

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G906984

VERONICA MARTINEZ-MONTALVO, EMPLOYEE	CLAIMANT
TYSON POULTRY INC., EMPLOYER	RESPONDENT
TYNET CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 14, 2021

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

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

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed February 12, 2021. In said order, the Administrative Law Judge made the following findings of fact and 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.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's February 12, 2021 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer Concurring and Dissenting Opinion

CONCURRING AND DISSENTING OPINION

I respectfully concur, in part, and dissent, in part, from the majority opinion. Specifically, I concur with the majority finding that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable thoracic back injury. However, I must dissent from the majority finding that the claimant has proven by a preponderance of the credible evidence she sustained a compensable cervical spine injury on November 8, 2018.

On November 8, 2018, Claimant was working when a metal bar that weighs between 10 and 15 pounds fell, hitting her in the neck and back. Respondents accepted the back claim as compensable but dispute that Claimant sustained a compensable neck injury.

Claimant was released by her initial treating physician, Dr. David Sitzes, on November 9, 2018, as having reached maximum medical improvement. Nearly four months later, Claimant was treated by Irma Perez, APRN at Mercy Clinic in Rogers, Arkansas. Ms. Perez noted that Claimant reported neck pain, which had been an “ongoing issue for years, getting worse.” On March 8, 2019, Claimant underwent an MRI which revealed intervertebral disc disease seen throughout the cervical spine with reduction of vertical disc space height especially at C-C5, C5-C6, and C6-C7 levels. Claimant was prescribed physical therapy but refused steroid injections and instead opted for surgery.

Dr. Blankenship, who initially tried to convince Claimant to try conservative treatment before surgery, which she refused, eventually performed surgery on Claimant’s cervical spine. Dr. Blankenship noted that Claimant was “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.”

As it turns out, there is more to the story than Dr. Blankenship was getting. In April 2017, Claimant was diagnosed with a cervical strain. As late as October 2018, just weeks before her workplace injury, Claimant was still being treated for tightness in her left neck and tingling in her hands.

Under Section 11-9-508(a) of the Arkansas Code, Claimant is only entitled to reimbursement for medical treatment that is reasonable and necessary in connection with his compensable injury. A claimant cannot carry this burden of proof merely through objective findings of a pre-existing condition which became more painful after an incident at work. *Liaromatis v. Baxter County*, 95 Ark. App. 296, 236 S.W.3d 524 (2006). Furthermore, a claimant must establish a causal connection between any objective medical findings in the record and the alleged compensable injury, even if the alleged compensable injury is an aggravation of a pre-existing condition. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

I. DISCUSSION

Given that Claimant was suffering from symptomatic neck pain at the time of her workplace incident; that Claimant's treating physician released her at MMI nearly four months before she began being treated again and; given that the objective medical evidence indicates the cause of her neck pain is disc disease that clearly was

not caused by the workplace incident, I would find that Claimant failed to prove her neck injury is compensable.

Accordingly, for the reasons set forth above, I concur, in part, and dissent, in part from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner