

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H109307**

CARLOS MARTIN, Employee	CLAIMANT
BEKAERT CORP., Employer	RESPONDENT
TRAVELERS INDEMNITY CO., Carrier	RESPONDENT

**OPINION FILED AUGUST 29, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On June 1, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 10, 2023, and a Pre-hearing Order was filed on April 11, 2023. 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. The relationship of employee-employer-carrier existed between the parties on September 13, 2020.
3. The claimant sustained a compensable injury to his right shoulder and neck on or about September 13, 2020.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$711.00 for temporary total disability benefits and \$533.00 for permanent partial disability benefits.

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

1. Whether Claimant is entitled to additional medical treatment for his compensable neck injury, including injections by Dr. Maryanov.

2. Whether Claimant is entitled to temporary total disability benefits from October 31, 2022, to a date yet to be determined.

3. Whether Claimant's attorney is entitled to attorney fee.

Claimant's contentions are:

"a. The Claimant contends that since he returned to active medical treatment as of October 31, 2022, and is currently not working, he is entitled to temporary total disability benefits from October 31, 2022, until a date yet to be determined.

b. The Claimant contends that Dr. Maryanov is his authorized treating physician and that therefore treatment by or at the direction of Dr. Maryanov is reasonably necessary treatment and should be the liability of the respondents. Said treatment includes, but is not necessarily limited to, injections.

c. The Claimant contends that Dr. Maryanov recommended surgery on May 3, 2022; however, respondents refused to authorize said surgery and instead sent the claimant to Dr. Randolph Gannon, who eventually performed surgery.

d. The Claimant contends that there is no evidence to support a conclusion that he would have ever been able to get surgery authorized if he had not hired an attorney and his attorney filed Pre Hearing Questionnaire, all disability benefits have been controverted and an appropriate attorney's fee should be awarded."

Respondents' contentions are:

- “1. The Respondents contend that they previously accepted the Claimant’s shoulder and neck injuries as compensable, and all appropriate benefits have been paid to date. In that regard, the Respondents provided the Claimant with light-duty work until he underwent surgery at the direction of Dr. Gannon on February 2, 2022.
2. The Respondents contend that the Claimant was paid temporary total disability benefits until he was released to return to work in a light-duty capacity.
3. The Respondents contend that the Claimant was released to return to work in a regular-duty capacity without any restrictions as of June 2, 2022.
4. The Respondents would note that the Claimant’s employment with the Respondent/Employer ended on or about July 29, 2022, for reasons unrelated to the claim filed herein.
5. The Respondents contend that the Claimant was placed at maximum improvement as of on or about August 25, 2022, and subsequently assigned an 8% permanent impairment rating to the body as a whole, which has been accepted and is being paid out at this point.
6. The Respondents would note that the Claimant underwent a Functional Capacity Evaluation on September 28, 2022, which indicated that the Claimant had permanent medium-duty restrictions.
7. The Respondents contend that the Claimant is not entitled to any additional temporary total disability benefits as he was originally released to return to work in a regular-duty capacity on June 2, 2022, and was once again placed at maximum improvement on or about August 25, 2022, and his permanent restrictions have been assigned. Accordingly, the Claimant has reached the end of his ‘healing period’ and is not entitled to any additional temporary total disability benefits.
8. The Respondents contend that, as the Claimant has reached MMI, his impairment rating has been assigned and his permanent restrictions have been assigned, the claim is ripe for wage-loss consideration if the Claimant contends he is entitled to wage loss disability benefits.

9. The Respondents contend that they would be entitled to a statutory offset for the unemployment benefits previously paid to the Claimant. Furthermore, the Respondents contend that they would be entitled to an offset for any other types of group health carrier, disability carrier or other collateral benefits paid to or on behalf of the Claimant.

10. The Respondents would reserve the right to amend and supplement their contentions after the supplemental discovery has been completed.”

The claimant in this matter is a 34-year-old male who sustained compensable injuries to his right shoulder and neck on September 13, 2020. On direct examination, the claimant described the incident in which he sustained compensable injuries to his right shoulder and neck as follows:

Q Mr. Martin, it has been agreed upon that you sustained injuries while in the employment of Bekaert back in September of 2020, but I would like for you just to briefly explain how you got injured.

A So I was running a machine and I pushed out a reel that had broke and strung it back up and I was rolling the bobbins back inside and I reached up from my crane, I had a pop in my neck and the pain that shot down my arm.

Q And did you report that?

A Yes, sir.

Q Were you sent somewhere to receive medical treatment?

A Yes, sir.

In the present matter the claimant has asked the Commission to determine if he is entitled to additional medical treatment for his compensable neck injury. The claimant was initially treated with conservative care for both his right shoulder and neck. The conservative treatment provided to the claimant did not alleviate the claimant’s symptoms.

On December 29, 2020, the claimant underwent an MRI without contrast of the cervical spine. That diagnostic report was authored by Dr. Leo Drolshagen. Following is the impression section of that report:

**IMPRESSION**

1. Moderate right paracentral lateral disc protrusion C6-7 indenting the subarachnoid space and cord.
2. Small to moderate central protrusion and spurring at C3-4.
3. Facet arthropathy as described.

On May 3, 2021, the claimant was seen by Dr. Maryanov. During that visit, Dr. Maryanov recommended surgical intervention for the claimant's cervical spine. Following is a portion of that medical record:

We administered Neck Disability Index to evaluate the impact that patient's neck and upper extremity dysfunction has on their functional abilities. Patient scored 22, with all 10 questions answered, thus indicating 44% functional disability due to neck and upper extremity dysfunction. We will use this score as baseline to evaluate efficacy of subsequent treatments. Patient reports worse pain since last visit post Yoga session. As we have exhausted all other less invasive treatments, we will schedule patient for cervical disc replacement with Mobi-c device on the June surgery day at PTCOA/ISC. We will order Flex/EX cervical XR upon approval for procedure to be performed here in the clinic at the preoperative visit. I think this is appropriate treatment for patient as we have exhausted conservative care for this problem for him with physical therapy exercise regimen, behavioral therapy, anti-inflammatory medications and interventional procedures. I explained the difference between the cervical disc replacement and acdf fusion, with disc replacement being favorable profile long term with much less risk of developing adjacent level disease and shorter recovery and come back to work quicker.

The claimant underwent another MRI at MANA Imaging Associates of NWA on November 11, 2021. Following are the impressions from that MRI as recorded by Dr. Vanessa Brunch:

**IMPRESSION:**

Multilevel cervical spondylosis, worst at the C6-7 level where there is moderate canal stenosis and severe bilateral foraminal stenosis.

On December 7, 2021, the claimant was seen by Dr. Gannon Randolph at Ozark Orthopedics. Dr. Randolph also recommended surgical intervention for the claimant's cervical spine. However, Dr. Randolph recommended a different form of surgical intervention than Dr. Maryanov. Following is a portion of the claimant's medical record from that visit:

Carlos is a pleasant 33-year-old he had an on-the-job injury 9/13/2020 he works for Bekaert. He thinks he was either moving a giant 3 ton spool of wire around or loading it in his machine when he felt a pop in his neck and has had subsequently right C7 radicular features since that time. He has been through a full gamut of conservative measures including epidural steroid injection, physical therapy, time, NSAIDs.

\*\*\*

Assessment/Plan

AP lateral and open-mouth odontoid views of the cervical spine taken for surgical evaluation 12/7/2021 demonstrate moderate degenerative disc disease at the C6-7 level. Otherwise normal alignment of the spine.

MRI at Manna dated 11/11/2021 demonstrates C6-7 HNP with by foraminal right greater than left C7 compression. No high-grade central canal stenosis or cord signal change. There is some slight progression of these from his previous MRI 12/29/2020.

Assessment plan:

In my hands Carlos being a very active young person with a highly physical job I think a ACDF C6-7 makes better sense that for him than a TDA the procedure alternatives risk potential complications were explained patient in detail today. He really has exhausted his options conservatively. He is going to mull it over and decide what he wants to do. I am happy to have him call and schedule this if he wants to.

On February 2, 2022, the claimant underwent the surgical intervention as recommended by and performed at the hands of Dr. Randolph. The surgery included an anterior cervical

discectomy and fusion, decompression of the spinal cord and bilateral neural elements. Also, an anterior plate fixation, C6-C7, with interbody cage placement at C6-C7 and intraoperative neuromonitoring.

On May 27, 2022, the claimant underwent a nerve conduction study at Ozark Orthopedics performed by Dr. Mark Miedema at the recommendation of Dr. Randolph. Following is a portion from that diagnostic testing report.

**NCV FINDINGS:**

\* All nerve conduction studies (as indicated in the preceding tables) were within normal limits.

\* All left vs. right side differences were within normal limits.

**EMG FINDINGS:**

\* All examined muscle (as indicated in the preceding table) showed no evidence of electrical instability.

1. Normal electrodiagnostic examination.
2. There is no electrodiagnostic evidence of carpal tunnel syndrome, cubital tunnel syndrome or a generalized peripheral neuropathy in the right or left upper limb of the nerves that were tested.
3. There is no electrodiagnostic evidence of a right or left cervical radiculopathy of the muscles that were tested, including the cervical paraspinals.
4. Of note, EMG is not a sensitive study and also does not evaluate small sensory pain fibers. Thus a lack of active denervation does not exclude an active radiculopathy. Clinical correlation is needed to determine the significance of the findings on the EMG and NCS with today's study. I encourage him to follow-up with Dr. Randolph.

On June 2, 2022, the claimant again saw Dr. Randolph. At that time, the claimant remained under the care of Dr. Randolph but was released to full duty. Following is a portion of that medical record:

**Assessment/Plan**

EMG dated 5/24/2022 demonstrated normal EMG bilateral upper extremities.

Assessment plan:

There is no clinically evident process why Carlos still having symptomology he has excellent looking radiographic studies. He has a normal EMG. I have recommended work hardening program and return to full duty without restrictions. I will see him back in 3 months.

On August 25, 2022, the claimant was again seen by Dr. Randolph who released the claimant to be seen on an as needed basis and found the claimant at maximum medical improvement. The claimant was also recommended to undergo a functional capacity evaluation (FCE). Following is a portion of that medical record:

Assessment/Plan

AP lateral cervical spine series taken clinic today 8/25/2022 demonstrate excellent bony consolidation through the ACDF construct. No evidence of adjacent segment degeneration. Normal alignment of the spine.

Assessment plan:

Healed C6-7 ACDF. Patient still is having some symptomatology. We evaluated with EMG and MRI scan both of which were negative. Therefore I think he is at MMI and recommend FCE and impairment rating. I will see him back on a as needed basis.

Approximately two weeks after being released by Dr. Randolph and placed at MMI, the claimant filed a request with the Commission on September 9, 2022, for a Change of Physician. It should be understood that the medical records continue to report the claimant's assertion that he continued to have neck pain.

On September 28, 2022, the claimant underwent a functional capacity evaluation and also an anatomical impairment rating with Functional Testing Centers, Inc. According to the FCE report, the claimant's "evaluation indicated that a reliable effort was put forth, with 50 of 53 consistency measures within expected limits." Following are portions of the claimant's FCE report which found him to have the ability to work in the medium classification.



#### FUNCTIONAL ABILITIES

Mr. Martin demonstrated the ability to perform material handling at the following levels during this functional capacity evaluation. Mr. Martin demonstrated an occasional bi-manual lift/carry of up to 40 Lbs. He also demonstrated the ability to perform lifting/carrying of up to 20 Lbs. on a Frequent basis. Mr. Martin also demonstrated an occasional RUE lift of 25 lbs. and a LUE lift of 20 lbs. when lifting unilaterally from knuckle to shoulder level.

\*\*\*

#### FUNCTIONAL LIMITATIONS

Mr. Martin demonstrated functional limitations during his evaluation in the area of material handling as he exhibited the ability to perform on an Occasional bi-manual lift/carry of up to 40 lbs. He also demonstrated limitations with unilateral lifting as he exhibited a maximal RUE lift of 25 lbs. as compared to 20 lbs. with the LUE when lifting unilaterally from floor to shoulder level. He demonstrated poor tolerance to repetitive and sustained stooping and performed these activities at the Occasional frequency level. He performed all other activities at a level consistent with that of an average worker.

#### CONCLUSIONS

Mr. Martin completed functional testing on this date with reliable results.

Overall, Mr. Martin demonstrated the ability to perform work in the MEDIUM classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal 8 hour workday with limitations as noted above.

The claimant's testing on September 28, 2022, also included evaluation for a permanent impairment rating regarding his cervical spine. It was determined by Casey Garretson, occupational therapist with Functional Testing Centers, Inc., that the claimant's cervical spine injury provided an 8% impairment rating to the body as a whole. Following is a portion of that report:

#### Impairment Rating Report

Using the AMA Guidelines Fourth Edition, Table 75 (p. 113), Whole-person Impairment Percents Due to Specific Spine

Disorders: In Mr. Martin's case, he does qualify for impairment based on the following:

Using the AMA Guidelines Fourth Edition, Whole-person Impairment Percents Due to Specific Spine Disorders, Page 113, Table 75, Mr. Martin would have an impairment to the cervical spine based on:

Section IV. D. Single level spinal fusion with or without decompression without residual signs or symptoms. This correlates to his documented cervical fusion surgery at C6-C7, which results in an 8% Whole Person Impairment.

Sometime after the claimant's FCE and impairment evaluation at Functional Testing Centers, Inc., Dr. Randolph issued an addendum to the claimant's August 25, 2022, medical record. That amendment follows:

This is an addendum to the patient's previous visit 8/25/2022. I received FCE dated 9/28/2022 reviewed these documents the physical demand characteristics of work for Mr. Martin demonstrate the ability to work in a medium classification work as defined by the US Department of Labor's guidelines over the course of a normal 8-hour workday per the AMA guidelines fourth edition patient's whole person impairment is 8%.

On October 21, 2022, the Commission issued a Change of Physician Order in response to the claimant's September 9, 2022, request for a Change of Physician. That order changed the claimant's physician from Dr. Randolph to Dr. Maryanov, whom the claimant had seen prior to Dr. Randolph.

On October 31, 2022, the claimant, who continued to complain of cervical pain and difficulties, was again seen by Dr. Maryanov. Following is a portion of that medical record.

We administered Neck Disability Index to evaluate the impact that patient's neck and upper extremity dysfunction has on their functional abilities. Patient scored 24, with all 10 questions answered, thus indicating 48% functional disability due to neck and upper extremity dysfunction. We will use this score as baseline to evaluate efficacy of subsequent treatments. Patient had ACDF

surgery in February 2022. This resolved problems on right side however, during Work Hardening PT, he began having pain on left side. We performed sudomotor testing due to inability to completely understand and explain patient's multiple sensory dysesthesias, in presence of elevated blood pressure, with concern for peripheral neuropathy, autonomic dysfunction, and vascular insufficiency.

\*\*\*

We performed cervical spine Xray, see report. My impression is that patient is having problems with neuritis or left c6 nerve root, related to physical activity exacerbation in setting of exceeding posteriorly placed interbody device. I suggested to help with left cervical 6/7 transforaminal epidural steroid injections to help. He is also having neck pain radiating up into the occiput. This is likely related to increased spondylosis at c3/4 level I suspect with these new xrays. This may be due to adjacent level disease due to fusion surgery he had. I recommend evaluating further with MRI cervical spine. I recommended activity restriction no lifting over 20 lbs. Follow up in two weeks for procedure.

On November 22, 2022, the claimant was again seen by Dr. Maryanov. At that time, and at least up until the time of the hearing in this matter, the claimant had not received the epidural steroid injections recommended by Dr. Maryanov during the claimant's October 31, 2022, visit.

Following is a portion of the claimant's November 22, 2022, visit with Dr. Maryanov:

Assessment:

Patient is 32 y/o male referred to our clinic for evaluation and treatment of bilateral shoulder pain and bilateral upper extremity pain subsequent to a work-related incident, when in 2020 he reached up to grab a controller of the crane right after pushing a heavy metal reel weighing over multiple hundreds of kilograms. Patient had a repeat injury in July 2022 when put into a work hardening program and exposed to lifting weights over 100 lbs. which is significantly higher than his disability rating of no more than 40 lbs.

\*\*\*

We administered Neck Disability Index to evaluate the impact that patient's neck and upper extremity dysfunction has on their functional abilities. Patient scored 25, with all 10 questions answered, thus indicating a 50% functional disability due to neck

and upper extremity dysfunction. We will use this score as baseline to evaluate efficacy of subsequent treatments. We discussed patient disability index that was determined by his surgeon which is 8% with 40 lb. lifting restriction. In my opinion this is an appropriate determination. We advised patient he needs to evaluate his life moving forward and what he wants to do. We will continue to work with adjuster to get procedure approved.

The first question before the Commission is whether the claimant is entitled to additional medical treatment for his compensable neck injury, including injections by Dr. Maryanov. It is clear from the medical records introduced into evidence that the claimant still reported neck difficulties after his surgical intervention. In the claimant's August 25, 2022, medical record with Dr. Randolph the claimant complained of pain at the level of seven out of 10, with 10 being the worst pain. During that visit Dr. Randolph found the claimant at maximum medical improvement and ordered an FCE. The claimant quickly thereafter requested a Change of Physician on September 9, 2022.

Dr. Maryanov, who saw the claimant on October 31, 2022, ten days after the Commission ordered the Change of Physician, gave a detailed explanation of why he believed the claimant's pain continued and recommended epidural steroid injections and a new MRI as treatment and diagnostics, stating "My impression is that patient is having problems with neuritis of the left C6 nerve root, related to physical activity exacerbation in setting of exceeding posterior placed interbody device. I suggest to help with left cervical 6-7 transforaminal epidural steroid injections to help. He is also having pain radiating up into the occiput. This is likely related to increased spondylosis at C3-4 level I suspect with these new xrays. This may be due to adjacent level disease due to fusion surgery he had. I recommend evaluating further with MRI cervical spine. I recommend activity restrictions no lifting over 20 lbs. Follow up in two weeks for procedure."

Both Dr. Maryanov and Dr. Randolph offered the claimant surgery, but each a different method of surgery regarding his cervical spine difficulties. The claimant chose Dr. Randolph. Dr. Maryanov believes that positioning of the interbody device from that surgery by Dr. Randolph continues to cause the claimant difficulties. It appears Dr. Maryanov believes that the epidural steroid injections will provide the claimant relief. The treatment recommended by Dr. Maryanov in both his October 31, 2022, and November 22, 2022, reports of the claimant's visits are reasonably necessary treatment for the claimant's compensable neck injury, but do appear to be in the form of maintenance to relieve symptoms as a result of his injury and the surgery he underwent. They do not appear to be necessarily corrective in nature. Put more clearly, they appear to be treatment to bring the claimant's symptoms closer to a baseline of his pre-injury status than to correct the underlying problem. However, Dr. Maryanov's recommendations are reasonably necessary treatment for the claimant's compensable neck injury.

The claimant has asked the Commission to determine whether he is entitled to temporary total disability benefits from October 31, 2022, to a date yet to be determined. The claimant was found at maximum medical improvement by Dr. Randolph on August 25, 2022, after having been released to full duty without restrictions by Dr. Randolph on June 2, 2022. The claimant did begin work at that time. However, the claimant's employment with the respondent ended sometime after he was released to return to work at full duty by Dr. Randolph on June 2, 2022. The claimant was still under care from Dr. Randolph when his employment ended. Apparently, a confidentiality agreement was reached between the claimant and the respondent. As such, the Commission has little to no information about the claimant's end of employment with the respondent.

I find that the claimant was at maximum medical improvement on August 25, 2022, when Dr. Randolph declared as much. However, I believe the claimant was still in need of maintenance type treatment for his long-term symptoms that are a result of his 8% whole body impairment rating determined by Functional Testing Centers, Inc. and agreed with by both Dr. Randolph and Dr. Maryanov. Since the claimant reached maximum medical improvement on August 25, 2022, he must reenter his healing period to be entitled to temporary total disability benefits and he has not done so. I recognize that at the claimant's October 31, 2022, visit with Dr. Maryanov, the claimant was placed on activity restrictions of "no lifting over 20 lbs.," which is a greater restriction than the 40 lb. restriction placed on the claimant by his FCE and agreed to by Dr. Randolph. However, the 40 lb. restriction was placed on the claimant at his FCE on September 28, 2022, before Dr. Maryanov's 20 lb. restriction. In the report following the claimant's November 22, 2022, visit with Dr. Maryanov, it is stated, "We discussed patient disability index that was determined by his surgeon which is 8% with 40 lb. lifting restriction. In my opinion this is an appropriate determination. We advised patient he needs to evaluate his life moving forward and what he wants to do. We will continue to work with adjuster to get procedure approved." The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from October 31, 2022, to a date yet to be determined.

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 his 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 April 10, 2023, and contained in a Pre-hearing Order filed April 11, 2023, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable neck injury, including injections by Dr. Maryanov and treatment as recommended by Dr. Maryanov set forth in the claimant's October 31, 2022, and November 22, 2022, visits.

3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from October 31, 2022, to a date yet to be determined.

4. The claimant has failed to prove that his attorney is entitled to an attorney's fee in this matter.

**ORDER**

The respondents shall be responsible for the payment of the reasonably necessary medical treatment including injections and treatment as recommended by Dr. Maryanov in the claimant's October 31, 2022, and November 22, 2022, visits.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

**IT IS SO ORDERED.**

---

**HONORABLE ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**