

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G908381

RICHARD G. SMITH, EMPLOYEE	CLAIMANT
CAL ARK INTERNATIONAL, INC., EMPLOYER	RESPONDENT
ARKANSAS TRUCKING ASSOCIATION SI FUND/ YORK RISK SERVICES GROUP, INC INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 31, 2021

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed June 2, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer/employee relationship existed on November 30, 2019, when the claimant sustained a compensable work-related injury to his rib. At that time,

the claimant earned sufficient wages for a TTD rate of \$695.00 per week.

3. The claimant has satisfied the required burden of proof to show that the CT scan of November 16, 2020, was in fact required, reasonable, necessary, and therefore compensable.
4. The claimant has failed to satisfy the required burden of proof to show that the requested additional medical treatment for his rib as recommended by Doctor Katy Marino is reasonable and necessary. Consequently, the requested additional medical treatment is denied.
5. The claimant has failed to satisfy the required burden of proof for TTD from July 15, 2020, to a date to be determined, and consequently additional TTD is denied.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the June 2, 2021 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part but must respectfully dissent in part from the majority opinion. I concur with the majority's finding that the claimant proved that the November 16, 2020 CT scan was reasonably necessary. I also agree with the ALJ's finding that the claimant failed to prove that she is entitled to additional TTD. However, I must dissent from the majority opinion finding that the claimant has failed to satisfy the required burden of proof to show that the requested additional medical treatment for his rib as recommended by Doctor Katy Marino is reasonable and necessary.

An 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). The claimant bears the burden of proving that she is entitled to additional

medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). 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).

The claimant's treating physician, Dr. Katy Marino, recommended that the claimant undergo an excision of a callus that is present as the result of a malunion of a left 8<sup>th</sup> costochondral rib fracture caused by the claimant's work accident. Dr. Marino explained the necessity of this procedure in her November 10, 2020 medical record, to wit:

[Mr. Smith] has chronic pain due to [a malunion of a left 8<sup>th</sup> costochondral-rib fracture after trauma] and has failed non-operative management.

Unfortunately, due to location near the costal cartilage, he is NOT a candidate for rigid fixation with rib plating. I am ONLY able to offer him an excision of the callus that is present. I explained to him that surgical excision does not offer guarantee of relief of his pain, which is likely neurogenic, but since other non-operative options have failed – [this] presents his only surgical option in attempt to remove any unstable portions of the bone that may be causing movement and pain.

It is clear that Dr. Marino believes this surgery is reasonable and necessary and may provide the claimant some relief from the pain associated with his injury.

When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). A physician's special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. *Id.*

Dr. Roman opined that the claimant reached MMI on July 14, 2020 and that "he needs no further procedures or medications as it pertains to his injury". However, I note that Dr. Roman specializes in pain management; he is not a surgeon. Thus, I don't consider the opinion of Dr. Roman to be conclusive regarding a surgical issue.

Dr. Shaun Chandran, who conducted a peer review, opined that the excision recommended by Dr. Marino was not medically necessary. Dr. Chandran indicated the following in his report:

Based on the information provided, the claimant has point tenderness at 8<sup>th</sup> rib mid axillary line. The treatment has included PT, intercostal nerve blocks [sic], RFA of the intercostal nerve, and medications including Lyrica. The CT scan in February 2020, indicates callus formation and healed rib fracture. However, the formal report was not provided. As such, the excision rib is not certified. Therefore, excision rib left 8<sup>th</sup> is not medically necessary.

Although Dr. Chandran is Board Certified in Orthopaedic Surgery, he was not the claimant's treating physician and had not

personally provided care for the claimant. Additionally, it appears that Dr. Chandran's opinion was based on incomplete information.

Therefore, based on the aforementioned, I accord the opinion of Dr. Marino more weight than that of Drs. Roman and Chandran. I find that the surgical procedure Dr. Marino recommended is reasonable and necessary and would award the claimant additional medical benefits.

For the foregoing reasons, I concur in part and dissent in part from the majority opinion.

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M. Scott Willhite, Commissioner