

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H105119**

NORMA R. PACE, EMPLOYEE	CLAIMANT
NIDEC MOTOR CORPORATION, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED **DECEMBER 16, 2021**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 22, 2021, the above captioned claim came before the Workers' Compensation Commission in Fort Smith, Arkansas, for a hearing. A prehearing conference was conducted on September 9, 2021, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1 and was made part of the record without objection.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed at all relevant times including February 6, 2020, and February 13, 2020.
3. The compensation rate is \$397.00 for temporary total disability.
4. Claimant suffered a compensable injury to her neck on February 6, 2020.
5. Claimant received temporary total disability benefits until May 5, 2021, after which time no additional temporary total disability benefits have been paid.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether claimant is entitled to additional temporary total disability after May 6, 2021.
2. Attorney fees.

All other issues are reserved.

The claimant contends that “she has continued to be entitled to temporary total disability benefits until a date yet to be determined.”

The respondents contend that “following the claimant’s neck injury she continued to work and did not miss any time. The claimant had CTS surgery and was taken off work. Claimant was paid temporary total disability benefits through May 5, 2021, until her release. The claimant has not been taken off work since then. Respondents are continuing to pay for any related medical treatment at this time.”

The above stipulations are hereby accepted as fact. From a review of the record as a whole to include medical reports, documents, and having heard testimony and observed demeanor of all witnesses, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the prehearing conference conducted on September 9, 2021 and contained in the Prehearing Order filed the same date, as well as the announced stipulations at the hearing on October 22, 2021, are hereby accepted as fact.
2. Claimant has met her burden of proof by a preponderance of evidence that she is entitled to temporary total disability benefits from May 6, 2021 until a date to be determined.
3. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

Although the Prehearing Order lists two case numbers, only H105119 was litigated at this hearing. Claimant has a second open claim, H009646, which involves a bilateral carpal tunnel injury that respondents accepted as compensable, and for which the parties agreed that all appropriate medical and indemnity benefits have been timely paid (TR. 3-4). This second claim is tangentially relevant to the controverted claim, because claimant's temporary total disability benefits ceased when she was released from care from her surgeon for the carpal tunnel injury. (TR. 25)

HEARING TESTIMONY

Claimant was the only witness called by either party. Claimant testified that she was 62 years old and had a history of difficulties with her neck, including a fusion surgery in 2017. However, claimant said she had no problems with her neck after she recovered from that surgery.

Claimant began working for respondent Nidec in January 2019 as a motor tester. She inspected motors that weighed anywhere from four hundred to a thousand pounds. In February 2020, claimant said that she released a lock on a motor and while she was attempting to move it, it locked again. She pulled it very hard because it was heavy, and something popped in the back of her neck. Claimant experienced a sharp pain in her neck and part of her shoulder, which caused a bad headache that started in her neck and radiated to the front of her head. Claimant testified that this was unlike the problems she had had before. Claimant continued working for about a week until the safety manager advised her to go see a doctor.

Claimant first saw Lori Fortner, APRN at Mena Medical Associates. Claimant's testimony at this point is hard to follow because she continued to interrupt her attorney, but eventually it became clear she was saying that she was given restrictions from Ms. Fortner on November 18, 2020. She

had not worked since that date because respondent Nidec did not have any work available within her restrictions.

Claimant testified that she had seen several other physicians and the records from those doctors will be reviewed below. Claimant did say that none of the doctors had modified the restrictions on her employment activities as set forth by Mena Medical Associates. Claimant said her physical limitations at the time of the hearing included not being able to lift more than five or ten pounds, dropping things, experiencing headaches, and seeing spots in front of her eyes. She sometimes could not move her neck; “There is popping, there is just crunching noises in there. It gets stuck.” She said at home she could not load the dishwasher or take clothes out of the washing machine. Claimant thought she might be able to carry a gallon of milk in each hand. Claimant was waiting for a consultation with a neurologist at the time of the hearing. When asked if she could return to the job she had at respondent Nidec, claimant said that she could not, and she believed that her condition at the time of the hearing was worse than it was in 2020 when she was put on restrictive duty.

On cross examination, claimant gave her vocational background as having run a bakery, a deli, two grocery stores, a shoe store, and a furniture store, where she was involved in hiring and firing employees, managing inventory, handling payroll and deposits. Claimant also said that she had driven a bus and was a truck driver for a period of time. She had managed an office and a warehouse for an electrical company, did line work at Tysons and was a quality assurance supervisor at Pilgrim’s Pride before taking the job at Nidec in January 2019.

Claimant related that she had had two prior work injuries, the first being when she injured her left knee while a bus driver and later at Tysons when she tore an ACL and had to have her right knee reconstructed. She had a back fusion the year before her neck fusion, but neither of those surgeries were job related.

Unrelated to her neck injury, claimant also had a compensable carpal tunnel injury while working for respondent Nidec. The surgeries were performed by Dr. Brad Thomas in February and March of 2021, and she was released from care regarding the carpal tunnel in May 2021. At that point, claimant's temporary total disability benefits ceased. Claimant said that a June 23, 2021 letter from Ms. Fortner was written at her request. This letter as well as the November 18, 2020 return to work note will be discussed as part of the review of the medical records.

Claimant explained again what happened on February 6, 2020. She said she felt a pop and told her supervisor, who got her some ice and then she later talked to the safety manager, Aaron Exley. Claimant continued to work but she was eventually urged by Mr. Exley to go see a physician. In November 2020, restrictions were placed on claimant that limited her activities to a point that respondent Nidec had no work for her to do.

REVIEW OF THE MEDICAL RECORDS

Counsel for the parties eliminated many of the duplicate records. What follows is a chronological review of those records submitted by claimant and respondent, which were introduced without objection from either party.

February 12, 2020: The earliest record was from Mena Regional Health System where claimant was examined by Stacey Scott, APRN. Ms. Scott noted under clinical impression that claimant had acute neck pain and believed that there was a muscle strain in the neck and shoulders. (R.X.9-11) While at the Mena Regional Hospital, claimant underwent an x-ray of her cervical spine. Dr. Jonathan Welch recorded this impression:

1. Status post anterior cervical fusion at C5-C7.
2. Grade one anterior subluxation of C4 on C5.
3. Mild degenerative disease on C4-5.
4. Straightening of the cervical lordosis which can be seen in muscular spasm. Correlate clinically. (R.X.7-8)

February 18, 2020: Claimant was seen at Mena Medical Associates by Lori Fortner, APRN. Ms. Fortner had the cervical spine series of x-rays from February 12, 2020, and following that visit, requested authorization for an MRI to be performed. (R.X.1-4)

February 24, 2020: an MRI on claimant's cervical spine without contrast was performed at Mena Medical Associates. The impression following that procedure was:

1. Post anterior cervical fusion changes at C5-C7.
2. Grade one anterolisthesis of C4 on C5.
3. Grade one retrolisthesis of C6 on C7.
4. Posterior disc herniation at C4-5 which abuts and indents the ventral aspect of the spinal cord, causing central spinal canal narrowing the 9mm.
5. Posterior osteophyte and grade one retrolisthesis at C6-C7 causes mild ventral spinal cord flattening and narrowing of the central spinal canal to 8-9mm. (R.X.5-6)

March 25, 2020: Claimant was sent to Dr. James Arthur at Saint Vincent Clinic, but saw his physicians' assistant, Mary Abernathy. Ms. Abernathy added Gabapentin and MethylPREDNISolone to claimant's existing medicines and referred her to physical therapy. (CL.X.8-12)

March 26, 2020: Claimant returned to Mena Medical Associates to see Ms. Fortner on what appears to be a regularly scheduled follow up visit. In the history of the present illness, Ms. Fortner recorded that claimant was to do physical therapy, but there was nothing in her note that made the referral to physical therapy. (CL.X.13-15) (This is consistent with claimant's testimony that Dr. Arthur was going to set up the physical therapy but never did so.) (TR.17)

May 11, 2020: Claimant returned to see Ms. Fortner at Mena Medical Associates. In the history of the present illness, Ms. Fortner records that claimant "states the original neurology was fired," and it does not appear that Ms. Fortner offered any treatment to claimant at this visit. (CL.X.16-18)

June 3, 2020: The physical therapy initial evaluation/plan of care was completed on this date. While neither party submitted a record from Dr. Brad Thomas from the May 20, 2020 visit, he was the referring physician for this evaluation and the date of the referral is May 20, 2020. (R.X.12-15)

July 29, 2020: Claimant underwent a CT of her cervical spine with dye. The findings were unremarkable except at C4-5, “moderate bilateral facet arthropathy. Mild disc bulge. Grade one anterolisthesis of C4 on C5” with the impression “intrabody infusion hardware in place at C5-C6 and C6-C7. No canal or neuroforaminal stenosis identified throughout the cervical spine.” (R.X.16-17)

September 16, 2020: Claimant returned to see Dr. Brad Thomas at Little Rock Neurosurgery. This record makes a reference to an evaluation of August 12, 2020, which was not included in the medical records submitted by the parties. On that same day, claimant was sent to Dr. Brent Sprinkle for an EMG test to determine whether claimant’s problem with her neck was causing “arm pain with numbness and tingling in both hands primarily in lateral digits.” (R.X.22) Dr. Sprinkle’s interpretation was “no neuroelectric diagnostic evidence of a cervical radiculopathy, brachial plexopathy, peripheral neuropathy or focal ulnar nerve entrapment seen in the extremity tested today. Diagnostic evidence of a focal median neuropathy in the wrist is seen on the left and right of moderate degree.” Dr. Thomas then reviewed the EMG results with claimant and said “there is no surgery recommended for her neck and headaches. We recommend her to see neurology for her headaches.” Dr. Brad Thomas recorded under the plan: “refer to Dr. Thomas (neurology) in Hot Springs for chronic headaches. We discussed the need to see another medical specialist to assist in the current diagnosis’ treatment. The patient was advised to call the office of the specialist to set up an appointment for consultation. Delay in this may lead to poor outcomes.” (R.X.21) (As we were concluding the hearing on October 22, 2021, the parties advised that claimant had an appointment scheduled with Dr. James Thomas, a neurologist in Hot Springs, which respondents were accepting as compensable.) (TR.6,35)

September 23, 2020: Claimant returned to Mena Medical Associates where she was seen by Hailee E. Weatherford, APRN. In the plan, Ms. Weatherford mentions that claimant had been referred to a neurologist (R.X.26) and Ms. Weatherford prescribed therapeutic injections of Tramadol,

Decadron, and Depomedrol. (R.X.26)

November 18, 2020: Ms. Fortner completed “return to work” forms regarding claimant’s neck and wrist injuries. She said that claimant could not return to full duty, and it was to be determined when she would be able to do so. Regarding the restrictions for claimant’s neck, Ms. Fortner recorded “avoid pushing or pulling weight greater than ten pounds. Frequent breaks, fifteen minutes every two hours. Headaches associated with cervical neck injury dating back to 2-6-2020.” In the section regarding the diagnosis, Ms. Fortner recorded “cervical neck pain associated with degenerative disc disease/disc herniation/headaches (tension). The form completed with an affirmative answer to the question “Do you feel the employee’s job duties contributed to this diagnosis?” (R.X.33).

On the same day, another form was completed by someone at Mena Medical Associates that said “Norma Pace was examined and treated in our clinic on 11-18-20...may resume full workload effective 11-20-2020” with Lori Fortner’s name typed at the bottom of that form. (R.X.35) When this was brought to Ms. Fortner’s attention on June 23, 2021, she unequivocally stated that “a mistake was made by a front office staff member when writing a work note that the patient could return to a full workload. I did not see this letter or sign it. I had already signed the restriction letters for patient to bring back to the safety director’s office. I apologize for the confusion, but this patient should not have had a letter to return to work.”

January 26, 2021: Claimant was seen at University of Arkansas for Medical Sciences by Dr. Syed F. Ali in the neurology clinic. Other than changing claimant’s medicine and a “referral to IP,” it does not appear Dr. Ali did anything noteworthy for claimant’s condition.

February 1, 2021: Claimant returned to Mena Medical Associates to see Ms. Fortner. Claimant’s medication for the cervical pain was refilled.

March 10, 2021: Claimant was seen by Dr. Jarna Shah, and was scheduled for a medial nerve

branch block.

March 17, 2021: Dr. Gregory Smith did a medial nerve block procedure to the right C2-C4 which was tolerated well. In a follow up call on March 18, 2021, claimant reported that she had a decrease in pain, and that she felt the best she had since February 2020.

March 24, 2021: Another medial nerve branch block was performed without incident.

March 25, 2021: Claimant underwent surgery on her right wrist, having had the left wrist done earlier in the year.

May 4, 2021: Claimant returned to Dr. Ali reporting that she had received the injections “and they burned her nerves but didn’t help much either.” Dr. Ali referred her back to Dr. Bradley Thomas.

June 2, 2021: Dr. Brad Thomas said that he had sent her to neurology at UAMS to address her problems with continued headaches, but was happy to see her again when she was referred back to him. He recommended a new MRI be performed, but there is nothing in the records to indicate that such has been done.

ADJUDICATION

As recited above, the only issues to be decided is if claimant is entitled to temporary total disability (TTD) benefits from May 6, 2021 to a date to be determined, and if so, if she is also entitled to an award of an attorney’s fee. Temporary total disability for unscheduled injuries is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *Smallwood v. Ark. Dep’t of Human Servs.*, 2010 Ark. App. 466, 375 S.W.3d 747; *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). The healing period is that period for healing of an accidental injury that continues until an employee is as far restored as the permanent character of his injury will permit, and the healing period ends when the underlying condition causing the disability has become stable and nothing in the way of treatment will improve the condition. *Smallwood*, supra.

Although a claimant's testimony is never viewed as uncontroverted, the Commission need not reject the claimant's testimony if it finds that testimony worthy of belief. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Despite claimant's repeated interruption of the attorneys to answer a question being asked before it was finished, I found she was a credible, if somewhat anxious, witness; what she said was consistent with what was contained in the medical records.

Claimant's neck injury occurred on February 6, 2020, but she did not stop working for respondent Nidec until November 18, 2020, when she was given a restriction for both her neck and her wrists. At that time, respondent Nidec did not have any jobs that fit those restrictions, and claimant was placed on TTD. Claimant continued to see physicians for her neck injury while treating for carpal tunnel during the first few months of 2021. After she was released from care following the surgeries on her wrists, claimant was sent back to Dr. Brad Thomas and at the time of the hearing, was waiting for an appointment to see Dr. James Thomas to address the issue with her cervical spine. Nothing in the records indicate that claimant has been "restored as the permanent character of her injury will permit." No doctor has released her from care as fully recovered or with a permanent impairment rating; none have even hinted at malingering. As far as I could tell from the records, the November 18, 2020 restrictions on claimant's neck have not been lifted.

I recognize the "To whom it may concern" note (R.X. 35) that was issued in error might have caused some confusion before it was declared invalid by Ms. Fortner on June 23, 2021. There is no reason it should have been relied upon after June 23, 2021.

While claimant recited a number of jobs she has held in her work history, I was not provided with any information as to the exertional limits on any of those prior employments, and thus cannot say she would be able to return to any of that type of work with the restrictions she now has. Based on the record before me, I find claimant has not yet been released from treatment for her neck and is

still in her healing period. As such, she is entitled to temporary total disability benefits from May 6, 2021, and her attorney is entitled to a fee on those benefits.

ORDER

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the claimant.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$ 435.00.

All issues not addressed herein are expressly reserved under the Act.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE