

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H007008

MAGAN OSBURN,
EMPLOYEE

CLAIMANT

CITY OF FAYETTEVILLE,
EMPLOYER

RESPONDENT

MUNICIPAL LEAGUE WCT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 30, 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 MARY K. EDWARDS, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed June 11, 2021. The administrative law judge found that the claimant failed to prove she was entitled to medical treatment recommended by Dr. Blankenship. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that Dr. Blankenship's current treatment recommendations of record are reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

I. HISTORY

The parties stipulated that the employee-employer-carrier relationship existed on all pertinent dates. Magan Christine Osburn, now age 33, testified that she was employed as a route driver for the respondent-employer. The parties stipulated that the claimant “sustained a compensable injury on June 11, 2020 to her head, neck, and right shoulder.” The claimant testified on direct examination:

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 shoulder was burning. I actually thought it was broke. My head started hurting and things started getting worse after that.

According to the record, the claimant treated at Arkansas Occupational Health Clinic on June 11, 2020: “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.” J. Daniel Nicholas, PA-C assessed “1. Contusion of unspecified part of head, initial encounter.”

A CT of the claimant's brain was taken on June 11, 2020 with the impression, "1. NO ACUTE INTRACRANIAL PROCESS." A CT of the claimant's cervical spine was taken on June 11, 2020 with the impression, "1. NO ACUTE FRACTURE OR MALALIGNMENT OF THE CERVICAL SPINE."

J. Daniel Nicholas noted on June 22, 2020, "Patient states that her head is feeling better, but her neck is feeling worse. States there is tingling at the base of her cervical spine." J. Daniel Nicholas assessed "1. Contusion of unspecified part of head, subsequent encounter. 2. Cervicalgia (pain in cervical spine)....She was given a steroid injection today. She will start physical therapy for this problem."

The claimant received a program of physical therapy visits beginning June 24, 2020. The claimant also continued to follow up with J. Daniel Nicholas. Mr. Nicholas arranged for an MRI of the claimant's cervical spine, which was taken on August 7, 2020 with the following 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.

An MRI of the claimant's thoracic spine was also taken on August 7, 2020 with the impression, "Negative exam." An MRI of the claimant's brain

was taken on August 25, 2020 with the impression, “Motion artifact limits image quality and interpretation. No gross intracranial abnormality appreciated.”

Dr. J. Michael Calhoun reported on August 27, 2020:

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 extracranial injury.

Since that time, she has continued to complain [of] 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....

As stated above, the claimant 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 (sic)? cervical (sic) strain, of (sic) 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 further treatment recommendations for Ms. Osborn? No....

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

The record indicates that the claimant received additional physical therapy visits beginning August 28, 2020.

The record contains a Change of Physician Order dated October 29, 2020: “A change of physician is hereby approved by the Arkansas Workers’ Compensation Commission for Magan Osburn to change from AR Occupational Health Clinic to Dr. James Blankenship[.]”

Dr. James B. Blankenship examined the claimant on November 9, 2020:

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 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 worst in extension. I think that her facets are likely the primary etiology with significant myofascial pain.... 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 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 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.

Dr. Blankenship diagnosed “Pain in unspecified joint. Cervicalgia. Postural kyphosis, site unspecified. Fibromyalgia.” Dr. Blankenship planned a follow-up visit, referral to Dr. Cannon, and physical therapy at Trinity Rehabilitation. The claimant essentially testified that the respondents denied treatment recommended by Dr. Blankenship.

A pre-hearing order was filed on February 3, 2021. According to the pre-hearing order, the claimant contended, “Claimant contends she is entitled to medical treatment as recommended by Dr. Blankenship. The claimant reserves all other issues.” The respondents contended, “(a) To date, claimant has received all benefits to which she is entitled. (b) Respondents reserve the right to file an amended response to the Prehearing Questionnaire or other appropriate pleadings and to allege any further affirmative defenses that might be available upon further discovery.”

The parties agreed to litigate the following issue: “1. Whether the claimant is entitled to medical treatment as recommended by Dr. Blankenship.” After a hearing, an administrative law judge filed an opinion on June 11, 2021. The administrative law judge found, in pertinent part, that the claimant failed to prove she was entitled to medical treatment recommended by Dr. Blankenship. The administrative law judge therefore denied the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

The 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)(Repl. 2012). The employee is not required to furnish objective medical evidence of her continued need for medical treatment. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408. However, the employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). What constitutes reasonably necessary medical treatment is a question of fact for

the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

An administrative law judge found in the present matter, “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.”

The Full Commission reverses this finding. The claimant is employed as a sanitation worker for the respondents, City of Fayetteville. There is no record of a prior degenerative condition in the claimant’s neck or shoulder. The parties stipulated that the claimant sustained a compensable injury to her head, neck, and right shoulder on June 11, 2020. The claimant credibly testified that she was thrown from the back of a sanitation truck while performing employment services. A subsequent CT scan of the claimant’s brain was negative, as was diagnostic testing of the claimant’s cervical and thoracic spine. Nevertheless, the respondents provided medical treatment following the stipulated compensable injuries. The respondents denied treatment on or about August 27, 2020. Dr. Calhoun determined on that date that the claimant had reached maximum medical improvement.

On October 29, 2020 the claimant received her statutory change of physician to Dr. Blankenship. Dr. Blankenship examined the claimant on November 9, 2020. Dr. Blankenship recommended medication, physical therapy, and injections with Dr. Cannon. The claimant’s testimony indicated

that the respondent-carrier allowed one prescription but denied additional physical therapy or injection treatment.

The Full Commission reiterates the parties' stipulation that the claimant sustained compensable injuries to her head, neck, and right shoulder. The claimant contends that she is entitled to reasonably necessary medical treatment provided in connection with her compensable neck injury. The claimant credibly testified regarding her symptoms after she was thrown from the back of the respondents' truck on June 11, 2020. It is well-settled that the claimant does not have to provide "objective findings" of injury to prove that she is entitled to additional medical treatment. *Ark. Health Ctr. v. Burnett, supra*.

It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Based on Dr. Calhoun's opinion in the present matter, the Full Commission finds that the claimant reached maximum medical improvement for her June 11, 2020 compensable injuries no later than August 27, 2020. However, it is well-settled that an employee may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the employee's injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). The Full Commission finds that Dr.

Blankenship's current treatment recommendations are reasonably necessary and are geared toward management of the claimant's compensable injury.

After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that Dr. Blankenship's current treatment recommendations of record are reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). Said treatment recommendations shall be the responsibility of the respondents. For prevailing on appeal, the claimant's attorney is entitled to a 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 dissents.

DISSENTING OPINION

I respectfully dissent from the majority because I find that Claimant failed to prove that the additional medical treatment sought is reasonable and necessary in connection with her workplace injury.

The law requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury received by an employee. Ark. Code Ann. §11-9-508(a). The burden of proving entitlement to additional treatment rests on the claimant; however, a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional medical treatment. *Ark. Health Ctr. & Ark. Ins. Dep't v. Burnett*, 2018 Ark. App. 427, at 9-10, 558 S.W.3d 408, 414 (citing *Chamber Door Indus., Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997); *Ark. Dep't of Cmty. Corr. v. Moore*, 2018 Ark. App. 60).

What constitutes reasonably necessary treatment is a question of fact for the Arkansas Workers' Compensation Commission. The Commission has authority to accept or reject a medical opinion and to determine its medical soundness and probative force. Likewise, the Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008). Lastly, 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.

Dr. James Blankenship has recommended a course of treatment for Claimant designed to correct what he describes as a “slight loss of normal cervical lordosis.” Cervical lordosis means the cervical spine has a slightly unnatural curvature.¹ There is nothing in the record to indicate that Claimant’s slightly unnatural neck curvature is anyway related to her workplace incident (as opposed to the other common causes of cervical lordosis, *e.g.*, poor posture, obesity, osteoporosis, degenerative disc disease, and spondylolisthesis²).

In fact, Dr. Blankenship is not even sure this “slight” unnatural curvature is causing Claimant’s subjective complaints of pain. Dr. Blankenship writes, “**I think her facets are likely** the primary etiology with significant myofascial pain.” The treatment that he recommends she receive is, among other things, facet injections but he “cannot really guide [the doctor he recommends provide those injections] as far as what facets based on MRI or x-rays.”

It was Claimant’s burden to prove that the recommended treatment was reasonable and necessary *in connection with her workplace injury*.

1 Laura Lippa, Luciano Lippa, Francesco Cacciola, *Loss of cervical lordosis: What is the prognosis?* 8 *Journal of Craniovertebral Junction and Spine* 1, Jan. to Mar. 2017 (available online at www.ncbi.nlm.nih.gov/pmc/articles/PMC5324370/).

2 *Common Causes of Cervical Lordosis*, The Southwest Scoliosis Institute, Feb. 9, 2021 (<https://scoliosisinstitute.com/cervical-lordosis-treatment/>).

Given that Dr. Blankenship is not sure that the recommended treatment will improve Claimant's slight condition, which requires speculation to even find was caused by her workplace injury, I must respectfully dissent from the majority.

CHRISTOPHER L. PALMER, Commissioner