APRN at Mercy Clinic in Rogers, Arkansas. Following is a portion of that medical record found at Claimant's Exhibit 1, Page 8:

Chief Complaint:

Patient presents with:

- Arm pain
Left neck, shoulder and arm "for a long time", looks down and uses her hands continuously.
- Neck Pain
with left shoulder ongoing issue for years, getting worse, has had nsaid for pain in the past but seems to continue.

On March 8, 2019, the claimant underwent an MRI at Mercy Hospital Northwest in Rogers, Arkansas. Following is the impression section of that diagnostic report found at Claimant's Exhibit 1, Pages 9-10:

IMPRESSION:

1. Intervertebral disc disease seen throughout the cervical spine with reduction of vertical disc space height especially C4-C5, C5-C6 and C6-C7 cervical levels.
2. Moderate severe canal stenosis at C4-C5 and C5-C6 with mild canal stenosis at C6-C7 secondary to diffuse posterior disc bulges and ventral spondylitic ridging. The neural foramina are markedly encroached at each level.
3. Other findings as above.

On September 26, 2019, the claimant was seen by Julie Slavik, PA. Following is a portion of that chart note found at Claimant's Exhibit 1, Page 14:

HPI: The patient is having neck pain. It radiates down her left arm. We used an interpreter today. Victor, through the iPad system, though a few details are lacking. The best I can ascertain, she was injured at work about a year ago. She had been bent over. A metal door above her fell

off and hit her on the upper back, neck area. The door weighs about 50 pounds. She went to the occupational health department that was next door to Mercy. She has been continuing to work with Meloxicam and Tylenol. She has had no other treatment. She has seen a doctor in Mexico and says something about he thinks something is torn, and she points to the trapezius area. She has a full movement of her arm, not painful in the shoulder with movement. The numbness and tingling are diffuse in her left arm. It is constant, worse when she is trying to use the arm. Everything is better with resting. The pain is all on the left side of the neck and left arm.

PLAN: I reviewed the MRI with the patient. She is not myelopathic. She is having diffuse left arm radicular-type features that fit appropriately with her MRI. I discussed our conservative options. She is not interested in injections. She will try physical therapy and here in about 4 weeks, we will have her come in and meet with Dr. Jones to see what her surgical options are going forward and then that way will know if physical therapy has helped any or not. But I suspect at some point, she will need surgical intervention. The patient works until 3 at Tyson, so only able to answer phone calls after 3.

The claimant began a course of physical therapy as recommended by Julie Slavik, PA and Dr. Matthew Steed on October 7, 2019 at Mercy Clinic Ortho & Sports in Rogers, Arkansas. The claimant, after completing conservative treatment, was referred by Dr. Steed to Dr. James Blankenship at the Neurosurgery Spine Center in Fayetteville, Arkansas. Dr. Blankenship's office visit note from that December 16, 2019 visit in part states the following found at Claimant's Exhibit 1, Pages 33-37:

HPI:

The patient has had neck pain, left shoulder and left subscapular pain, and left upper extremity pain to her hand. She describes decreased strength in the left upper extremity and also is having balance problems. Onset of symptoms was November of last year when a door fell on her at work and have been progressively getting worse. She did physical therapy at Mercy last month. She has had no steroid medications and is currently on gabapentin and meloxicam. She is working on trying to get the injury affiliated with Workers Comp which, unless there is more to the story than I am getting, it does appear to be a directly work-related injury.

Chief Complaint: NECK PAIN.

Impression:

The patient has a C7 radiculopathy on examination on the left. She also has myelopathic findings. Her MRI demonstrates a tight spinal canal with severe foraminal stenosis with a large disc herniation, actually on the right, with spondylotic ridging. At C5-6 she has severe bilateral foraminal stenosis. At C6-7, she does not have any significant canal stenosis, but she does have significant foraminal stenosis. The AP diameter of the spinal canal at C5-6 measures 8 mm. At C4-5, it measures 8 mm.

Recommendations:

REFER TO: Cannon, David (479-582-2800).

I told her that her myelopathic complaints and findings are present but not significant enough that I would tell her that she has to have surgery. I told her the surgery decision needs to be reserved more from the standpoint of her pain. I told her that if she needed surgical intervention, my recommendation would be an anterior cervical arthrodesis and fusion at C4-5, C5-6 and C6-7. After a very lengthy discussion, she is going to pursue the following recommendations: I recommended that she get in to see Dr. David Cannon for a CESI and get a few more weeks of physical therapy with the folks at Trinity. If she has any progression of weakness, she is going to call us. In the absence of significant hard myelopathic findings, I think maximizing our conservative treatment is worthwhile. The patient is just not ready to consider surgery anyway.

On February 20, 2020, the claimant was again seen by Dr. Blankenship. Following is a portion of his visit note found at Claimant's Exhibit 1, Pages 40-43:

HPI:

The patient is in today for follow up. She had physical therapy at Trinity. She states this only aggravated her pain. She decided that she did not want to try any type of injection. She is also having some low back pain. She rates her overall pain about 70% toward the worst pain imaginable. She has mostly neck pain that radiates into the left shoulder, left scapula, mid scapula, and left subscapula. Her pain goes down to the left upper extremity. She has decreased strength in the left arm and left hand.

Chief Complaint: NECK PAIN.

Impression:

Ms. Martinez returns to the office today. Once again she has been having significant and severe right upper extremity pain. The patient has severe left-sided arm pain. The patient has severe foraminal stenosis on the left at C4-C5. She has asymmetrical foraminal narrowing at C5-C6 and broad-based disc protrusion at C6-C7. I believe that the disc at C5-C6 is likely the cause of her arm pain.

Recommendations:

The patient states that her hand weakness has gotten worse. She has failed routine and usual conservative measures. I have offered her spinal cord and foraminal decompression at C5-C6 and C6-C7 as well as discectomy with arthrodesis at C4-C5.

After a lengthy discussion, the patient has elected to proceed with surgery.

On August 25, 2020, the claimant underwent surgical intervention at the hands of Dr. Blankenship at Physician's Specialty Hospital. Following is a portion of that operative note found at Claimant's Exhibit 1, Page 57:

PREOPERATIVE DIAGNOSES:

1. C5-C6 disc herniation with severe central canal stenosis.
2. Multilevel disc space degeneration.
3. Cervical spondylosis with myelopathy.
4. Cervical kyphosis.

POSTOPERATIVE DIAGNOSES:

1. C5-C6 disc herniation with severe central canal stenosis.
2. Multilevel disc space degeneration.
3. Cervical spondylosis with myelopathy.
4. Cervical kyphosis.

It is the claimant's burden to prove that she suffered a compensable injury to her cervical spine during that same November 8, 2018 incident in which she suffered an admittedly compensable back injury. The claimant is able to prove the existence of objective medical findings regarding her cervical spine from both diagnostic testing and the operative note of Dr. Blankenship's August 25, 2020 surgical intervention. I also note Dr. Sitzes' assessment portion of the progress note on November 9, 2018 which he indicates the presence of contusions of the thoracic and cervical spine. The claimant must also prove a causal connection between her cervical objective medical findings and the November 8, 2018 incident where she was struck by a falling metal object.

The claimant was asked on cross-examination about her deposition testimony regarding prior neck difficulties as follows:

Q Okay. When I took your deposition, and I am not going to go into great detail, but do you recall telling me when I took your deposition that prior to November 8th of 2018 you had never had any problems with your neck?

A That's correct.

Q And do you also remember telling me that prior to November 8th of 2018 you had never had any problems with either your back or your shoulders?

A That's correct.

Q Do you recall going to Mercy Hospital in Northwest Arkansas on April 21st of 2017?

A I don't recall the date.

Q If that record, which is Page 3 of Respondents' Exhibit 1, shows that you reported with complaints of shoulder pain and decreased range of motion and neck pain, do you dispute that?

A The only thing I remember is I went there because my arm was hurting, and the doctor told me that it was tiredness.

MR. ZUERKER: May I approach?

THE COURT: You may.

Q [BY MR. ZUERKER]: I am going to show you Page 5 of Respondents' Exhibit 1 and I am going to show you a picture of a drawing that indicates where your pain was.

A Yes, that's correct.

Q And I am going to show you the other document, which is Respondents' Exhibit 2, Page 1, that you just identified where you drew the pain in your back.

A Yes, I drew it in the back, but not in the neck.

Medical records from the claimant's April 21, 2017 visit to Mercy Hospital Northwest were introduced into the record and can be found at Respondent's Exhibit 1, Pages 1-7. I note the claimant's chief complaint is shoulder pain, not neck or cervical pain. The claimant may have had some pre-existing cervical difficulties prior to the incident of August 11, 2018. It appears that the claimant was able to perform her job duties, however, after the incident returning to work and the passage of time, her cervical difficulties increased as described in medical records admitted into evidence by the claimant. In Dr. Blankenship's December 16, 2019 visit note he states, "She is working on trying to get the injury

affiliated with workers' comp which, unless there is more to the story than I am getting, it does appear to be a directly work-related injury.”

A metal object fell on the claimant and struck her neck and upper back on November 8, 2019. The contusions identified by Dr. Sitzes are strong evidence of the location at which she was struck. The claimant told medical providers about her cervical difficulties and was conservatively treated, then eventually underwent cervical surgery. It is the claimant's testimony that her condition has improved since surgical intervention. Here, the claimant is able to prove a causal connection between her cervical objective medical findings and the November 8, 2018 incident she alleges to have caused her compensable cervical injury. The claimant is able to prove by a preponderance of the evidence that she suffered a compensable cervical injury on November 8, 2018.

The claimant has also proven that she is entitled to reasonable and necessary medical treatment for her compensable cervical spine injury, including the already completed surgical intervention and its after care. The claimant has also asked the Commission to consider her entitlement to treatment for her compensable back injury. Upon review of the medical evidence, I do not find there to be any reasonable, necessary medical treatment for the claimant's compensable back injury which has been recommended at this time.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness 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 the pre-hearing conference conducted on September 2, 2020 and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her cervical spine on November 8, 2018.

3. The claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment for her cervical spine, including the already completed surgical intervention and its after care.

4. The claimant has failed to prove by a preponderance of the evidence that she is currently entitled to additional reasonable and necessary medical treatment for her compensable back injury.

ORDER

The respondent shall be responsible for the costs associated with the reasonable and necessary medical treatment for the claimant's compensable cervical back injury of November 8, 2018, including the already performed surgical intervention and its after care.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**