

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H007008

MAGAN OSBURN, Employee	CLAIMANT
CITY OF FAYETTEVILLE, Employer	RESPONDENT
MUNICIPAL LEAGUE, Carrier	RESPONDENT

OPINION FILED MAY 25, 2023

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, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 28, 2023, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 9, 2023, and a Pre-hearing Order was filed on January 10, 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 June 11, 2020.
3. The claimant sustained a compensable injury to her head, neck, and right shoulder on June 11, 2020.
4. All prior opinions are final and res judicata.

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

1. Whether Claimant sustained a compensable injury to her lower back on June 11, 2020.
2. Whether Claimant is entitled to medical treatment for her lower back as recommended

by Dr. James Blankenship.

Claimant's contentions are:

"Claimant contends she is entitled to treatment for her back, depression and anxiety as recommended by Dr. Blankenship. Claimant reserves all other issues."

Respondents' contentions are:

"Respondents contend that they accepted claimant's head, neck, and right shoulder and have paid related medical treatment. Claimant is continuing to receive medical treatment for her cervical injury, and respondents are paying for that treatment. Dr. Blankenship has recommended medical treatment for claimant's back. The back was never accepted. Respondents contend claimant cannot prove by a preponderance of the evidence she sustained a compensable back injury. Further, the medical evidence is not supported by objective findings of an injury to her back. Please see attached Exhibit "A". In addition, respondents contend that claimant cannot prove by a preponderance of the evidence that she has sustained a mental injury."

The claimant in this matter is a 35-year-old female who worked for the respondents in their waste department. On June 11, 2020, the claimant was on the back of a waste truck when she fell off and hit the ground. The claimant sustained compensable injuries to her head, neck, and right shoulder at that time. The claimant has now asked the Commission to consider whether she sustained a compensable lumbar spine injury in that same June 11, 2020, incident. Following is a portion of the claimant's direct examination testimony about her June 11, 2020, incident.

Q And what happened to you when you were working for the City of June 11th of 2020.

A I was on the back of a yard waste truck and I was

slung off the side of it and hit the ground.

Q And when you hit the ground, how did you land?

A I landed on my right side, hit my head and my shoulder and my hip and all down m leg.

Q Okay. And after this injury occurred, did you have bruising anywhere?

A Yes. I had bruising on my shoulder and my hip.

Q On the right-hand side?

A Yes, ma'am.

The claimant was seen the day of her June 11, 2020, incident at Arkansas Occupational Health Clinic by Daniel Nicholas, PA-C. Following is a portion of that medical record.

CHIEF COMPLAINT

Fall injury.

PATIENT DESCRIPTION OF ACCIDENT

Patient states she was slung off the back of the yard waste truck onto the pavement. She states she is having pain in her neck, right shoulder and right hip. She also complains of headache and thrown up 4 times.

DIAGNOSIS

1. Contusion of unspecified part of head, initial encounter (500.93XA).

MEDICAL CAUSATION

The cause of this problem appears to be related to work activities.

The claimant was again seen two days later by PA-C Nicholas. Following is a portion of that medical report.

CHIEF COMPLAINT

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PATIENT DESCRIPTION OF ACCIDENT

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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.

On November 9, 2020, the claimant was seen at the Neurosurgery Spine Center by Dr. James Blankenship. Following is a portion of that medical record.

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 her 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 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 worst in extension. I think that 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 out 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 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 is 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 respondent in this matter denied treatment for some of the claimant's other compensable injuries arising out of her June 11, 2020, incident. As such, those matters entered into litigation and it was not until February 2022 that the claimant was again seen by Dr. Blankenship. Following is a portion of the claimant's visit note from her February 17, 2022, visit with Dr. Blankenship.

HPI:

The patient is in today for follow up after a new MRI. We saw the patient last in November of 2020. At that time we made recommendations for physical therapy, medications, and a new MRI but unfortunately her workmen's compensation carrier did not approve that. She is still having neck pain that radiates to the bilateral shoulders and mid scapula. She has bilateral upper extremity numbness. She describes electrical shock-like pains that go down both arms and around in her chest area. She denies any balance problems but does continue to have occipital headaches. The patient is also having low back pain that has been continuous.

She states that it is sharp and is electrical and a shocking-type pain. She is still working at the city. She has not had any injections or physical therapy. She was not able to start the medications. She rates her pain about 60 to 70% toward the worse pain imaginable.

Impression:

Ms. Osburn returns to the office. I have not seen Ms. Osburn since November of 2020. At that time we recommended an ESI, medication, and physical therapy. Unbeknownst to us, this was all denied almost immediately and she has been fighting with them ever since. The patient has neck pain, mid scapular, and bilateral upper extremity numbness. She has electrical shock-like pain down both arms. I have reviewed her MRI in its entirety that shows a gross annular fissure at C5-C6 with a small lateral disc protrusion at C4-C5.

Recommendations:

I have recommended basically that we treat her the same way I said we should treat her a year and a half ago. Her delay in treatment possibly could lead to chronic pain syndrome and I will be more than happy to address that with anyone that wants to know that her delay in care has created this. I still think that since she is a go-getter, we have a chance to make this better.

I have recommended that we get her in to see Dr. David Cannon for a CESI. I recommended that we get her started on Celebrex and Lyrica at 50 mg b.i.d. We will get her started working with Steve's folks with an aggressive active physical therapy program. I will plan on seeing her back eight weeks after this program is approved and started. I will now answer the questions that were forwarded by Ms. Dixon who is her case manager I have assumed.

5. As far as recommendations for work restrictions, Dr. Cannon has already placed work restrictions on her and I agree with them completely. You can see his note. Also I have recommended a lumbar MRI that has not been done. Again, her chronic lumbar pain has been unaddressed and I do think it is directly work-related.

The claimant was again seen by Dr. Blankenship on June 23, 2022. Following is a portion of that visit note.

HPI

The patient is in today for followup. She has been doing her physical therapy with Steve. She did get a cervical epidural injection that did afford her some relief. She is still having some neck pain and bilateral upper extremity paresthesias. Her greatest pain complaint is low back pain that radiates to the bilateral hips and bilateral buttocks. She rates her pain about 60 to 70% toward the worst pain imaginable. Her workers' compensation carrier would not allow her to get a lumbar MRI.

Impression

First of all I have requested a lumbar MRI because I do think that her back pain is related to her work-related injury but her worker's comp carrier has denied this. Her neck pain is better and she is improving. She is a year out from her injury and she does have annual fissuring at C5-C6 and at C4-C5. I do think that with her neck improving, I would not at present offer her surgical intervention. I still feel like she needs to have her lumbar spine worked up. She has been doing her therapy with Trinity and I would like for her to continue to do that. She got one injection by Dr. Cannon that helped.

Recommendations

REFER TO

Cannon, David (479-582-2800)

I would like her to see Dr. Cannon again to see if he would recommend another injection but I am going to see her back in eight weeks. If we can get a lumbar MRI approved of her lumbar spine, I will see her back sooner and we will go over this with her. I have also prescribed Lyrica and Celebrex and her worker's comp carrier will not authorize this. This was prescribed for her neck. If they do not authorize her MRI or medications, then I am not going to be able to treat her because they have basically hamstrung me in not allowing me to treat her as I see fit.

The claimant eventually underwent a lumbar spine MRI recommended by Dr. Blankenship at her own expense. Following is a portion of that diagnostic report.

IMPRESSION:

1. L5-S1 foraminal narrowing on the right with extreme lateral disc protrusion and midline disc protrusion slightly eccentric off to the left. Severe facet arthropathy is noted at this level.

2. L4-L5 moderate bilateral lateral recess lateral recess stenosis secondary to facet arthropathy and ligamentous hypertrophy.
3. Multilevel facet arthropathy as described in the narrative.

On November 28, 2022, the claimant saw Dr. Blankenship. Following is a portion of that visit note.

HPI:

The patient is in today for followup. She states that she is still having significant neck pain that radiates to the bilateral upper extremities. She has pain and numbness in both arms, right worse than left. She has decreased strength in the bilateral upper extremities. She has been doing her physical therapy with Steve. She says this does not afford her any significant relief. She tried meloxicam with no relief. She was never able to get her Lyrica or gabapentin filled because her workmen's compensation carrier did not cover this. She is also having some significant low back pain that radiates to the bilateral hips, bilateral buttocks, and bilateral medial leg numbness. She denies any weakness in the lower extremities. Prolonged sitting, standing, walking, and bending all significantly aggravate her pain. She does have new MRI's for review today. She had a CESI with Dr. Cannon that only afforded her very temporary relief.

Impression:

Ms. Osburn is back in the office today for followup. We saw her last in June of this year. She is currently on meloxicam even though I recommended Celebrex and they would not approve her Lyrica or even gabapentin which is amazing because it is dirt cheap. I told her we need to again try to get her on those medications, preferably Lyrica at 75 mg twice a day. Her lower back is bothering her about as bad as her neck and all of this started with her on-the-job injury although her worker's comp carrier is not covering her lower back.

Recommendations:

REFER TO:

Cannon, David (479-582-2800)

I have recommended concerning her lower back that we get her in to see Dr. Cannon for an LESI even though she did not get any relief with her CESI. I have recommended that we have Steve start working on her lower back and then follow back up with me in six

weeks. Concerning her lower back, I have recommended that we get her back in to see Dr. Cannon. Her CESI was done almost three months ago and I have recommended that she get another CESI. I have also recommended that we start her on Lyrica. We had recommended that at her last visit. That and gabapentin were denied which again is somewhat mind-boggling.

Again, it is my opinion based on a reasonable degree of medical certainty that the patient's lower back problem along with her neck was created by her on-the-job injury. She had a significant injury and what I am seeing on her MRI and her plain radiographs would be consistent with an injury of this degree.

At the request of the respondent, Dr. Theodore Hronas reviewed the following medical records regarding the claimant and authored a letter regarding them on December 18, 2022.

At your request, the following films and reports were reviewed:
MRI of the cervical spine, 08/07/2020. NW Imaging Center Fayetteville
MRI of the thoracic spine, 08/07/2020. NW Imaging Center Fayetteville
Clinic note, 08/27/2020. Michael Calhoun, MD
MRI of the cervical spine, 02/09/2022. Physicians Specialty Hospital
MRI of the lumbar spine, 10/21/2022. Mana MRI.
MRI of the cervical spine, 11/16/2022. Mana MRI.

I note that while Dr. Hronas reviewed several diagnostic tests and a singular report from Dr. Calhoun, he did not review any reports from Dr. Blankenship including those that considered the claimant's right hip and lumbar spine. Following is a portion of Dr. Hronas' letter of December 18, 2022, that discusses the claimant's lumbar spine.

The MRI exam of the lumbar spine, 10/21/2022, was performed approximately two years after the date of injury. The MRI exam of the lumbar spine shows a normal vertebral body alignment with no evidence of fracture or subluxation. The T12/L1, L1/2, and L2/3 disc levels are normal. At L3/4, the disc space is preserved. There is mild bilateral facet arthropathy at L3/4 with no central canal stenosis or foraminal narrowing. At L4/5,

there is mild diffuse disc bulging and presence of a central annular fissure. There is bilateral mild facet arthropathy. This level demonstrates mild central and lateral recess stenosis and bilateral mild foraminal narrowing. At L5/S1, there is disc height loss and disc desiccation, posterior osseous ridging more prevalent on the right extending to the far extraforaminal location, and presence of a small central disc protrusion effacing the anterior epidural space. There is mild bilateral facet arthropathy. These changes are resulting in mild central canal stenosis, mild left and moderate right foraminal narrowing. The presence of posterior osseous ridging at the L5/S1 level is consistent with chronic degenerative change.

In summary, additional imaging studies of the cervical and lumbar spine demonstrate chronic degenerative changes with no objective findings of an acute injury as the result of the work injury that occurred on 06/11/2020.

The claimant has asked the Commission to determine if she suffered a compensable injury to her lumbar spine on June 11, 2020, in the same incident that she suffered compensable injuries to her head, neck, and right shoulder. It is the claimant's burden to prove her lumbar spine injury compensable. The report from the claimant's lumbar spine MRI performed on October 21, 2022, in part states "L5-S1 femoral narrowing on the right with extreme lateral disc protrusion and midline disc protrusion slightly eccentric off to the left." Through that MRI the claimant is able to show the existence of objective medical findings regarding her lumbar spine. I do note that while Dr. Blankenship's report reports an L5-S1 "femoral narrowing on the right with extreme lateral disc protrusion and midline disc protrusion," Dr. Hronas in his December 18, 2022, letter discusses the claimant's L5-S1 level and states "presence of a small central disc protrusion effacing the anterior epidural space." Dr. Hronas does not note any additional protrusion at L5-S1. Here, I give Dr. Blankenship more weight as he has examined and treated the claimant and it appears Dr. Hronas was not provided or did not review medical records from

the claimant's treatment with Dr. Blankenship and only reviewed Dr. Calhoun's singular report and imaging films from the claimant's diagnostic testing.

It was the claimant's credible testimony that she had no prior issues with her low back or right hip prior to her June 11, 2020, incident. The respondent does make a point in cross examination testimony from the claimant that documents she signed regarding the June 11, 2020, incident and found on pages 1-3 of Respondent's Exhibit 2 do not mention her right hip or low back or lumbar spine. However, the claimant's initial medical records, including her visit to Arkansas Occupational Health Clinic on the day of the incident, do mention her right hip complaints. The claimant's November 9, 2020, visit considers her right hip pain along with lumbar spine implications as follows: "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 is not getting better we may need to get an MRI of her lumbar spine but we are going to hold off on that for a little bit." It seems clear that Dr. Blankenship believes her right hip pain may be a result of a lumbar spine injury from her work incident but wants the claimant to have more time before a lumbar MRI for her symptoms to ease in the event that they are a result of "local trauma."

Many months later at the claimant's February 17, 2022, visit with Dr. Blankenship, the claimant still has complaints regarding her right hip and Dr. Blankenship recommends an MRI of the lumbar spine. The claimant gave testimony about her symptoms around the time of her February 17, 2022, visit with Dr. Blankenship as follows.

Q Now, when you got back to Dr. Blankenship for the second time after that long delay, what were your symptoms like at that point?

A They were the same that I had talked about from the very beginning. My shoulder was still hurting. My neck was still hurting. Above - - sorry. I know I can't point. Above my - -

like right at the top of my right butt cheek into like the hip area is where it was hurting and it's continued to be the same from the very beginning.

Q And so when you got to see him again, what recommendations did he make?

A That is when he started pushing for the MRI on my lower back because he wasn't convinced that it was just a hip issue and he wanted the MRI done on my lower back and it kept being denied.

Q And did he prescribe anything else that was denied?

A He had prescribed a couple of different medications and they were all denied at that point.

Q Okay. Now, can you describe the kind of pain that you are having in your right hip and your low back?

A It is like a burning poke, needling if you will, I guess, sensation that is always there in like the top portion of my butt I guess you would say, lower back, right at the top of my butt cheek and radiates across my back toward the left hip. And it will go down my leg sometimes. It varies on what it does, but there is constant radiation that goes across my back from my right hip.

Q Okay. And which leg does the pain go down?

A My right leg.

Q Now, those symptoms that you have described, have they increased since through when you first had this accident or have they remained the same?

A They have been the same, but it feels like it is going further over to my left hip than it originally was.

Q And originally did you have pain into your right leg?

A No. That is just slowing happening over time.

The claimant is able to prove the existence of objective medical findings regarding her lumbar spine, but she must also prove a causal connection between those objective medical findings and the June 11, 2020, incident. I believe the claimant has met her burden of proof. While the documents she signed after the injury do not reflect a right hip or lumbar injury, the initial medical records do reflect right hip pain. It is that same right hip pain that Dr. Blankenship later suspects to be related to her lumbar spine which shows a clear derangement in the MRI of her lumbar spine.

The claimant is able to prove by a preponderance of the evidence that she sustained a compensable lumbar spine injury on June 11, 2020. In review of Dr. Blankenship's November 28, 2020, visit note, the treatment he recommends for the claimant's lumbar spine is reasonable and necessary medical treatment for her compensable lumbar spine injury, including treatment with Dr. Cannon and prescription medications.

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 the pre-hearing conference conducted on January 9, 2023, and contained in a Pre-hearing Order filed January 10, 2023, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her low back on June 11, 2020.

3. The claimant has proven by a preponderance of the evidence that she is entitled to the medical treatment recommended for her lower back by Dr. James Blankenship as it is reasonable and necessary medical treatment for her compensable lumbar spine injury.

ORDER

The respondents shall be responsible for payment of the reasonable and necessary medical treatment recommended by Dr. James Blankenship for the claimant's compensable lumbar spine injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

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**