

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H007008

MAGAN OSBURN, Employee	CLAIMANT
CITY OF FAYETTEVILLE, Employer	RESPONDENT
MUNICIPAL LEAGUE WORKERS' COMPENSATION PROGRAM, Carrier	RESPONDENT

OPINION FILED JUNE 11, 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 MARY K. EDWARDS, Attorney at Law, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 16, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 3, 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 on June 11, 2020 to her head, neck, and right shoulder.

By agreement of the parties the issue to be litigated is limited to the following:

1. Whether claimant is entitled to medical treatment as recommended by Dr. Blankenship.

Claimant's contentions are:

“Claimant contends she is entitled to medical treatment as recommended by Dr. Blankenship. The claimant reserves all other issues.”

Respondents' contentions are:

“To date, claimant has received all benefits to which she is entitled.”

The claimant in this matter is a 33-year-old female who suffered compensable injuries to her head, neck, and right shoulder on June 11, 2020. The claimant described the incident during direct examination testimony as follows:

Q And what happened on June 11th of 2020?

A I was thrown off of the back of a yard waste truck.

Q And how did that happen?

A We were at a stop and I was getting back onto the truck and for whatever reason we were moving and the driver of the truck applied the brakes very hard and I was slung very hard onto the ground.

Q And how did you land?

A I landed with the right side of me. I hit head first and then my right shoulder and then slid across the ground with my whole right side hitting the ground.

Q And immediately after the incident, what were your symptoms?

A I was a little confused to begin with. I started throwing up. I didn't feel well. My head started hurting and things started getting worse after that. Just kept throwing up. I couldn't stop throwing up for a while, actually.

The claimant was seen at Arkansas Occupational Health Clinic by Daniel Nicholas, PA, at which time she was diagnosed with a contusion of the head and sent to Washington Regional for a CT of the head. While at Washington Regional the claimant underwent a CT of the head or brain without contrast.

The Impression section stated, “No acute inner cranial process.” The claimant also underwent a CT of the cervical spine without contrast. The Impression from that diagnostic test stated, “No acute fracture or malalignment of the cervical spine.” And finally, the claimant underwent a CT of the chest/abdomen/pelvis with contrast. The Impression section from that diagnostic test states, “No acute traumatic injury of the chest, abdomen or pelvis identified.” The Assessment/Plan portion of the medical record from Washington Regional states:

- 1 Fall
- 2 Neck strain
- 3 Shoulder contusion
- 4 Head injury, closed, without LOC
- 5 Upper back strain

On June 22, 2020 the claimant was again seen at Arkansas Occupational Health by PA Nicholas. During that visit the claimant complained of neck, right shoulder, and right hip pain. The claimant also complained of continued headaches and vomiting. The claimant was placed on work restrictions of no lifting, pulling, or pushing anything greater than 10 pounds. The claimant was given a steroid injection and referred to physical therapy.

The claimant underwent several physical therapy sessions at Advanced Physical Therapy. The claimant returned to the Arkansas Occupational Health Clinic and was again seen by PA Nicholas on July 13, 2020. Following is a portion of that medical record found at Claimant’s Exhibit 1, Page 30:

HISTORY OF PRESENT ILLNESS

Magan’s primary problem is pain located in the right shoulder, neck. She describes it as numbness, burning. She considers it to be minimal/moderate. The problem began on 6/11/2020. Magan says that it seems to be constant, variable – depending on the activity level. She has noticed that it is made worse by looking down, looking up, lifting, pulling. It is improved with rest. Magan’s secondary problem is pain located in the right hip. She describes it as sore. She considers it to be minimal. The problem began on 6/11/2020. She has noticed that it is made worse by pressure. It is improved with no pressure. She feels it is improving.

The claimant was recommended to continue physical therapy and an MRI of the cervical spine and thoracic spine were both ordered by PA Nicholas.

The claimant continued physical therapy and underwent an MRI of both the cervical and thoracic spine on August 7, 2020 at Arkansas Medical Imaging in Fayetteville. Following are the diagnostic reports from those two MRIs found at Respondent’s Exhibit 1, Pages 54 and 55:

Procedure MR C-Spine Without Contrast

Findings

Segmentation and alignment are normal Vertebral body and disc heights are preserved Small hemangioma noted within the C6 vertebral body No moderate or high-grade canal or foraminal stenosis Prevertebral soft tissues and anterior longitudinal ligaments are unremarkable The cord is normal in caliber and signal.

IMPRESSION

Negative exam

Procedure MR T-Spine Without Contrast

Findings

Segmentation and alignment are normal Vertebral body and disc heights are preserved Pedicle margins are intact There are couple of small vertebral body hemangiomas No moderate or high-grade canal or foraminal stenosis The cord is normal in caliber and signal No paraspinal mass

IMPRESSION

Negative exam

On August 12, 2020 the claimant returned to Arkansas Occupational Health Clinic and saw PA Nicholas. Following is a portion of that medical record found at Claimant’s Exhibit 1, Pages 49 - 50:

HISTORY OF PRESENT ILLNESS

Magan’s primary problem is pain located in the neck, head. She describes it to be moderate/intense. The problem began on 6/11/2020. Magan says that it seems to be constant, variable – depending on the activity level. She has noticed that it is made worse by loud noises, light. It is improved with nothing.

COMMENTS ON HISTORY OF PRESENT ILLNESS

Magan returns to clinic today feeling unwell. She reports several days now of headache. She reports that her headache

has come and gone over the past two months, and that she often has a prodrome sensation before the headache occurs. Her neck pain is not much improved. She has found some relief with physical therapy but this seems to wane within hours of her appointment.

TREATMENT PLAN

I would like her to see PM&R for a second opinion for this persistent problem. I would also like neurology to evaluate her continued headache. She will use Flexeril as needed for pain relief. She will continue physical therapy for this problem.

The claimant was sent to see Dr. Michael Calhoun on August 27, 2020 for a second opinion. However, prior to the claimant's August 27, 2020 visit with Dr. Calhoun he ordered an MRI for the claimant's brain. On August 25, 2020 the claimant underwent that brain MRI at Ozark Orthopedics. Following is a portion of that diagnostic report found at Claimant's Exhibit 1, Page 62:

Findings The ventricles are normal in size and configuration No evidence of an acute infarct or hemorrhage is seen The midline structures and posterior fossa are unremarkable The vascular flow voids are preserved No mass, edema, or mid-line shift appreciated Motion artifact limits image quality and interpretation

Impression

Motion artifact limits image quality and interpretation No gross intracranial abnormality appreciated

On August 27, 2020, the claimant saw Dr. Calhoun. Following is a portion of the medical record from that visit found at Claimant's Exhibit 1, Page 64:

History of Present Illness

The patient is a 32 year old female who presents with neck pain. The patient was 2-1/2 hours late for her appointment No doctor-patient relationship was sought She was thrown from a yard debris truck on June 11, 2020. She landed on her neck and head She did not lose consciousness The patient was evaluated that day by occupational medicine and a CT of the brain was obtained. The CT was negative for any type of intracranial injury

Since that time, she has continued to complain pain in the cervicothoracic area with an area of numbness in that same

area. She also reports right-sided neck pain with intermittent numbness radiating down her arm to the small, ring and middle finger of the right hand. She also reports mid thoracic pain, worse on the right. She has undergone a cervical and thoracic MRI which are totally normal and more recently a brain MRI which is normal. She has been treated with 12 sessions of physical therapy with no improvement. She has been prescribed Flexeril for the headaches. She has been prescribed 6 more sessions of physical therapy, but has not attended further therapy.

Current Plans

As stated above, the patient was quite late for her appointment. To answer your specific questions:

1. In your professional opinion, are there any acute objective findings directly related to the work injury on June 11, 2020?

No.

2. In your professional opinion, what is the medical diagnosis for Ms. Osborn? cervical strain, of which she has been appropriately treated with physical therapy with no improvement. There may be a functional component that [sic] these issues as well.

3. Do you have any treatment recommendations for Ms. Osborn?

No.

4. Please opine on [unintelligible] ... restrictions for Ms. Osborn. There are no restrictions [unintelligible] in full duty with no restrictions.

5. Please opine on MMI projections for Ms. Osborn and her injury of June 11, 2020. The patient is at maximum medical improvement and suffered no permanent partial impairment.

The claimant asked the Commission for a change of physician and was granted a change of physician on October 29, 2020. The claimant's change of physician was granted for the claimant to see Dr. James Blankenship. On November 9, 2020 the claimant was seen at the Neurosurgery Spine Center by Dr. Blankenship. Following is a portion of that medical record found at Claimant's Exhibit 1, Page 76

– 79:

HPI

The patient has neck pain, mid scapular, and mid back pain. She has intermittent pain in the right upper extremity. She denies any balance problems. She does have decreased strength in the right arm. She has had no steroid medications. She did 12 visits to physical therapy. She was injured on 6/11/2020 when she was thrown off a yard waste truck and

hit her head on the right side. She had a concussion. MRI of the brain was normal. She also has an MRI of her cervical spine and thoracic spine. Both were read out as negative and I have reviewed them and agree that there are no disc protrusions although there is a loss of normal cervical lordosis so it is not negative. She has continued to work at light duty throughout her entire treatment. At present she only takes Flexeril on an as-needed basis.

Impression:

Her general neurologic examination is unremarkable. She has significant mechanical neck pain worse in extension. I think her facets are likely the primary etiology with significant myofascial pain.

Recommendations:

REFER TO:

Cannon, David (479-582-2800).

I have recommended we start her on Celebrex and Lyrica. I am fine with her working with restrictions but it sounds like she is doing her regular job and not under restrictions so we have written some specific restrictions for her today. I have also recommended that she get started working with Steve in physical therapy and he has examined her today. I have also recommended that we get her in to see Dr. David Cannon for consideration of facet injections in her neck. I cannot really guide him as far as what facets based on MRI or x-rays. I will leave it to his wisdom under fluoroscopic examination the best idea of where to inject her. I am going to see her back in eight weeks since she will continue to work. I do not think there is any urgency in seeing her any sooner. We need to give this some time and try to get better with an aggressive active conservative treatment plan. She is having a significant amount of right hip pain but she landed on her right hip and I think this may very well be local trauma but if it's not getting better we may need to get an MRI of her lumbar spine but we are going to hold on that for a little bit.

The claimant has asked the Commission to determine if she is entitled to the medical treatment as recommended by Dr. Blankenship. An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a)(1). However, the claimant bears the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W.

2d 543 (1999). Claimant likewise has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Patchell v. Walmart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 3d 32 (2004). I find that claimant has failed to meet her burden of proof.

Dr. Blankenship in the History of Present Illness portion of the medical record from the claimant's November 9, 2020 visit with him states, "She also has an MRI of the cervical spine and thoracic spine. Both were read out as negative and I have reviewed them and agree there are no disc protrusions although there is a loss of normal cervical lordosis so it is not negative." While all of the diagnostic tests performed on the claimant after her compensable injury were read out as negative, I do agree with Dr. Blankenship that they are not necessarily negative; however, they most certainly are not positive for signs of traumatic injury to the claimant. Instead, it is more likely than not that the loss of normal cervical lordosis is degenerative or congenital in nature and not related to the claimant's June 11, 2020 incident. I agree with Dr. Calhoun's opinion that the claimant has been provided appropriate treatment for her compensable injuries. Given the medical evidence that has been presented to the Commission, I agree with Dr. Calhoun's assessment of the claimant and believe that she has received all appropriate reasonable and necessary medical treatment for her compensable injuries.

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 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 February 3, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she is entitled to the medical treatment as recommended by Dr. Blankenship.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**