

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H004236

WESLEY E. MILLER, Employee	CLAIMANT
SIMPLEXGRINNELL LP (JOHNSON CONTROLS), Employer	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, Carrier	RESPONDENT

OPINION FILED FEBRUARY 11, 2022

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

Claimant represented by MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by LEE J. MULDROW, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 16, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 8, 2021, 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.
3. The claimant sustained a compensable injury to the right side of his body to include the right shoulder, right arm, and lower back.
4. The claimant's weekly compensation rates are \$306.00 for temporary total disability and \$230.00 for permanent partial disability benefits.

By agreement of the parties the issues to be litigated were limited to the following:

1. Whether claimant is entitled to additional medical services as recommended by Dr. Gannon Randolph in the form of surgical intervention to the claimant's lower back.
2. Whether claimant is entitled to temporary total disability benefits from August 7, 2021 to a date yet to be determined.
3. Whether claimant's attorney is entitled to an attorney's fee.

Claimant's contentions are:

"The Claimant contends that the medical services recommended by Dr. Randolph are reasonably necessary for his compensable injury."

Respondents' contentions are:

"The claim has been accepted as compensable. Respondents contend claimant has received all medical and indemnity to which he is presently entitled."

The claimant in this matter is a 58-year-old male who has been employed with the respondent for over two decades installing security systems. The claimant sustained admittedly compensable injuries to the right side of his body to include the right shoulder, right arm, and lower back on June 23, 2020 when he was involved in a motor vehicle accident. The claimant has asked the Commission to determine if he is entitled to additional medical treatment for his low back in the form of surgical intervention recommended by Dr. Gannon Randolph. The parties in this matter submitted a joint medical exhibit into evidence. On the day of the claimant's motor vehicle accident he was treated at Washington Regional Medical Center. The claimant next received medical treatment at Ozark Orthopedics when he saw Dr. Andrew Heinzelmann on August 14, 2020. Dr. Heinzelmann stated in that report: "With regard to his right hip area we will refer him to see Dr. Deimel for evaluation. This could possibly be a low back etiology."

The claimant was again seen at Ozark Orthopedics, but this time by Dr. Deimel on September 3, 2020. Following is a portion of that medical record:

Assessment:

Mr. Miller is a 57 y/o male who presents to clinic today for evaluation of more than two months of right hip and leg pain. He sustained multiple injuries as part of a motor vehicle crash on 6/23/2020 in which he was rear-ended. Dr. Henley and Dr. Heinzlmann are working him up for his right arm pain. We have been asked to evaluate his right hip and leg. He has symptoms which do suggest a lumbosacral radicular pain. He has marked degenerative changes noted on lumbar spine radiographs. We talked about getting an MRI for further diagnostic clarification. There is also some concern for potential fracture of his hip/thigh given that he has had previous surgery with orthopedic fixation and retained hardware. We will also get a CT scan of his hip and femur. We will see him back once we have imaging results to review and at that time, discuss next steps. We will continue his light duty activities per restrictions from the other orthopedic specialists.

On September 17, 2020 the claimant underwent an MRI of the lumbar spine with contrast at Washington Regional Medical Center at the request of Dr. Deimel. Following is a portion of that diagnostic report:

FINDINGS:

The conus medullaris is normal. Small chronic Schmorl nodes along the T11 and T12 endplates. No acute or sub-acute vertebral compression fracture.

L1-2: No canal or foraminal stenosis. There is a benign hemangioma along the right inferior L1 endplate.

L2-3: Disc desiccation is present. No canal or foraminal stenosis.

L3-4: Disc desiccation is present. No canal or foraminal stenosis.

L4-5: Small chronic Schmorl nodes along each endplate. Slight bulging of the disc along with bilateral facet arthrosis. There is mild left-sided foraminal stenosis. No central canal stenosis.

L5-S1: There is disc desiccation, annular fissuring, and loss of disc space height. There is bilateral facet joint arthrosis. There is moderate left and severe right foraminal stenosis. No central canal stenosis.

The paraspinal soft tissues and retroperitoneum are unremarkable.

IMPRESSION:

Report

1. SEVERE RIGHT AND MODERATE LEFT FORAMINAL STENOSIS AT THE L5-S1 LEVEL.
2. NO DISC HERNIATIONS OR CENTRAL CANAL STENOSIS.

The claimant again saw Dr. Deimel on November 5, 2020. That medical record indicates the claimant was seen on September 24, 2020 by Greg Smith, PA, and that he was sent at that time for physical therapy due to his MRI findings of “severe right neuroforaminal narrowing at L5-S1.” At the time of the claimant’s November 5, 2020 visit with Dr. Deimel, he reported pain of “about an 8/10.” Dr. Deimel noted the claimant had done physical therapy with mild improvement. The claimant also had right leg pain. Dr. Deimel’s medical record addressed that issue: “With respect to his leg pain, the symptoms certainly seem concordant with his MRI of his lumbar spine which shows severe neuroforaminal stenosis.” Dr. Deimel recommended epidural steroid injections given the lack of improvement through conservative measures. On November 17, 2020, the claimant underwent a right L5-S1 transforaminal epidural steroid injection at the hands of Dr. Deimel.

On December 3, 2020 the claimant was again seen by Dr. Deimel. The claimant reported improvement from his previous injection in both his low back and right leg pain. Dr. Deimel encouraged the claimant to continue home exercise and wanted to see the claimant again in six weeks to consider further injections.

On January 13, 2021, the claimant was again seen by Dr. Deimel. Following is a portion of that medical record:

ASSESSMENT:

Mr. Miller returns to the clinic today for follow-up. We discussed his clinical course. He has had continued limitations in his right leg due to his lumbosacral radicular pain. He had a previous injection which was helping to some degree. As he has tried to advance his therapy efforts,

he has noticed worsening with functionally limiting pain. We talked about consideration of repeat epidural steroid injection. He would like to consider this. He would like to exhaust all non-operative treatments before considering surgery for his low back issues. With respect to his neck and right shoulder pain, he has been seeing Dr. Heinzelmann. Dr. Heinzelmann has put him on muscle relaxers which has not provided long term relief. The neck and shoulder pain is also limiting his ability to advance his therapy efforts with respect to his shoulder. We talked about this possibly being referred cervical radicular pain. He states that Dr. Heinzelmann told him that he needed to have it further evaluated. In this setting, we will move forward with cervical spine x-rays in route to a cervical spine MRI. We will see him back once we have imaging to review and at that time, discuss next steps.

On February 2, 2021, the claimant again underwent a right L5-S1 transforaminal epidural steroid injection at the hands of Dr. Deimel.

On February 18, 2021, the claimant was again seen by Dr. Deimel. Following is a portion of that medical record:

Assessment:

Mr. Miller returns to clinic today for a follow up. We discussed his clinical course. He has undergone treatments for his low back and right leg pain. This has included physical therapy, medication management, and injections. The most recent injection did not provide any lasting relief. He states that he had an episode after the injection where neither of his legs worked. His leg function has returned. He still has significant pain. We discussed a range of treatment options. At this point we will move forward with surgical consultation. He does have severe right neuroforaminal stenosis at the L5-S1 level. We will see if there are any surgical options for him. I will refer him to Dr. Gannon Randolph to discuss. I do think electrodiagnostic testing would be helpful given his rather complicated history with prior lower extremity fracture. I also anticipate Dr. Randolph is going to want electrodiagnostic testing to help him with some surgical decision making. We talked about his work status. He is concerned that if he doesn't pursue further intervention, that he would not be able to work. We talked about the role of a functional capacity evaluation. I told him that this would be part of

the process rather or not he pursued surgery or not. Given the pending surgical decisions, we will hold on any declaration of his work status with continued restrictions as previously outlined.

The claimant was again seen at Ozark Orthopedics, this time by Dr. Mark Miedema on March 8, 2021. At that time the claimant underwent nerve conduction studies. Following is the Impression section of that diagnostic test report:

IMPRESSION:

1. Normal electrodiagnostic examination.
2. There is no electrodiagnostic evidence of a right or left lumbar radiculopathy of the muscles that were tested, including the lumbar paraspinals.
3. The electrodiagnostic and nerve conduction studies do not reveal evidence of any other focal nerve entrapment or generalized peripheral neuropathy in the right or left lower limb of the nerves that were tested.
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.

On April 20, 2021 the claimant was again seen at Ozark Orthopedics by Dr. Gannon Randolph. Dr. Randolph examined the claimant and reported the following information in the Assessment/Plan portion of the medical report he authored:

Assessment/Plan

AP lateral views of the lumbar spine taken 9/3/2020 demonstrate foraminal stenosis at L5-S1. There is a hint of listhesis at L5-S1 we will call this grade 1.

MRI scan in the Washington regional system dated 9/17/2020 demonstrates severe right and moderate left foraminal stenosis at the 5 1 segment with some facet arthropathy. The listhesis is reduced on these films.

Assessment and plan:

The patient with low back and bilateral leg pain consistent with his severe foraminal stenosis right L5-S1 and moderate left L5-S1. He is failed conservative measures with PT

physical therapy injections and time. Really the best option for the patient is L5-S1 ALIF with MIS PSIF. This will address his by foraminal stenosis degenerative change and sagittal deformity.

The procedure, alternatives, risks, and potential complications were discussed with the patient today and informed consent including surgical procedure consent, clinic pain policy, and the detailed risk sheet were signed.

1. Acquired spondylolisthesis

M43.10: Spondylolisthesis, site unspecified

2. Lumbar radiculopathy

M54.16: Radiculopathy, lumbar region

3. Stenosis of intervertebral foramina

M99.9: Biomechanical lesion, unspecified

The respondent sent the claimant for a second opinion to see Dr. Luke Knox. In the report from Dr. Knox, he summarizes the claimant's medical history and course of treatment. Dr. Knox also answered six questions posed to him by the respondent as follows:

1. Does the medical documentation support a causal relationship between the accident and the injuries allegedly sustained by the claimant?

No.

2. Is there any history of prior injuries and preexisting conditions, and were these conditions aggravated or do they impact the current injury?

There was history of prior injuries and there is a history of preexisting conditions. It is very possible that these conditions were aggravated and/or impact the current injury.

3. What is the claimant's current medical status?

I understand he continues to remain off work due to his injuries. He continues to be plagued by right arm weakness as well as low back pain.

4. Is further treatment and/or future diagnostic tests necessary?

Unfortunately, I did not have access to claimant's lumbar MRI scan. I did review his x-rays while in clinic today, and I was able to review the MRI report. As far as I can tell, in my professional medical opinion, I do not believe any further treatments and/or future diagnostic tests would be necessary.

5. Is the recommended surgery warranted?

Again, I was unable to review the MRI scan. Reviewing the report, however, I do not believe that surgical avenues would be in this individual's best interest. I believe it would be ill-advised to consider surgery of any kind as there appeared to be a significant component of secondary gain. I do not believe any further treatments would be warranted at this time, again, due to the nature of his examination findings.

6. Please give an anticipated time-frame for light-duty and/or return to full work schedule.

From the standpoint of the findings on x-ray/MRI report, I do not believe there is any reason this individual could not return to his full work schedule.

I note that Dr. Knox issued an addendum to this report on October 25, 2021 which reaffirms his findings.

The respondent also requested that Dr. Wayne Bruffett issue an additional opinion regarding the claimant and claimant underwent this evaluation on October 25, 2021. Following is a portion of that medical record:

Physical Exam

Patient is a 58-year-old male.

He is 5 foot 10 inches tall weights 353 pounds pulse rate is 78. He has positive Waddell signs with pain upon any simulated compression trunk rotation even superficial tenderness and skin rolling. He has give way weakness in his lower extremities. When I just ask him to extend his knees and straighten his legs he goes through an elaborate attempt with "huffing and puffing" ... He sounds much more debilitated then his objective imaging would support.

X-rays reveal a subtle degenerative spondylolistheses L5-S1

He has some degenerative changes. I reviewed his MRI scan. He may have a pars defect on the left at L5. Hard to know with certainty. He does not have marked foraminal stenosis. He has degenerative changes in the lower lumbar spine.

Assessment/Plan

Degenerative spondylolistheses L5-S1 with multilevel disc degeneration possible chronic pars defect L5 on the left. I would like to answer the questions posed for this IME. I do think his low back complaints are related to his motor vehicle accident of June 2020. That is by his report. Surgery as recommended by Dr. Randolph would not be the most appropriate treatment option. The claimant does not need additional treatment for any low back injury caused by his June 2020 motor vehicle accident. He has not sustained any permanent impairment involving his spine due to this accident.

The claimant apparently surprised counsel from both sides and certainly this administrative law judge when during testimony it became clear he had already undergone the surgical intervention for his low back that was recommended by Dr. Randolph fifteen days prior to the hearing in this matter.

Following is a portion of the claimant's direct examination testimony:

Q And what portion of your problems did Dr. Randolph treat?

A Dr. Randolph was a back and leg specialist. I went to see him about my back.

Q Okay. Now all these doctors you - - during a portion of this period of time you were seeing all these doctors at the same time. Is that correct? You'd see one and then a week later see another one and go back to one, and they were all treating you during the same - -

A At one time, yes.

Q Initially?

A Right.

Q And ultimately it came down to Dr. Randolph?

A Yes, sir.

Q And he's the one that's currently treating you now. Is

that correct?

A Yes, sir, he is.

Q What difficulties and problems are you experiencing now?

A Right now, it's just swelling in my back because I had surgery done, and my stomach hurts a little bit where they came through there, but it will take a while for that to all heal.

Q So Randolph has - - Dr. Randolph has already performed this surgery?

A Right, yes, sir.

Q That he had recommended?

A Yes, sir.

Q When was that performed?

A The first of this month.

Q Does that seem to provide you some relief?

A It's getting better as that goes along. At least I'm not having muscle spasms and getting maybe two hours of sleep.

On redirect examination the claimant was asked more specifically about the results of his surgery as follows:

Q All right. Now, regardless of whether Dr. Knox or Dr. Bruffett think that you needed this back surgery, has this surgery been helpful in resolving the difficulties and problems or at least reducing the difficulties and problems you had since the entry [sic]?

A Well, I mean, it's only been two weeks since I've had surgery. I had it November the 1st, but I'm not having bad muscle spasms. I'm able to get at least more sleep than two hours. You know, I mean, I ended up getting five hours of sleep last night. That was amazing. You know, and I'm not feeling the pain whatsoever that I had endured this whole - - throughout this whole thing.

You know, it's difficult whenever you are the person and you are the one who's in pain, and you've having to live

it every day, day in day out. It's not as easy as everybody makes it sound.

The claimant provided what I find to be credible testimony to the Commission. In that testimony he stated that he had never had any low back difficulties prior to his admittedly compensable low back injury. The claimant was denied medical treatment for his low back after Dr. Knox's second opinion stated that the claimant did not need further medical treatment and could return to full duty work. In Dr. Knox's second opinion report dated June 9, 2021, he responded to the respondent's question which stated, "Is there any history of prior injury and preexisting conditions, and were these conditions aggravated or do they impact the current injury." In response, Dr. Knox stated, "There was history of prior injuries and there is a history of preexisting conditions. It is very possible that these conditions were aggravated and/or impact the current injury." Dr. Knox's response appears to be in error because there is no history of injury regarding the claimant's lower back prior to his admittedly compensable low back injury of June 23, 2020. If his statement is not in error, I am at a loss to explain his belief that a prior injury had occurred given the claimant's credible testimony which is supported by medical records submitted into evidence.

Dr. Bruffett's position regarding surgical intervention for the claimant's low back as stated in his report was, "Surgery as recommended by Dr. Randolph would not be the most appropriate treatment option." He further stated that the claimant does not need additional treatment for his low back injury.

I disagree with both Dr. Knox and Dr. Bruffett and believe the course of treatment through Dr. Deimel who provided conservative treatment and epidural steroid injections and when these efforts failed referred the claimant to Dr. Randolph for surgical consideration to be more appropriate. Dr. Randolph's subsequent recommendation for surgery is reasonable and necessary medical treatment for the claimant's admittedly compensable low back injury.

The claimant's experience in actually having the surgery recommended by Dr. Randolph fifteen days prior to the hearing also supports surgery being reasonable and necessary medical treatment. The claimant credibly testified he had a lessening of muscle spasms and a vast reduction in pain.

The claimant has also asked the Commission to determine his entitlement to temporary total disability benefits from August 7, 2021 to a date yet to be determined. The claimant was still in his healing period for his admittedly compensable back injury on August 7, 2021 and at the time of the hearing in this matter remained so. The claimant also remained under work restrictions given by Dr. Deimel and continued by Dr. Randolph during that time period. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 7, 2021 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 September 8, 2021, 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 he is entitled to the surgical intervention recommended by Dr. Gannon Randolph for his admittedly compensable low back injury.
3. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 7, 2021 to a date yet to be determined.
4. The claimant's attorney is entitled to an attorney's fee on all indemnity benefits awarded herein.

ORDER

The respondent shall pay the costs associated with the claimant's surgical intervention that was recommended by Dr. Randolph including his aftercare. The respondent shall pay the claimant temporary total disability benefits from August 7, 2021 until a date yet to be determined.

Respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the indemnity benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE