

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204215

RICHARD G. OLIVER, EMPLOYEE CLAIMANT

ARKANSAS DEPARTMENT OF ENVIRONMENTAL  
QUALITY, EMPLOYER RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,  
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED MARCH 21, 2024

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

Claimant represented by the HONORABLE MARK A. PEOPLES, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed September 28, 2023. In said order, the Administrative Law

Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that he is entitled to additional treatment of his compensable back injury in the form of a referral to Dr. Kenneth Rosenzweig for the

purpose of determining whether he should be assigned a permanent impairment rating.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's 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 this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(a)(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 Mayton dissents

DISSENTING OPINION

I respectfully dissent from the majority opinion. After my *de novo* review of the file, I find that the claimant has failed to prove by a preponderance of the credible evidence that he is entitled to additional treatment of his compensable back injury in the form of a referral to Dr. Rosenzweig for the purpose of determining whether he should be assigned a permanent impairment rating.

The claimant, Richard Oliver, sustained a compensable low back injury while moving cubicles at the Arkansas Department of Environmental Quality (ADEQ) offices on May 31, 2022. The claimant initially treated with Healthcare Express on June 1, 2022, where he was assessed with a lumbar strain. (Cl. Ex. 1, Pp. 1-2). There, PA-C Claire Golden discussed muscle relaxants with the claimant, but claimant declined due to an upcoming heart ablation. *Id.* PA-C Golden informed the claimant that if his pain persisted, she would refer him for physical therapy. *Id.*

The respondents ultimately referred the claimant to Dr. Michael Cassat, who began treating the claimant on June 7, 2022. (Resp. Ex. 1, P.

1). Upon physical examination, Dr. Cassat found:

The lumbar spine is normal in appearance, as well as the overlying skin. There is no bony point tenderness. There is no tenderness over the SI joints. Range of motion is normal in flexion and extension with reproduction of pain in flexion. Seated SLR is normal. DTRs are 2+ at both patella[s] strength is normal at bilateral hip flexors, quads, tibialis anterior, gastric, EHL. There is no pretibial edema.

X-Rays today without acute process. We will start physical therapy for neutral spine core strengthening and modalities. Follow up with me in 4 weeks. His work restrictions are no lifting, pushing, pulling greater than 15 lb. (Resp. Ex. 1, Pp. 1-2).

The claimant underwent a physical therapy evaluation on June 22, 2022, but testified that therapy only helped “[a] little bit.” (Hrng. Tr, P. 10; Resp. Ex. 1, Pp. 4-8). On July 28, 2022 the claimant obtained an MRI, which found, in part:

L3-4: Mild diffuse disc bulge indenting the thecal sac without spinal canal stenosis. There is mild left neural foraminal narrowing.

L4-5: Mild diffuse disc bulge indenting the thecal sac without spinal canal stenosis. The disc contacts but does not displace the transiting left L5 nerve root in the lateral recess. There is mild neural foraminal narrowing. There is mild facet arthrosis.

L5-S1: Mild diffuse disc bulge indenting the thecal sac without spinal canal stenosis. A small left paracentral posterior annular fissure is noted without protrusion of disc material. There is no neural foraminal narrowing. There is mild facet arthrosis.

**IMPRESSION:**

Mild lumbar spondylosis at the L3-4, L4-5 and L5-S1 levels without significant spinal canal stenosis or neural foraminal narrowing. Disc bulge at L4-5 contacts but does not displace the transiting left L5 nerve root in the lateral recess. (Resp. Ex. 1, Pp. 9-10).

The claimant returned to Dr. Cassat on August 9, 2022, who reported that:

He returns today to review his lumbar spine MRI which shows some small disc herniations considerable central or foraminal stenosis. He has fluid in his facets at multiple levels with some degenerative change present. We discussed that this could be indicative an acute exacerbation some facet pathology. Given that

he no significant symptoms before his injury this is greater than 50% likely to be causative his symptoms. We discussed medial branch blocks with rhizotomy. He would like to return to work without restrictions which I think is reasonable. (Resp. Ex. 1, P. 11)(errors in original).

Dr. Cassat released the claimant to full duty with no restrictions, noting that he had not reached maximum medical improvement (MMI). (Resp. Ex. 1, P. 12).

The claimant returned to Dr. Cassat on September 27, 2022. (Resp. Ex. 1, P. 16). Dr. Cassat's report stated:

Our discussion today was that [the claimant] continues to have significant axial pain with activity has failed conservative treatment measures, cannot tolerate anti-inflammatories and is not currently able to go off of anticoagulation even with bridging for medial branch blocks or a rhizotomy. At this point have no further treatment options for him, he understands this. He will continue to work on being as active, he will follow up with me if he would like to proceed with intervention in the future. He states that he will never get off of anticoagulation secondary to stroke risk. He is at MMI with 0% permanent impairment rating. He has no work restrictions. He can follow up with me as needed. (Resp. Ex. 1, Pp. 16-17).

The claimant obtained a change of physician order through the Commission on December 5, 2022, which was amended on December 9, 2022, and transferred his care from Dr. Cassat to Dr. Ali Raja of Neurosurgery Specialists of Arkansas, who took over the claimant's care on December 15, 2022. (Cl. Ex. 1, Pp. 19-21). Dr. Raja reviewed the claimant's radiological studies, stating that "MRI of the lumbar spine without contrast done 7/28/2022 at UAMS showed mild lumbar spondylosis at L3-L4, L4-L5, and L5-S1 without significant spinal canal stenosis or neuroforaminal stenosis. There is a disc bulge at L4-L5 that contacts but does not displace the transiting left L5 nerve root in the lateral recess." (Resp. Ex. 1, P. 20). The December 15, 2022 report further states:

I personally reviewed outside records from the referring physician as well as the patient's past medical, surgical, family, and social history and current medications in clinic today. I also personally reviewed the patient's radiological images and imaging reports in clinic today and correlated these with the patient's current symptoms and exam findings to formulate the plan of care.

I had a detailed discussion with the patient regarding findings of the history and physical examination and radiological studies. We discussed the need for lifestyle

modifications including the need to be careful with no excessive pushing, pulling, bending, weight lifting, strenuous activities and not lifting anything more than 5-10 pounds.

We also discussed management options and plans including surgical versus nonsurgical measures. We discussed the finding of multilevel degenerative changes without definite neural compromise or evidence of fracture on the patient's most recent MRI of the lumbar spine done 7/28/22 and my recommendation not to proceed with any neurosurgical intervention at this time.

We discussed the option for outpatient physical therapy for gentle muscle strengthening exercises for 6-8 weeks, but he said he has already done multiple sessions without benefit. (Cl. Ex. 1, Pp. 20-21).

Dr. Raja later referred the claimant to Dr. Kenneth Rosenzweig to be evaluated for an impairment rating on May 9, 2023. (Cl. Ex. 1, Pp. 22-23).

In an order dated September 28, 2023, an administrative law judge (ALJ) ruled that the claimant is entitled to additional medical treatment in the form of a referral to Dr. Rosenzweig for the purposes of determining whether he should be assigned a permanent impairment rating.



The sole question here is whether the claimant is entitled to additional medical treatment related to his compensable low back injury. Arkansas Code Annotated section 11-9-508(a) (Repl. 2012) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." The claimant has the burden of proving by a preponderance of the evidence that the additional treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010). What constitutes reasonably necessary treatment is a question of fact for the Commission. *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445 (2023). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it sought to remedy. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* However, the Commission has the authority to accept

or reject medical opinions. *Williams v. Ark Dept. of Community Corrections*, 2016 Ark. App. 427, 502 S.W. 3d 530 (2016). Furthermore, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation. *Id.*

In his opinion, the ALJ appears to rely on a single discrepancy in disregarding Dr. Cassat's impairment rating: one line in the August 9, 2022 report that states the claimant "returns today to review his lumbar spine MRI which shows some small disc herniations" rather than the "[m]ild diffuse disc bulge[s]" found in the claimant's MRI. (Resp. Ex. 1, Pp. 9-11). This, however, ignores the fact that the claimant continued treating with Dr. Cassat after that date before being released at MMI, and the claimant would later be treated by Dr. Ali Raja, who personally reviewed the claimant's medical records and noted no issues with this so-called discrepancy. The ALJ did not weigh the opinions of Drs. Cassat and Raja against the facts at hand and arbitrarily rejected Dr. Cassat's opinion. Dr. Cassat treated the patient soon after his initial injury and for a period of nearly four months before releasing the claimant at MMI when Dr. Raja evaluated the claimant on a single occasion once it was clear that surgical intervention was not an option.

Further, the only difference between Dr. Cassat and Dr. Raja's opinions on the claimant's treatment is that Dr. Raja, for reasons unknown, believes that the claimant should undergo an additional evaluation for permanent impairment. The claimant has already undergone this evaluation with Dr. Cassat and received a 0% impairment rating. There were no changes in the record to the claimant's treatment plan or physical symptoms between the date of Dr. Cassat's impairment rating and Dr. Raja's referral request. Dr. Raja did nothing to treat the claimant, as the claimant rejected the available options. Dr. Raja did not provide any reason why he believes that an additional evaluation is necessary or relevant. Additionally, the claimant exhausted his change of physician request when changing to Dr. Raja's care, and it is unreasonable to introduce a third physician to provide information that is already available.

The claimant's request to be evaluated by Dr. Rosenzweig is both unnecessary and unreasonable as it will not provide any greater information about the claimant's care or treatment. For the reasons set forth above, I must dissent.

---

MICHAEL R. MAYTON, Commissioner