

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H010292

TAMEE RUNION, Employee	CLAIMANT
KINDRED HOSPICE, Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 28, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Russellville, Pope County, Arkansas.

Claimant represented by EMILY S. PAUL, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

On July 15, 2021, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on April 14, 2021, and a Pre-hearing Order was filed on that same date. 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 and prior to the start of the hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a weekly compensation rate of \$462.00 for temporary total disability benefits.
4. The respondent is entitled to a credit for short term disability paid to claimant if the claim is found to be compensable.

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

1. Whether claimant sustained a compensable injury on December 4, 2020 to her neck and lower back.
2. Whether claimant is entitled to reasonable and necessary medical treatment.
3. Whether claimant is entitled to temporary total disability benefits from December 5, 2020 to February 8, 2021.
4. Attorney's fee.

Claimant's contentions are:

"The claimant contends she sustained a compensable neck and lower back injury on December 4, 2020 when the company car she was driving between appointments was rear-ended. She contends she is entitled to TTD from December 4, 2020 until February 8, 2021."

Respondents' contentions are:

"Respondents contend the claimant did not sustain a compensable injury within the course and scope of her employment. Claimant's complaints are not the responsibility of the respondents."

The claimant in this matter is a 53-year-old female who is employed by the respondent as a certified nurse's assistant. The claimant alleges that on December 4, 2020 she sustained compensable injuries to her neck and lower back in a motor vehicle accident while performing employment services for the respondent. Following is a portion of the claimant's direct examination testimony regarding that motor vehicle accident and the claimant's actions shortly thereafter:

Q Can you tell me what happened on December 4th, 2020?

A On December 4th I went to see my patient that lives over down by Fourth Street. I was on my way – on that patient's house, we are only allowed to get gas at the BEQ's in the fleet car that our company provides for us, and so I was coming down Knoxville turning onto East Main and there was a semi coming so I stopped completely because I couldn't go, and Mrs. Watson rear-ended me.

Q Were you injured in that accident?

A Yes, ma'am, I was.

Q How could you tell?

A When I got out of the car, my left leg kind of feel, and it scared me because I didn't know what had happened; and, of course, I had to call my job because we have to take a drug test and we have to go – we have to file the police report.

Q What happened immediately after the accident? Did you seek medical treatment?

A I did – well, immediately after I pulled – we pulled over to get out of people's way into Walgreens' parking lot. I had called the police, which the other driver was upset because she just wanted to exchange insurance information, and I told her I couldn't because I was in a company vehicle; I had to have a police report, and I had to do a drug test. So after he was done there, my job advised me to go to the emergency room at St. Mary's, and that's what I did.

The claimant was seen at St. Mary's Hospital in Russellville on December 4, 2020. At that time she complained of shoulder and lower back pain. The claimant was diagnosed with muscle strain and instructed to heat and ice the affected body parts along with alternating Tylenol and Ibuprofen, and was prescribed Baclofen 10 mg. three times daily.

On December 8, 2020, the claimant was seen at MedExpress by Dr. Derek Urban. At that time the claimant complained of "lower back pain left side." The claimant underwent an x-ray of the lumbar spine which gave the following Impressions:

Impression:

1. No acute lumbar fracture or subluxation by plain radiography.
2. Mild spondylotic changes.

The claimant was prescribed Tramadol and referred to orthopedics. The claimant was taken off of work and recommended for an MRI at that time.

On December 11, 2020 the claimant was seen at Conway Orthopaedic & Sports Medicine Center, from here out known as COSMC by Dr. Scott Smith. Following is a portion of that medical record:

HISTORY OF PRESENT ILLNESS: Mrs. Runion presents concerning her lower back and cervical spine. She works as an EMT and as a CAN for Hospice. On 12/04/2020 she was involved in a two-vehicle rear-end collision. She was the restrained driver when another vehicle rear-ended her driver-side. There was no airbag deployment. She was seen in the Emergency Room following her injury and later at MedExpress. She reports left low back and hip pain that began post injury. Her pain is present to her buttock as well as to the plantar surface of her foot. She denies numbness or tingling. She denies a history of similar lower back or neck issues.

She also reports left-sided cervical spine and parascapular pain. She was looking over her left shoulder at the time of impact and reports pain to her left trapezius as well as left scapula. Her low back pain is worse than her cervical spine pain. There is no radiation of her pain into her left arm. No numbness or tingling.

She has been taking Tramadol, Tylenol, and Baclofen for her pain. She does not feel that her pain is improved.

FOCUSED EXAM: Cervical Spine Exam:

Appearance: Normal
Palpation: TTP left lateral neck musculature, trapezius, medial parascapular musculature
Skin: Normal without lesions or masses
Gait: Normal gait without thrust
Muscle atrophy: No visible atrophy
Muscle Spasms: No muscle spasms
Range of motion: Cervical spine Flexion and extension is intact but is limited secondary to pain. Rotational motion is also somewhat limited secondary to left parascapular and trapezius pain.

IMPRESSION: Mild cervical and lumbar spondylosis
Cervical strain s/p MVC
Left Lumbar radiculopathy

The x-ray and exam findings were reviewed with the patient. Options were discussed. I recommend obtaining an MRI of the lumbar spine to evaluate for left foraminal stenosis. She understands and agrees. She will follow-up for test results and treatment recommendations. Prescription for Medrol Dosepak and a refill on her Tramadol were given. She will remain off work until the MRI findings have been reviewed.

During the claimant's December 11, 2020 visit to COSMC, the claimant also underwent x-rays of the cervical spine. Dr. Robert Smith authored the x-ray report. The body of that report follows:

X-ray Report

PROCEDURE:

AP, lateral, and Odontoid views of the cervical spine

FINDINGS: There is narrowing at C5-6. No acute abnormalities. Satisfactory spinal alignment noted.

IMPRESSION: Degenerative disc disease C5-6

The claimant was continued off work until after a recommended MRI.

On December 16, 2020, the claimant underwent an MRI of the lumbar spine without contrast at Conway Regional Health System. Following is a portion of the diagnostic examination report from the claimant's MRI:

IMPRESSION:

1. Transitional vertebral body anatomy with sacralization of L5 vertebra.
2. Mild levoscoliosis with degenerative disease most pronounced at L4-5. There is annular disc bulging at this level asymmetric to the right with mild inferior right neural foraminal narrowing.

On December 22, 2020, the claimant was released to return to work with the restrictions of no lifting over 15 lbs. by APRN Tiffany Epperson with COSMC. The claimant then began physical therapy with River Valley & Sports Medicine for six weeks, two to three days per week.

On February 4, 2021, the claimant was released by APRN Epperson to full duty with no restrictions.

The claimant has asked the Commission to determine if she sustained compensable injuries to her neck and low back on December 4, 2020 in the previously described motor vehicle accident. The claimant must prove the existence of objective medical findings; she is able to do so as they relate to her lower back and neck or cervical spine. The MRI of the claimant's lower back performed on December

16, 2020 clearly shows the presence of an annular disc bulge that is asymmetric to the right with mild inferior right neuroforaminal narrowing. This is objective medical evidence of a lower back injury. The claimant is also able to show objective medical evidence of neck difficulties; however, that evidence is found in an x-ray performed at COSMC on December 11, 2020, which only shows degenerative disc disease at C5-6 which fails to meet the burden of objective medical evidence of disability or injury related to the motor vehicle accident the claimant alleges.

The claimant is unable to prove objective medical evidence regarding her alleged cervical or neck injury within meaning of the Arkansas Workers' Compensation Act in that the medical evidence is clearly degenerative in nature and unrelated to the motor vehicle accident in which she was involved. However, the claimant is able to prove the existence of objective medical evidence regarding her alleged low back injury given the annular disc bulge found at the L4-5 level during the December 16, 2020 MRI of the claimant's lower spine with contrast.

The claimant must now prove a causal connection between her objective medical findings of low back injury and the motor vehicle accident she alleges. The claimant testified, and I believe she did so credibly, that she has not previously had lower back difficulties. Her testimony regarding the accident is supported by both the medical evidence and the motor vehicle accident report found at Claimant's Exhibit 2, Pages 1-12. Given the MRI results regarding the claimant's lower back, the statements made to medical providers shortly after the accident, the police report and the claimant's credible testimony, I find that the claimant is able to prove that she suffered a compensable injury to her lower back at the L4-5 level in the form of an annular bulge.

The claimant has asked the Commission to determine if she is entitled to reasonable and necessary medical treatment regarding her compensable lower back injury. The medical treatment submitted into evidence at the hearing in this matter all appear to be reasonable and necessary medical treatment and shall be paid by the respondent.

The claimant has also asked the Commission to determine her entitlement to temporary total disability benefits from December 5, 2020 to February 8, 2021. The claimant was taken off of work at her visit to MedExpress in Russellville. The claimant was returned to full duty with no restrictions on February 4, 2021 by APRN Epperson. The claimant did not work during the time period in which she was taken off work by medical providers. The claimant is entitled to temporary total disability benefits between the time periods of December 5, 2020 and February 4, 2021.

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 April 14, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence that she suffered a compensable lower back injury on December 4, 2020. The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable neck or cervical spine injury on December 4, 2020.
3. The claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment regarding her compensable lower back injury.
4. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from December 5, 2020 until February 4, 2021.
5. The claimant's attorney has proven by a preponderance of the evidence that she is entitled to an attorney's fee in this matter.

ORDER

The respondents shall be responsible for the payment of the reasonable and necessary medical treatment regarding the claimant's lumbar spine. The respondents shall also be responsible for the payment of temporary total disability benefits from December 5, 2020 to February 4, 2021.

Respondent shall pay to claimant's attorney a statutory attorney fee on the temporary total disability benefits awarded above.

All benefits herein awarded which have heretofore accrued are payable in a lump sum and without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**