

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H010141

BOBBIE MOORE, Employee	CLAIMANT
MENA REGIONAL HEALTH SYSTEMS, Employer	RESPONDENT
ARKANSAS HOSPITAL ASSOC./RISK MANAGEMENT RESOURCES, Carrier/TPA	RESPONDENT

OPINION FILED JULY 12, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JASON M. HATFIELD, Attorney, Springdale, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 21, 2021, the above captioned claim came on for hearing in Fort Smith, Arkansas. A pre-hearing conference was conducted on April 28, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on December 2, 2020.

3. The claimant was earning an average weekly wage of \$709.52 which would entitle her to compensation at the weekly rates of \$473.00 for total disability benefits and \$355.00 for permanent partial disability benefits.

4. Respondent paid benefits through January 29, 2021, but now controverts the claim in its entirety.

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

1. Compensability of injury to claimant's low back on December 2, 2020.
2. Additional medical treatment by Dr. Onyekwelu, including physical therapy and epidural steroid injection to low back.
3. Temporary total disability benefits from December 3, 2020 through a date yet to be determined.
4. Attorney fee.

The claimant contends she has been employed with respondent as a psychiatric nurse for approximately 11 years. Claimant sustained a compensable injury while working for respondent on or about December 2, 2020. At that time, claimant was in the course and scope of her employment with respondent when she was lifting a heavy patient up on a bed, injuring her low back. Claimant has tried conservative measures prescribed by Dr. Ian Cheyne including steroid packs, muscle relaxers, and pain medication for her low back pain. These conservative measures have not offered her any pain relief. Dr. Onyekwelu has recommended physical therapy and an epidural steroid injection for claimant's low back, but respondents have controverted this request. Claimant is entitled to medical treatment, temporary total disability benefits from December 3, 2020 through a date yet to be determined, and a controverted attorney's

fee. Claimant acknowledges that respondent paid some temporary total disability benefits and is entitled to a credit for those payments.

The respondents contend that while claimant's claim was initially accepted as compensable, it has now been denied in its entirety. Benefits were paid through the denial on January 29, 2021. It is respondents' position that claimant had no injury in the course and scope of her employment. Further, she had no objective findings of an acute injury, and claimant's problems, if any, are due to a preexisting condition.

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 a pre-hearing conference conducted on April 28, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back on December 2, 2020.

FACTUAL BACKGROUND

The claimant is a 49-year-old woman who began working for respondent as a LPN in its Senior Behavioral Unit in 2009. Claimant works three 12-hour shifts per week on the night shift. Claimant's job duties required her to give patients' bedtime medication; pass evening snacks; help with personal care, including showers and bathing; help dress

or help patients into bed; chart patient records with a computer; and occasionally restrain combative patients.

Claimant testified that she suffered a compensable injury to her back on December 2, 2020.

I was lifting a patient up in the bed. She had slid down to the edge of the bed several times that night and we had lifted her already multiple times, meaning I, myself, and my charge nurse, Missy Cost. And we were lifting her up per protocol with a drawsheet up into the bed and something caused my back to have sudden stabbing, burning pain that I had not experienced ever before and I knew something was wrong.

Claimant testified that she sat down for the remainder of her shift and that when she got off work at 7:00 a.m. reported the injury to her program director, Sue Cavner. Claimant's testimony regarding this incident was collaborated by the deposition testimony of Missy Cost.

Later that day, claimant sought medical treatment from Dr. Lance Richardson, a chiropractor with whom she had previously treated, and she did indicate that she had been lifting a heavy patient several times the night before. Dr. Richardson noted that the claimant presented with low back pain, upper back pain, neck pain, numbness, tingling sensation and pain in her legs. Dr. Richardson performed manipulation to the claimant's cervical, thoracic, lumbar and sacral regions and indicated that claimant should return to him for treatment as symptoms persisted.

Later that same day claimant also sought medical treatment at the Mena Regional Health emergency room. Claimant was evaluated by Dr. Swonger who diagnosed claimant's condition as lumbago sciatica with right-sided radiculopathy and he prescribed medication for claimant's pain complaints. Thereafter, claimant was evaluated

by Dr. Cheyne at Mena Regional on December 4, 2020, and he diagnosed claimant's condition as a strain of muscle, fascia, and tendon of the low back. He also prescribed medication and gave claimant work restrictions of lifting 20 pounds or less and repetitive lifting limited to 10 pounds or less. Dr. Cheyne also ordered an MRI scan which was performed on December 11, 2020. The MRI scan was read with the following impression:

IMPRESSION:

1. Grade 1 retrolisthesis of L5 on S1.
2. Left posterior paracentral disc herniation at L5-S1 with possible involvement of the descending left S1 nerve root and narrowing of the left neural foramen.
3. Mild grade 1 retrolisthesis of L5 on S1.
4. Disc bulge at L4-5 with moderate spinal canal stenosis.
5. Facet joint degenerative joint disease at L4-5 and L5-S1.

Following this MRI scan, claimant also sought medical treatment from her primary care physician, Dr. Fox, who prescribed medication and referred her for a neurosurgical evaluation.

Claimant was eventually seen by Dr. Onyekwelu, who reviewed claimant's MRI scan and recommended treatment in the form of physical therapy and an epidural steroid injection at the L4-5 and L5-S1 levels. Dr. Onyekwelu also placed work restrictions on the claimant and prescribed her medication.

Respondent initially accepted claimant's injury as compensable and paid some compensation benefits through January 29, 2021. As of that date, respondent controverted compensability and has not paid for the treatment recommended by Dr. Onyekwelu.

Claimant has filed this claim contending that she suffered a compensable injury to her low back on December 2, 2020. She seeks payment of medical treatment

recommended by Dr. Onyekwelu as well as temporary total disability benefits and a controverted attorney fee.

ADJUDICATION

Prior to December 2, 2020, claimant had sought chiropractic treatment for complaints which initially began following a motor vehicle accident some 20 years ago. Those complaints primarily involved her cervical spine. However, on September 24, 2020, just a little more than two months before December 2, 2020, claimant sought medical treatment from Dr. Richardson which included complaints of low back pain.

An employer takes an employee as it finds her, and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). The aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. *Oliver v. Guardsmark*, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). Since an aggravation is a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W. 3d 900 (2000); *Farmland Ins. Company v. Dubois*, 54 Ark. App. 141, 923 S.W. 2d 883 (1996).

An aggravation, being a new injury, must be evidenced by objective medical findings of a new injury to the pre-existing condition. *Vaughn v. Midland School District*, 2012 Ark. App. 344 (citing *Barber v. Pork Group, Inc.*, 2012 Ark. App. 138); *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W. 3d 1; *Mooney v. AT& T*, 2010 Ark. App. 600, 378 S.W. 3d 162. If the only objective findings present are consistent with prior objective findings or consistent with a long-term degenerative condition rather than an acute injury, the objective findings requirement for a compensable aggravation of a pre-existing condition is not satisfied. *Vaughn, supra*; *Barber, supra*.

Claimant testified that before December 2, 2020 she was not having any significant low back pain. In fact, she testified that when she saw Dr. Richardson's medical records indicating that she was having significant low back pain that she was surprised because she only recalled telling Dr. Richardson that she had low back pain occasionally after a hard night at work, and that it was nothing continuous.

However, Dr. Richardson's medical records indicate that claimant was complaining of significant low back pain. In his initial report of September 24, 2020, he noted that claimant "presents with low back pain, upper back pain, and neck pain and numbness, a tingling sensation, and pain into legs." Dr. Richardson also stated with respect to her radiculopathy complaints:

Concerning radiculopathy, lumbosacral region, the discomfort is most prominent in the mid and lower lumbar spine. She characterizes it as intermittent, severe, aching, burning, cramping, and shooting. The pain level between 1 and 10 is a 8. This is a chronic problem, with essentially constant pain. She states the current episode of pain started 6 months ago. She does not recall any precipitating event or injury. Associated symptoms include numbness in the bilateral lower leg and bilateral foot, paravertebral muscle spasm and radicular bilateral leg pain. (Emphasis added.)

Dr. Richardson went on to perform a physical examination in which he noted that a palpation examination of claimant's spine revealed moderate amount of restricted joint function at L2 and a severe amount of restricted joint function at L3, L5, and the sacrum. Dr. Richardson also noted that claimant had a limited active range of motion of her lumbar spine.

Dr. Richardson stated that claimant's complaints and physical examination findings were consistent with a mechanical, non-specific spine pain secondary to

degenerative changes and that the changes in her muscle strength, sensation and reflexes indicated nerve root involvement. His diagnosis included radiculopathy of the lumbosacral region.

Claimant returned to Dr. Richardson on October 1, 2020. Again, claimant's complaints included low back pain. Dr. Richardson had also ordered an x-ray of the lumbar spine and made the following notation:

Lumbar Xray impression: There is a 19.3 degree left convexity mid lumbar scoliosis coupled with pelvic un-leveling. There is mild loss of disc height at L4-5 and L5-S1 with moderate degenerative changes present in the posterior elements. This is limited ROM with flexion/extension indicating muscle spasm.
(Emphasis added.)

Dr. Richardson went on to perform spinal manipulation which included claimant's lumbar and sacral regions. He also noted that traction would be administered to the claimant's cervical, thoracic and lumbar region to reduce radicular pressure and segmental restriction. He also noted that electrical stimulation would be performed to reduce muscle spasm and pain.

Claimant again returned to Dr. Richardson on October 15, 2020 and his medical report from that date reflects that he performed spinal manipulation to the claimant's cervical, thoracic, lumbar and sacral regions. The visit to Dr. Richardson on October 15, 2020 occurred approximately a month and a half before December 2, 2020.

As previously noted, claimant eventually saw Dr. Onyekwelu on January 19, 2021, at which time he recommended an epidural steroid injection and physical therapy. In his report of that date, Dr. Onyekwelu also stated that it was his belief that claimant had suffered an exacerbation of her pre-existing condition which caused her right lower

extremity pain. He noted that while claimant had some discomfort in the past, that she described the new pain as different from her typical usual pain. He noted that claimant also described a classic L4 and L5 radicular pain.

While Dr. Onyekwelu was aware that claimant had previously complained of low back pain, it is unclear whether he was aware that claimant had made complaints of radicular pain to Dr. Richardson and that he had specifically diagnosed one of claimant's conditions as radiculopathy of the lumbosacral region or that she had rated her pain in the lumbar spine as an 8 out of 10.

I also note that claimant introduced into evidence an updated letter from Dr. Fox, her primary care physician, noting that claimant had been a patient of his since July 9, 2019 and stating that claimant had never had any complaints of lumbar pain and as a result it was his opinion that claimant was suffering from an acute event that had occurred at work. Clearly, claimant had complained of lumbar pain and radiculopathy to Dr. Richardson in September and October of 2020, shortly before December 2, 2020.

In response to Dr. Onyekwelu's recommendation, respondent sent claimant's medical records to Dr. J. Michael Calhoun, a neurosurgeon, for review and he authored a report dated January 27, 2021. Dr. Calhoun has indicated that he personally reviewed claimant's lumbar MRI scan of December 11, 2020, and it was his opinion that all of the findings on that lumbar MRI scan are pre-existing and degenerative and show no evidence of an acute symptomatic injury. Specifically, he stated:

All of the findings on the lumbar MRI from December, 2020 are pre-existing and degenerative. There is no evidence of an acute symptomatic injury. Ms. Griffin [sic] clearly reported lower back pain with bilateral lower extremity radicular complaints to Dr. Richardson, beginning in September, 2020. Thus, any continued issues with her lower back are due to pre-existing chronic conditions and not related to her reported

injury on December 2, 2020. She is at MMI with no partial permanent impairment. There are no work restrictions with regard to her work injury in December 2020.

Dr. Calhoun subsequently filed a second report also dated January 27, 2021 in which he confirmed that he had personally reviewed the lumbar MRI scan and also stated that he saw no evidence of a synovial cyst at the L4-5 level and that any synovial cyst would be due to degenerative changes and not an acute finding.

In addition to Dr. Calhoun, respondent also had claimant's medical records and imaging studies reviewed by Dr. Steven Nokes, a radiologist. Dr. Nokes also noted that claimant's imaging studies were attributable to degenerative findings and that no acute findings were present with the exception of muscle spasm.

In conclusion, more likely than not, and to a reasonable degree of medical certainty, the imaging demonstrates moderate to severe multilevel lumbar degenerative findings with multiple chronic pain generators but no acute findings which could be related to an injury on 12/2/2020, except for muscle spasm.

While muscle spasm is an objective finding and could serve as an objective finding establishing a new injury on December 2, 2020, a review of Dr. Richardson's medical records indicates that claimant had findings of muscle spasm before December 2, 2020. In his initial report of September 24, 2020 with respect to claimant's radiculopathy complaints in the lumbosacral region, he noted that claimant's symptoms included numbness in her bilateral lower leg and bilateral foot as well as paravertebral muscle spasm. Furthermore, in his subsequent report dated October 1, 2020, Dr. Richardson noted: "This is limited ROM with flexion/extension indicating muscle spasm."

At the time of the October 1 visit, Dr. Richardson indicated that claimant would be provided with electrical stimulation to reduce her muscle spasm.

Thus, claimant's muscle spasms were present even before December 2, 2020.

In short, the medical evidence in this case in the form of the medical reports from Dr. Richardson clearly indicate that claimant had pre-existing lumbar complaints with radiculopathy for which she received medical treatment. As previously noted, an employer takes the employee as it finds her, and an employment related incident that aggravates a pre-existing condition is compensable if the accident aggravated, accelerated, or combined with the infirmity to produce a disability for which the claimant seeks benefits. In order to prove an aggravation, claimant must meet all requirements for a compensable injury. This includes objective findings establishing an injury. Here, according to Dr. Calhoun, all of the objective findings shown on the MRI scan are degenerative in nature and existed prior to December 2, 2020. Likewise, Dr. Nokes has also opined that these conditions were degenerative in nature and preexisting with the exception of muscle spasm. However, as previously noted, according to Dr. Richardson's medical records muscle spasms were present in September and October of 2020. Therefore, muscle spasms are not a new objective finding of injury.

While it is true that neither Dr. Calhoun nor Dr. Nokes have physically examined the claimant, their opinions are not based upon findings which would result from a physical examination but rather upon a review of the medical records; specifically, the imaging studies. Furthermore, there is no indication that Dr. Onyekwelu had the opportunity to review the medical reports from Dr. Richardson which describe her low back pain as chronic, essentially constant and rated 8 out of 10. On the other hand, both Dr. Calhoun and Dr. Nokes had the benefit of reviewing Dr. Richardson's medical records. Based on

the foregoing, specifically, the opinion of Dr. Calhoun, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back on December 2, 2020. According to Dr. Calhoun, all of the lumbar MRI findings are preexisting and degenerative in nature and there is no evidence of an acute symptomatic injury. I find his opinion to be credible and entitled to great weight.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her low back on December 2, 2020. Therefore, her claim for compensation benefits is hereby denied and dismissed.

The respondent is responsible for paying the court reporter's charges for preparation of the hearing transcript in the amount of \$453.40.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE