

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H202890

MARION PEDERSON, Employee	CLAIMANT
OPTUM CARE, INC., Employer	RESPONDENT
FARMINGTON CASUALTY/SEDGWICK CLAIMS, Carrier	RESPONDENT

OPINION FILED NOVEMBER 20, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by LAURA BETH YORK, Attorney, Little Rock, Arkansas.

Respondents represented by RANDY P. MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 30, 2024, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 26, 2024 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The claimant sustained a compensable injury to her right hip, low back, and cervical/neck.

At the time of the hearing the parties agreed to stipulate that claimant earned sufficient wages to entitle her to compensation at the weekly rates of \$356.00 for total

disability benefits and \$267.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to permanent partial disability benefits.
2. Attorney's fee.

The claimant contends that as a result of her compensable injury of April 4, 2022, she is entitled to permanent partial disability benefits and an attorney's fee. Claimant reserves all other issues.

The respondents contend the claimant has reached maximum medical improvement and that any additional treatment is not related to the compensable injury.

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 a pre-hearing conference conducted on June 26, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant earned sufficient wages to entitle her to compensation at the rates of \$356.00 for total disability benefits and \$267.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to payment of permanent partial disability benefits in an amount equal

to 7% to the body as a whole as a result of her compensable cervical injury.

4. Respondent has controverted claimant's entitlement to permanent partial disability benefits in the amount of 7% to the body as a whole.

FACTUAL BACKGROUND

The claimant is a 73-year-old woman with a radiology certification who has worked for various health providers over the years. In 2006 she was hired as the Director of Imaging for Washington Regional Medical Center and held that position until she retired in 2014. After not working for six years, claimant began working parttime for respondent in 2020 as a radiologic technologist performing x-rays; lab work; triage; patient assessment; et cetera.

The parties have stipulated that claimant suffered a compensable injury to her right hip, low back, and cervical spine on April 4, 2022. On that date the claimant was performing a shoulder x-ray on a patient when the patient fainted. Claimant grabbed the patient's head so it would not hit the floor but both she and the patient hit the floor. Claimant testified that she landed on the right side of her body.

Claimant's supervisor was present and claimant completed workers' compensation paperwork before continuing to perform her job for the rest of the afternoon. Since the time of her injury, the claimant has received various treatment for her compensable injury. The cervical treatment has primarily consisted of medication, injections, physical therapy, and work restrictions.

Although respondent has paid for claimant's medical treatment, respondent has not accepted liability for a 7% impairment rating to the body as a whole assigned by Dr.

Knox for the cervical spine injury. As a result, claimant has filed this claim contending that she is entitled to payment of permanent partial disability benefits for the 7% rating.

ADJUDICATION

Claimant contends that she is entitled to payment of permanent partial disability benefits based upon a 7% impairment rating assigned for her compensable cervical spine injury which was assigned by Dr. Knox. Respondent alleges that claimant's cervical spine condition was preexisting and that claimant cannot prove that the compensable injury was the major cause of her permanent impairment.

The relevant statutory law is codified at A.C.A. §11-9-102(4)(F)(ii) which states:

(a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.

(b) If any compensable injury combines with a pre-existing disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

A.C.A. §11-9-102(14)(A) defines "major cause" as more than fifty percent (50%) of the cause.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof.

Initially, it should be noted that claimant has a history of cervical spine issues. Medical records from Dr. Beemer, a chiropractic physician, were introduced into evidence and date back to July 26, 2011. Medical records from Dr. Beemer indicate that claimant

was seen a total of 189 times. Since claimant's claim is for an impairment rating associated with her cervical spine injury, only those medical reports relating to her cervical spine will be discussed. A review of the various medical records from Dr. Beemer indicate that many of claimant's complaints involve her thoracic and lumbar spine. However, there are certainly notations of complaints involving claimant's cervical spine as well. Those notes describe claimant's neck complaints as "moderately severe", "intermittent", "nominal" or "resolved". The medical records indicate that claimant did not always receive manipulation to her cervical spine. On multiple occasions claimant complained of restricted neck motion involving both sides of her neck. Furthermore, although claimant testified that she did not remember having muscle spasms in her cervical spine, the medical records from Dr. Beemer contain multiple references to muscle spasms in the claimant's cervical spine.

In addition to Dr. Beemer, claimant also received medical treatment prior to April 4, 2022, from Dr. Weilert, a pain management physician. In a report dated March 15, 2016, Dr. Weilert indicated that claimant's active problems included: "bulge of cervical disc without myelopathy" and cervical spondylosis. On May 14, 2020, Dr. Weilert noted that claimant had some neck issues six years ago but that her neck pain had become severe two weeks earlier and he provided claimant trigger point injections on that date. Subsequent medical records from Dr. Weilert indicate that he continued to treat claimant, but those treatments primarily included claimant's lumbar spine and left hip pain.

Medical records from Dr. Beemer indicate that claimant continued to seek medical treatment for various complaints including neck pain as late as March 2022, just before her compensable injury on April 4, 2022.

Significantly, in her report of March 7, 2022, Dr. Beemer indicated that claimant rated her neck pain as a 3; however, on April 5, 2022, the day after her injury, claimant rated her neck pain as an 8. I also note that Dr. Beemer indicated that at the time of her last visit claimant's muscle spasms in her cervical spine were noted as mild whereas on April 5, 2022, the muscle spasms were noted as severe.

Claimant's initial medical treatment from Dr. Weilert after the injury occurred on April 18, 2022. In his report of that date he noted:

Neck has mostly been manageable until a fall at work. Now having severe left neck.

In addition to Dr. Weilert, claimant also sought medical treatment for her compensable injury from Dr. Hoover who ordered an MRI scan of claimant's cervical spine. The MRI scan of May 13, 2022 was read as showing multilevel cervical spondylosis, worse at C3-4 through C-6 levels and a central disc protrusion at the C3-4 level. Following the MRI scan Dr. Hoover referred claimant to neurosurgery. It does not appear that claimant was seen by a neurosurgeon at that point in time, but instead she continued to receive treatment from Dr. Weilert and Dr. Hoover in the form of medication, physical therapy, and injections. Claimant underwent another MRI scan of her cervical spine on November 28, 2022. That scan was read as showing a multilevel cervical spondylosis with moderate canal stenosis at C4-5 and C5-6. It also revealed severe bilateral neuroforaminal narrowing at C3-4, severe right neuroforaminal narrowing at C4-5 and severe bilateral neuroforaminal narrowing at C5-6.

After that MRI scan, Dr. Hoover in his report of January 18, 2023 again indicated that claimant should see a neurosurgeon for her ongoing neck problems.

At some point the respondent apparently had claimant's medical reports reviewed by Dr. Owen Kelly, an orthopedic surgeon. In a report dated March 23, 2023, Dr. Kelly indicated that claimant had degenerative disc disease of the cervical spine and that she may have sustained a cervical sprain/strain at the time of the accident but no identifiable injury was noted. He further found that claimant's degenerative findings were not related to the April 4, 2022 accident and opined that claimant had reached maximum medical improvement with no impairment rating relating to the injury.

Claimant subsequently obtained a change of physician to Dr. Luke Knox, orthopedic surgeon. In a report dated August 24, 2023, Dr. Knox assessed claimant's condition as cervical disc disorder with radiculopathy; cervical spondylosis; cervical stenosis of the spinal canal; and chronic right shoulder pain. He recommended that claimant receive physical therapy and continue following up with Dr. Weilert.

Apparently additional medical treatment was not approved by the respondent and claimant returned to Dr. Knox on October 17, 2023. In his report of that date, Dr. Knox stated:

October 17, 2023. Patient 1 and half years status post work comp injury continuing difficulty with cervical radiculopathy. Reviewed MRI scan demonstrating significant disc herniation on the right at C4-5 C5-6. I informed her that surgical options do exist. Would like to see her go through physical therapy. Her work comp carrier refused. She wants to settle her course a filled out her paperwork recommended that she close her case she would qualify for a 7% permanent partial disability. Plan to follow up p.r.n. we did Re up her physical therapy through Total spine I would like to see her go through cervical traction.
(Emphasis added.)

Dr. Knox also completed responses to questions from claimant's attorney indicating that claimant had reached maximum medical improvement and had a 7% impairment rating to the body as a whole.

I find based upon the opinion of Dr. Knox that claimant has met her burden of proving by a preponderance of the evidence that claimant's compensable cervical spine injury is the major cause of the 7% impairment rating assigned by Dr. Knox. Dr. Knox is a neurosurgeon and has reviewed claimant's MRI scans. It was his opinion that claimant's MRI scan shows a significant disc herniation at the C4-5 and C5-6 levels. It was also his opinion that claimant did have surgical options available; however, she wished to settle her case. There is no indication that claimant had been diagnosed as suffering from a disc herniation in her cervical spine prior to her compensable injury. While it might be argued that other treating physicians and radiologists did not interpret claimant's MRI scan as showing a significant disc herniation, I find that Dr. Knox's opinion as a neurosurgeon is credible and entitled to greater weight than the opinions of the other treating physicians.

Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that her compensable cervical spine injury is the major cause of the 7% impairment rating assigned by Dr. Knox. Therefore, respondent is liable for payment of permanent partial disability benefits in an amount equal to 7% to the body as a whole.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to permanent partial disability benefits in an amount equal to 7% to the

body as a whole based upon the rating assigned by Dr. Knox for her cervical spine injury. Respondent has controverted claimant's entitlement to payment of permanent partial disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant.

All sums herein accrued are payable in a lump sum and without discount. This award shall bear interest at the maximum legal rate until paid.

Respondent is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$1,041.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE