

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H003228

KIMBERLY PARKER, Employee	CLAIMANT
NIDEC MOTOR CORP., Employer	RESPONDENT
TRAVELERS INDEMNITY CO., Carrier	RESPONDENT

OPINION FILED NOVEMBER 7, 2023

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by DAVID L. SCHNEIDER, Attorney at Law, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On August 10, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on May 8, 2023, and a Pre-hearing Order was filed on May 9, 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 October 2, 2019.
3. The claimant sustained a compensable right shoulder injury on or about October 2, 2019.
4. The respondents have controverted the claimant's alleged neck injury on or about October 2, 2019.

5. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$571.00 for temporary total disability benefits and \$428.00 for permanent partial disability benefits.

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

1. Whether Claimant sustained a compensable injury to her neck on or about October 2, 2019.
2. Whether Claimant is entitled to medical treatment for her neck injury as recommended by Dr. Garlow.
3. Whether Claimant is entitled to additional medical treatment for her shoulder injury.
4. Whether Claimant is entitled to reimbursement for out-of-pocket medical expenses regarding both her neck and right shoulder injuries.
5. Whether Claimant is entitled for temporary total disability benefits from March 3, 2021, to a date yet to be determined.
6. Whether Claimant's attorney is entitled to an attorney fee.

Claimant's contentions are:

“Claimant sustained an admittedly compensable injury to her right shoulder while working for Respondent on or about 10/02/19 while lifting a heavy coil. At the time of the injury, Claimant was acting in the course and scope of her employment with respondent. The Claimant also contends that in the same lifting accident on 10/02/19 when she sustained her right shoulder injury, she also suffered an injury to her neck. Respondents have provided Claimant certain medical benefits, including injections, therapy, medications, and surgery. Because Claimant continued to suffer pain in her right shoulder and neck, she requested an obtained a change of physician to Dr. Garlow on 5/10/21. When the Claimant saw Dr. Garlow pursuant to that change, he performed an injection into her right shoulder. Dr. Garlow also indicated some of her pain and related symptoms were coming from her neck. An MRI and physical therapy for her neck was recommended by Dr. Garlow,

but was denied by the Respondents. Dr. Fortner, another physician seen by the Claimant, issued work restrictions on March 3, 2021.

Since that time, Respondents have not offered the Claimant a return to work or tendered TTD benefits. Claimant recently saw Dr. Garlow at her own expense. He directed her to undergo a cervical MRI and referred her to physical therapy and a neurosurgical consult. The respondents should be found liable for all medical expenses arising from Dr. Garlow and his referrals, as well as any other medical care she had received from other authorized physicians.”

Respondents’ contentions are:

“Respondents contend that the claimant did not sustain a compensable injury to her neck in the course and scope of employment. Claimant was provided work within any restrictions related to her compensable shoulder injury. Claimant’s neck complaints are not work related and instead are the result of a pre-existing condition(s) for which the respondents are not responsible.”

The claimant in this matter is a 51-year-old female who sustained an admittedly compensable right shoulder injury on October 2, 2019. The claimant was employed by the respondent to test electrical coils and then while seated, move the electrical coils from a testing area in front of her to a table behind her. In her direct examination testimony, the claimant describes her work on October 2, 2019, when she suffered an admittedly compensable right shoulder injury as follows:

Q On that particular day, what kind of coils were you working with?

A The large ten-pound coils. I would test like four and then pick those four up, which would be about 40 pounds, and move them to the table behind me which would go over my head or to the table to the left if they were bad.

Q Did you remain seated the entire time?

A Yes, sir.

Q So what movement did you make?

A You pick them up, raise them above your head, slightly turn and set them down.

Q And were these coils on some kind of a tray or a crate or something when you pick them up?

A A table like you are sitting in front of. There was a table there, a table to the left, and a table behind.

Q So there is a table –

A To the left.

Q -- that is roughly about like four feet by three feet, something like that, five feet?

A Yes, sir.

Q And what kind of container were the coils in?

A They were just laying on top of the table.

Q Okay.

A They just sat on the table. You hooked them up with electrical, electrodes, and then you would pick them up and move them to the tables.

Q So you said you were moving four. How did you pick up four coils?

A I grab them with my hand and pick them up and go like this behind me (indicating), and they were 40 pounds and they went over. And that is how I got hurt. It popped my neck and my shoulder.

Q And when you picked them up and moved them, what kind of motion did you make? Did your chair rotate?

A Yes. Like I am sitting in now, I pick them up. I slightly turn to put them behind me (indicating).

Q Now, you are showing us a reaching motion across your body?

A Yes. You pick them up and over.

Q So you had your hands in front of you. You picked them up.

A Pick them up.

Q You swivel slightly.

A And then you go over.

Q Is that a motion in your shoulder?

A To the table behind you, yes.

Q So you picked the coils up, you would move them across your body, and reach and set them on the table behind you?

A Yes, sir.

The claimant currently alleges that she also sustained a compensable neck injury at the time of her admittedly compensable right shoulder injury. The claimant gave direct examination testimony about how she alleges her neck injury to have occurred as follows:

Q Describe what happened.

A I reached the coils – the four coils in front were ripe. I picked them up. I slightly turned. I went to put them over behind me. They were heavier and they went past. They went past me and popped my shoulder and my neck (indicating).

Q When you said went past you, you are showing a motion where you are reaching over your shoulder?

A Yes. When I turned to put them on the table, they just kept going.

Q What happened next?

A I got ahold of my supervisor. He came over. I got an ice pack. I got medicine.

Q Let me back up just a little bit.

When you put these particular coils over on this table, what sensations did you have?

A I had a burning, a numbing, and a radiating pain down to my fingers.

Q Did you hear any popping or cracking?

A The pop of my neck and my shoulder, yes, sir.

Q What physical sensations did you have at that time?

A Like I said, there was a burning. There was a numbing. The radiating pain that went down my hand from my elbow to my fingers. I had sharp, stabbing pains that would shoot from my neck down to my shoulder to my elbow, just all the way down.

Q What did you do after that?

A I got ahold of my supervisor.

It was the claimant's testimony that she was provided an ice pack and moved to a position where she did not have to move or lift the electrical coils, only test them. The claimant did not seek or request any medical treatment at that time. In fact, the claimant continued to work for the respondent.

The claimant first sought medical treatment on May 12, 2020, some 223 days after the incident she described in direct testimony. The claimant was seen at Mena Regional Health System by APRN Stacy Scott at that time. Following is a portion of that medical record:

HPI:

New/Follow-up Patient Consult:

Joint pain

The joint pain Since last October. Pt was at work and lifted coils that was heavy and has had problems since. Pain getting worse.

The severity of the joint pain is variable

The character of the pain is sharp

Aggravating factors include increased exertion, overuse, recent injury

Alleviating factors include aleve, ibuprofen

Associated factors include joint pain, joint stiffness, muscle pain

Pt states she recalls moving a heavy coil on October 2nd and feeling immediate pain in her right shoulder. She states it has hurt since that time. She has not seen anyone for this injury. She states she was off work for 2 weeks due to COVID-19 precautions and she didn't have any shoulder pain during that time. Now that she has returned to work, the pain has returned and is worsening.

The claimant was assessed with acute pain of the right shoulder and prescribed Meloxicam.

There is no mention in the medical record of the claimant's allegation or complaints of neck difficulties.

The claimant continued to treat for her admittedly compensable right shoulder injury without mention of her alleged neck injury. On May 27, 2020, the claimant underwent an MRI of the right shoulder. Following is a portion of that diagnostic report:

IMPRESSION:

1. Acromioclavicular joint degenerative joint disease as above with intraarticular and periarticular inflammatory changes as well as subarticular bone marrow edema.
2. Inferior prominence of the acromioclavicular joint which deforms the superior contour of the distal supraspinatus tendon. Correlate for possible impingement symptoms.

After the claimant's MRI of the right shoulder, she began to treat with Dr. Carl Cordell at CHI St. Vincent's in Hot Springs on June 11, 2020. Following is a portion of the claimant's medical record from her June 11, 2020, visit:

Chief Complaint:
Patient presents with
Shoulder pain – right

History of Present Illness: Kimberly F. Parker is a 48 y.o. right hand dominant female here for evaluation of her right shoulder pain. The patient reports pain in the right shoulder for 9 months. This was the result of an injury. The date of injury was 10-2-19 while lifting coils at work and felt shoulder pop. She works at NIDEC. The patient has not had previous surgery on the shoulder. The pain is in the superior, anterior, lateral and posterior aspect of

the shoulder. The patient reports pain at night. The pain is described as constant, sharp, aching, stabbing and throbbing. The intensity is 10/10. The patient does have weakness. The patient has swelling, popping, catching, stiffness and instability. The patient has not had physical therapy. The patient has taken medication for the shoulder; ibuprofen, Mobic and Norco. The patient has not had a steroid injection into the shoulder. The patient reports neck pain. The patient reports numbness in the upper extremity; it is in the right hand. The patient has had an MRI of the shoulder. The patient does have pain with ADLs. Pain is increased or provoked by using arm. Pain is alleviated by not using arm. She is wearing a sling.

Neck: Normal appearance/symmetry.
Cervical motion normal.
Spurling's test negative.

From that record it is clear the claimant told Dr. Cordell about the incident on October 2, 2019, where she "felt shoulder pop." There is only silence in the record regarding the neck pop she testified to have also occurred at the hearing in this matter.

The claimant continued to treat conservatively for her right shoulder with Dr. Cordell until September 30, 2020, when she underwent surgical intervention. Following is a portion of Dr. Cordell's operative report:

Pre-operative Diagnosis:

1. Right shoulder pain
2. Right partial rotator cuff tear
3. Right impingement syndrome
4. Right RTC syndrome

Post-operative Diagnosis:

1. Right shoulder pain
2. Right small partial rotator cuff tear
3. Right impingement syndrome
4. Right RTC tendinosis
5. Right degenerative labral tear

Procedure Performed:

1. Right arthroscopic sub-acromial decompression
2. Right debridement of the glenohumeral joint, extensive

On February 23, 2021, the claimant had her final postoperative visit with Dr. Cordell.

Following is a portion of that medical record:

CHIEF COMPLAINT: The patient is here for the final post-op visit after a right SAD and debridement. The date of surgery was 9-30-2020.

SUBJECTIVE: Kimberly F. Parker is here for a final postoperative visit for a right SAD and debridement. The patient has pain posteriorly and around the scapula. The patient has completed phase III therapy. She has intermittent pain. This is medial border of scapula.

ASSESSMENT:

1. Right shoulder pain
2. Right small partial rotator cuff tear
3. Right impingement syndrome
4. Right RTC tendinosis
5. Right degenerative labral tear

TREATMENT AND PLAN: The patient will continue home strengthening exercises. Her scapular pain may be related to c spine pathology. If she has any problems or concerns with her shoulder, she may return. She is at MMI with no impairment.

On March 3, 2021, the claimant is seen by APRN Lori Fortner at Mena Medical

Associates. Following is a portion of that medical record:

History of Present Illness

New/Follow-up Patient Consult:

Joint pain

The joint pain October 2019

The joint pain is located in the right side of the neck, in the right shoulder

The severity of the joint pain is severe

The character of the pain is sharp and numbness sensation

Aggravating factors include increased exertion, overuse, recent injury recent surgery

Alleviating factors include None

Associated factors include joint pain, joint stiffness, muscle pain

Medication(s) for joint pain include narco Meloxicam, Oxycodone

Overall condition is worsening

Where did injury occur work

Ms. Parker is here today for a f/u on right shoulder pain. She initially hurt her right shoulder at work by trying to move a coil. She was given Hydrocodone and Meloxicam for the pain. She was referred to Dr. Cordell and was given Oxycodone 10-325 #60 for 15 days and was last filled 10/01/2020. Hydrocodone was last filled 05/28/2020 and was given #28 for 7 days. Ms. Parker had surgery on the right shoulder on 09/2020 and was told that the pain might be more in the neck that is radiating down into the shoulder. She went to PT and was told that it would take time but she had not had any improvement.

Assessments

1. Acute pain of right shoulder – M25.511 (Primary)
2. Cervical pain (neck) – M54.2
3. Radicular pain in right arm – M79.2

Treatment

1. Acute pain of right shoulder
Start Meloxicam Tablet, 15 MG, Orally, Once a day, 30 day(s), 30, Refills 5
Start Hydrocodone-Acetaminophen Tablet, 7.5-325 MG, 1 tablet as needed, Orally, every 6 hrs prn severe pain, 7 days, 28 Tablets, Refills 0

Start Gabapentin Capsule, 100 MG, 1 capsule, Orally, Once a day, 30 day(s), 90, Refills 5

IMAGING: MRI SHOULDER RIGHT

Notes:

pmp reviewed

er/urgent care prn

failure to improve with trigger point injection, shoulder surgery, nsaid, and physical therapy

recommend further radiographic diagnostics

consider EMG/NCS for nerve symptoms

rtc in 2 weeks or sooner prn new/worsening symptoms

2. Cervical pain (neck)

IMAGING: SPINE/CERVICAL W FEX/EXT

IMAGING: SPINE/CERVICAL AP & LAT

There is mention of neck pain in this medical report. However, the record still fails to reflect the pop associated with her neck the claimant claims to have occurred on October 2, 2019. Just a few days prior to the claimant's March 3, 2021, visit with APRN Fortner, the claimant completed a

Form AR-N, which is found at Respondent's Exhibit 2, page 1. That AR-N is signed by the claimant and dated February 26, 2021. That form only indicates a right shoulder injury on October 2, 2019. This form, filled out and signed by the claimant 513 days removed from her alleged neck injury, does not include any reference to claimant's neck.

On March 22, 2021, the claimant underwent a second MRI of the right shoulder at Mena Regional Health Systems. Following is a portion of that diagnostic report:

IMPRESSION:

1. Acromioclavicular joint degenerative joint disease with intraarticular inflammatory changes.
2. Evidence of bursitis.

The claimant saw Dr. Timothy Garlow at Mercy Clinic Orthopedic in Fort Smith on May 10, 2021. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS: The patient is a 49-year-old female, in to see me today for her right shoulder. There had been an injury at work, for which she was treated by Carl Cordell, MD in Hot Springs. She reports that she failed physical therapy, she failed injections. She had an MRI showing just AC joint changes. She underwent an arthroscopic procedure. I do not have the op note, though it sounds like she had a SAD and a DCR. She says since that time, her motions maybe gotten better, though her pain is really the same. She reports a lot of pain into the trapezlua musculature in between the shoulder blades. She has periodic numbness and tingling down the arm. She says that she has numbness across where her bra strap should be in the back. She has had an MRI after her surgery.

The patient's past medical, surgical history, as well as current medications, allergies, family history, social history, review of systems, all reviewed and up-to-date in the patient questionnaire.

ASSESSMENT AND PLAN: A 49-year-old female, failed right shoulder treatments including surgery, injections, therapy, and anti-inflammatories. I think a lot of this is periscapular pain related to her underlying cervical issues. We are going to work this up with an MRI of her neck. I am going to start her on some physical therapy for her neck as well. There is a component of this, has

some bursitis type symptoms. We are going to try an injection into the shoulder. She consents to this under sterile conditions that right shoulder injected with 3 mL of lidocaine and 10 mg of Kenalog and she tolerated that well. We will see her back.

The claimant was again seen by Dr. Garlow on January 16, 2023. Following is a portion of that medical report:

HISTORY OF PRESENT ILLNESS: Ms. Parker is a patient, whom I have not seen since May of 2021. She had an injury at work, treated in Hot Springs with Dr. Carl Cordell. She had a scope procedure, sounds like this is a SAD and DCR. When I saw her in clinic, I had seen that she is having a lot of cervical-type issues. We had tried to get an MRI of her neck, at that time we can get her started on some therapy, though she says because of work comp issues none of that ever happened. She is still having quite a bit of pain. Let us see what else can be done.

IMAGING: Updated x-rays of the cervical spine obtained and reviewed today. She has phyte formation around C5-C6 and even some calcifications, that look like immature bridging osteophyte there. I do not appreciate any fractures, acute or remote. No lesions in the soft tissue or bone.

ASSESSMENT AND PLAN: A 50-year-old female, chronic cervical pain with radiculopathy. I discussed all this with her as well as treatment options. I think she would benefit from some physical therapy on the neck. I think that given the chronicity of her symptoms now the development of radicular-type symptoms that an MRI of the cervical spine also makes sense. I discussed with her that ultimately I am not a spine surgeon, we may have to hand her off to somebody who handles neck injuries.

On February 3, 2023, the claimant underwent an MRI of the cervical spine at Mercy Hospital Fort Smith. Following is a portion of that diagnostic report authored by Dr. David Diment:

IMPRESSION:

Multilevel mild degenerative change as above with small left lateral disc protrusion C5-6 with left foraminal stenosis, some posterior lateral uncinat spurting and bulge or small protrusions

C6-7 slightly more than left with some foraminal stenosis more on the left. No large disc herniation or canal stenosis.

It is the claimant's burden to prove that she sustained a compensable injury to her neck or cervical spine on or about October 2, 2019. The claimant can establish objective medical findings of derangement in her cervical spine through her February 3, 2023, cervical spine MRI. However, the claimant must also prove a causal connection between those objective medical findings and the October 2, 2019, incident when she alleges her neck "pop." The claimant testified that she told medical providers about her neck difficulties and there are some minimal mentions of neck pain, but as late as February 26, 2021, when the claimant completed and signed a Form AR-N, she only alleged a right shoulder injury. The remoteness in time some 513 days after her alleged injury and still the claimant does not claim a neck injury on an "Employee Notice of Injury" form is remarkable. The claimant's medical records never once make mention of the pop in her neck she testified at the hearing to have experienced on October 2, 2019, even though medical records do reference the pop in her right shoulder on October 2, 2019. The claimant is unable to prove a causal connection between her alleged October 2, 2019, neck incident and her objective findings of derangement in her cervical spine. As such, the claimant is unable to prove that she sustained a compensable neck injury on or about October 2, 2019.

The claimant has asked the Commission to determine if she is entitled to medical treatment for her neck. As the claimant has failed to prove her neck injury compensable, the claimant is not entitled to medical treatment regarding her neck.

The claimant has asked the Commission to determine if she is entitled to additional medical treatment for her compensable right shoulder injury. The claimant last saw Dr. Garlow on January 16, 2023. At that time, Dr. Garlow did not recommend any treatment for the claimant's right shoulder, but instead, he directed treatment for her neck. As Dr. Garlow did not

recommend any right shoulder treatment, the claimant is unable to prove her entitlement to any additional right shoulder treatment.

The claimant has asked the Commission to determine whether she is entitled to reimbursement for out-of-pocket medical expenses regarding her neck and right shoulder injuries. The claimant has failed to prove her neck injury compensable. As such, she is not entitled to any medical expenses. It appears that Dr. Garlow's treatment was in regard to the claimant's neck, not particularly her right shoulder. It is the claimant's burden to prove her entitlement to any reimbursement for medical expenses and she has failed to do so. The claimant's last visit with Dr. Garlow recommended no treatment for her right shoulder, only her neck.

The claimant has asked the Commission to determine if she is entitled to temporary total disability benefits from March 3, 2021, to a date yet to be determined. On March 3, 2021, APRN Fortner, who is not a medical doctor as set out in the claimant's contentions and testimony, did remove the claimant from full duty by restricting use of the claimant's right arm. In that restricted duty note, found at Claimant's Exhibit 1, page 52, under the Diagnosis section, it states:

Right shoulder pain/radicular pain RUE neck vs shoulder pending review of neck x-ray and shoulder MRI to determine further limitations.

The claimant then had a right shoulder MRI on March 22, 2021, of which the results did not show the claimant to have reentered a healing period from her release by Dr. Cordell on February 23, 2021. In fact, treatment then begins to move to the claimant's neck, which she failed to prove to be compensable. In Dr. Garlow's last visit with the claimant on January 16, 2023, he does not recommend any treatment for the claimant's compensable right shoulder

injury. Instead, he recommends treatment for the claimant's neck difficulties. The claimant is unable to prove her entitlement to temporary total disability benefits from March 3, 2021, to a date yet to be determined, as the claimant was not in, nor did she reenter her healing period in regards to her compensable right shoulder injury.

The claimant has asked the Commission to determine if her attorney is entitled to an attorney's fee in this matter. As the claimant has not proven her entitlement to any indemnity benefits, the claimant's attorney is not entitled to any attorney fee.

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 May 8, 2023, and contained in a Pre-hearing Order filed May 9, 2023, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her neck on or about October 2, 2019.

3. The claimant has failed to prove by a preponderance of the evidence her entitlement to medical treatment for her alleged neck injury.

4. The claimant has failed to prove her entitlement to additional medical treatment for her compensable right shoulder injury.

5. The claimant has failed to prove her entitlement to reimbursement for out-of-pocket medical expenses regarding both her alleged neck injury and her admittedly compensable right shoulder injury.

6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits from March 3, 2021, to a date yet to be determined.

7. The claimant has failed to prove by a preponderance of the evidence that her attorney is entitled to an attorney's fee.

ORDER

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.

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

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**