

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H208296

LAURA TREADWELL, Employee	CLAIMANT
POPE COUNTY JUDGE, Employer	RESPONDENT
AAC RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED JUNE 11, 2024

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

Claimant represented by DANIEL E. WREN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 14, 2024, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on January 22, 2024, and a Pre-hearing Order was filed on January 23, 2024. 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 April 15, 2022.
3. The claimant sustained a compensable injury to her back on or about April 15, 2022.
4. The claimant's weekly compensation rates will be determined at a later date.

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

1. Whether Claimant is entitled to additional medical treatment in the form of an FCE as recommended by Dr. Beavers, or whether Claimant is entitled to referral from Dr. Beavers to Dr. Brad Thomas or a similar neurosurgeon.

The claimant's contentions are as follows:

“Dr. Beavers has ordered a functional capacity exam for the Claimant which the Respondents refuse to approve.”

The respondents' contentions are as follows:

“All appropriate benefits have been paid. The claimant has been released at MMI with a 0% impairment rating. An FCE is not medical treatment, nor is it necessary. The respondents have paid for all reasonable and necessary medical treatment and the requested treatment is not reasonable or necessary.”

The claimant in this matter is a 46-year-old female who worked for the respondent on April 15, 2022, when she sustained a compensable back injury. At that time the claimant was employed as a paramedic for the respondent. On direct examination the claimant described the April 15, 2022, incident in which she sustained a compensable back injury as follows:

Q All right. But just for a little bit of background for the Judge, a two-minute summary of how you got hurt.

A Me and my female partner were on a call in Hector about a 275-pound man with breathing problems that needed to be transported. When we put him on our cot, our cots are manual lift. They did not have power cots. When we picked the cot up, my partner did not release the handle on the cot. It did not lock the legs in place and when the weight was put back down, the cot slammed to the ground and I was still holding it. I bent at the waist.

Q And, essentially, you were touching your toes with your hands?

A My head was close to my toes.

Q Okay. Did you feel immediate pain?

A Yes, sir.

Q All right. Did you seek treatment, file a workers' comp claim, let your supervisor know and get treatment for that claim?

A Yes, sir.

The claimant began to see Dr. Edward Saer at Ortho Arkansas in Little Rock on September 9, 2022. Dr. Saer provided the claimant with conservative medical treatment for her compensable back injury until November 29, 2022, when he released her at MMI and found no permanent impairment associated with her compensable injury. Following is a portion of Dr. Saer's November 29, 2022, medical record:

Assessment/Plan

Ms. Treadwell is back in follow-up. She is an EMT and had a work-related injury on April 15, 2022 lifting a patient on a cot. She has had pain in her lower back as well as tightness in the lower thoracic area since then. She continues to complain of the tightness in her back especially if she overdoes things. She is taking a Flexen, usually in the afternoon, although not every day. She gets relief if she takes the Flexeril and lies down to rest. She has avoided doing any heavy lifting and continues to work on a light-duty basis.

She continues to take naproxen twice daily. She is using OTC naproxen now. She is continue with some exercising and stretching that she learned in physical therapy.

Exam:

She gets up and down easily and walks normally. She has good forward pending and good extension although extension is a little uncomfortable. Forward bending is her position of comfort. There is no muscle spasm. She has no localized tenderness.

Her prior imaging did not show any significant focal abnormalities no new x-rays were obtained today.

Assessment:

I had recommended an FCE but that was not approved. Therefore I think she should continue with light duty level work with a lifting limit of 25 pounds, and no repetitive bending twisting or lifting. These restrictions should be considered permanent.

She is at MMI. There is no permanent impairment associated with this injury.

Dr. Saer also authored a letter to the respondent regarding the claimant's medical treatment on November 29, 2022. The body of that letter follows:

I saw Laura Treadwell in the office today. She has been treated for back pain following an injury at work. As far as I can determine she had a lumbar strain or sprain.

Treatment was based on the recent injury, not on pre-existing changes. There are no objective findings to warrant permanent impairment rating. Work restrictions are based primarily on the injury, not any pre-existing conditions.

As far as I can tell, this was an acute injury, although I did not see her until 3 months after the date of injury.

I do not think any further treatment is needed at this time.

After being released by Dr. Saer, the claimant admittedly began unauthorized treatment for her compensable back injury with her PCP, Dr. Homer Beavers at Millard Henry Clinic, under her regular healthcare insurance. Dr. Beavers referred the claimant to Dr. Brad Thomas of Little Rock Neurosurgery.

On March 15, 2023, the claimant was seen by Dr. Thomas. Following is a portion of that visit note:

HPI: This is a 45 year old female who is being seen for a chief complaint of chronic low back pain involving the spine. Context: an injury at work on 4/15/2022. Details: She was working as a paramedic. She and her partner were lifting a manual cot with a 275+ pound man on it. She was lifting the head. Her partner started to put the legs down but did not release the lock mechanism, so the cot slammed to the ground. She was still holding the cot and basically folded in half. She had an immediate pain in her low back and got sick on the scene. She reported it to her employer who sent her to urgent care where she got x-rays. They sent her home with a muscle relaxer and an anti-inflammatory. She was off work until she could follow up with occupational medicine. When she saw them they had her start PT. About a week into PT they started adding exercises that made her pain worse and she had to stop PT.

Eventually they ordered an MRI. She saw Dr. Saer who put her on a permanent 35 pound restriction. He said there was a disc herniation and had her continue PT. She felt like she could not hold herself up. She started having weakness in her thighs. Dr. Saer ordered a myelogram, but work comp refused it. He tried to order it again and it was refused again. The patient then found out that Dr. Saer was a deacon and friends with her boss. Once she found that out she felt like things changed. He ordered an FCE, but work comp refused it. In the meantime she was working light duty in the courthouse. In December she got a letter from the judge stating he was terminating her position because she was on a 35 pound lift restriction and could no longer perform the duties of her job. Then she got a letter from work comp telling her she should get representation. She did not have any follow ups scheduled with Dr. Saer. She got one check from worker's comp. In January she bent over to look at a label on a shelf in CVS and her left leg went numb. She fell into the shelf. She went home and sat down. Later that night she noticed her rumba was not working properly and she bent over to check it out. She had the same symptoms again at that time. She contacted her lawyer who told her to see her PCP, so she saw Dr. Beavers and he referred her to us. A week after she started having symptoms in January she had an episode of urinary incontinence. This has happened several times, but is not consistent. It seems to happen on days when her back pain is at its worst. She has been transferred by the county and is now working at the Assessor's office where she makes significantly less. She reports the following pertinent positives: urinary incontinence.

Impression/Plan:

1. Low back Pain (new Dx)

Located on the lumbar spine

Associated diagnoses: Intervertebral Disc Degeneration, Lumbar, Leg Pain, and Numbness

Plan: Other

She has been having low back pain since an injury at work in April of 2022. She started having symptoms again in January that she believes is related to her work injury. She and her lawyer need to get the notes from Dr. Saer then contact worker's comp and tell them she wants to re-open her case and change physicians. We are going to order a new MRI and have her follow up.

There is a worker's comp rep present in clinic today, but since this is not technically a worker's comp visit, we did not speak with the rep. The rep was not in the room with the patient during the visit.

Plan: Order MRI – Spine

Protocol – Lumbar – Spine – Lumbar MRI WC, contrast (CPT: 72149)

Indication: Low Back Pain – M54.50, M51.36, M79.605, R20.0

The claimant was again seen by Dr. Thomas on April 7, 2023. Following is a portion of that visit note:

HPI: This is a 45 year old female who is following up for Low Back Pain (low back pain, unspecified) on the lumbar spine. She was seen on March 15, 2023, at which time MRI Interpretation Lumbar Spine was performed and

She has been having low back pain since an injury at work in April of 2022. She started having symptoms again in January that she believes is related to her work injury. She and her lawyer need to get the notes from Dr. Saer then contact worker's comp and tell them she wants to re-open her case and change physicians. We are going to order a new MRI and have her follow up.

There was a worker's comp rep present in clinic today, but since this is not technically a worker's comp visit, we did not speak with the rep. The rep was not in the room with the patient during the visit.

Order MRI – Spine was performed.

The patient presents for imaging results and she is doing about the same with back pain, she can manage as long as she doesn't do any real activity. She is unsure if workers comp has been reopened but this is all going on from work accident in April 2022.

Tests

MRI Interpretation Lumbar Spine

MRI Data:

Date: 04/07/2023 MRI L-spine without gadolinium

MRI of the lumbar spine was obtained, demonstrating the following findings: mild degenerative changes, no sig canal stenosis or impingement.

Impression/Plan:

1. Low Back Pain

Located on the lumbar spine

Associated diagnoses: Intervertebral Disc Degeneration, Lumbar, Leg Pain, and Numbness

Plan: Other

There is no surgery recommended for her low back, she does still have numbness in her left leg with certain positions. She has been avoiding those positions, we are going to get EMG/NCV of the left and f/u after. We did discuss pain management and trying some of their treatments to help with her pain. We will get the EMG and then can discuss further options.

Plan: Consult

I counseled the patient regarding the following need to see the specialist:

Other Details: Refer to pain management for eval/treat

We discussed the need to see another medical specialist to assist in the current diagnosis and 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.

The claimant was again seen by Dr. Thomas on June 7, 2023. Following is a portion of that visit note:

HPI: This is a 45 year old female who is following up for Low Back Pain (low back pain, unspecified) on the lumbar spine. She was seen on April 27, 2023, at which time MRI Interpretation Lumbar Spine was performed and

There is no surgery recommended for her low back, she does still have numbness in her left leg with certain positions. She has been avoiding those positions, we are going to get EMC/NCV of the left and f/u after. We did discuss pain management and trying some of their treatments to help with her pain. We will get the EMG and then can discuss further options.

Consult was performed.

Order EMG/NCV was performed.

The patient presents for EMG results and she has left leg numbness. This is related to a work accident April 2022 as a paramedic. Her symptoms are weakness and pain in the low back more on the left, since January she will have incontinence and the left foot/leg numbness with increased activity.

Impression/Plan:

1. Low Back Pain

Located on the lumbar spine

Associated diagnoses: Intervertebral Disc Degenerations, Lumbar, Leg Pain, and Numbness.

Plan: Other

There is no surgery recommended for her low back based on the MRI and the EMG. She does have some mild left radicular neuropathy. She is unable to do her job as a paramedic and is doing a light duty job. She will continue her current work status. She is a year out from the work accident and we do feel her continued symptoms are related to the work accident. We are going to get an FCE to evaluate her long term work status. We will order this and f/u after to determine her impairment rating.

Plan: Order Tests.

Labs:

46634-2 – Functional capacity assessment (RFC)

On September 13, 2023, the claimant requested a change of physician from the Commission to Dr. Beavers. That change of physician was granted by the Commission on September 22, 2023.

On October 5, 2023, the claimant returned to see her PCP, Dr. Beavers. Following is a portion of the medical records from that visit:

HPI

Laura presents today from the standpoint to address workman's comp issues.

She was injured in April of 2022 in a lifting incident while working as an EMT. She presents in years previous with left hip pain, and there was some question of whether her symptoms were radicular or not. At that time she did undergo an MRI and in the body of the interpretation of that MRI was noted that at L4-5 she had a small right sided disc protrusion.

The ligamentous pain that she was experiencing in her left hip at that time resolved.

From 2018 to 2022 I have not had any visits with her where there was any complaint of back pain.

Assessment/Plan

1. Backache

Variable in intensity of daily...she has daily pain and takes NSAIDs daily but still has pain related as a 3-6/10...she is no longer able to do her prior job as an EMT that was significantly physically demanding...she now is working in the court house as a clerical position which obviously does not pay as well as her EMT position...since the injury occurred on the job in her EMT position she is seeing compensation through workmans compensation...she needs to have a work physical capacity evaluation...M54.9: Dorsalgia, unspecified.

On March 1, 2024, Dr. Beavers authored a letter regarding the claimant. Following is the body of that letter:

I referred Laura Treadwell to Dr. Brad Thomas on February 22, 2023 for an evaluation of ongoing radicular pain into her left lower extremity. Dr. Brad Thomas, a board certified neurosurgeon ordered an EMG nerve conduction velocity that revealed that she had left proximal sciatic neuropathy. Ms. Treadwell was being seen both by me and Dr. Thomas under her health insurance. Her health insurance would not pay for her continued treatment recommended by Dr. Thomas. I do feel that referral to Dr. Thomas for a radicular type pain with an abnormal MRI was appropriate. Further based upon EMG nerve conduction results I continue to believe that Ms. Treadwell needs to be able to continue her treatment with Dr. Thomas and/or an equally qualified neurosurgeon/orthopedic spine specialist.

The claimant has asked the Commission to determine whether she is entitled to additional medical treatment in the form of an FCE as recommended by Dr. Beavers, or whether the

claimant is entitled to the referral from Dr. Beavers to Dr. Brad Thomas, or a similar neurosurgeon. The claimant has the burden of proving the additional medical treatment she has requested is reasonable and necessary medical treatment. Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

The claimant in this matter does continue to work for the respondent but works in a light duty, desk type position. Given the permanent restrictions placed on her by Dr. Saer after the respondent refused to pay for an FCE, she was unable to return to work in her former profession as a paramedic. “I had recommended an FCE but that was not approved. Therefore I think she should continue with light duty level work with a lifting limit of 25 pounds, and no repetitive bending, twisting or lifting. These restrictions should be considered permanent.” From Dr. Saer’s medical records, it is clear that he placed those restrictions himself without the benefit of an FCE because the respondent denied the FCE that he had recommended.

The claimant is clearly frustrated by her inability to receive an FCE. Her testimony during cross examination by the respondent attorney shows that frustration as follows:

Q [BY MR. RYBURN]: And you were released, as you testified earlier, with permanent restrictions; correct?

A Yes, sir.

Q Do you believe that you can do more than those restrictions?

A No, sir.

Q Do you believe that you can do – that those restrictions should be removed?

A No, sir.

Q What do you think an FCE will accomplish, then?

A My goal is to be compensated for the wage loss that I have incurred because of a documented work comp injury.

Q So in fact, you disagree with that 0 percent and the FCE is simply a way to get a different rating?

A Yes, sir.

Q Okay. You understand that Dr. Thomas stated that you – that is on Page 33 of your Exhibit – suffered from intervertebral disc degeneration?

A Sure.

Q Okay. And you did have a prior low back workers' comp injury before this one; correct?

A Yes, sir.

Q Do you know what degeneration means?

A Yes, sir.

Q Do you understand that my client accepted your claim as an aggression of that preexisting condition?

A No, sir.

Q Do you understand what an FCE is?

A Yes, sir.

Q Okay. And you understand that it is not medical treatment?

MR. WREN: Objection. Your Honor.

THE COURT: Sustained. I will decide.

Q [BY MR. RYBURN]: Can you explain your understanding of an FCE.

A To see what I am capable of doing.

Q Okay. And you are currently working?

A Yes, sir.

Q And your job falls under your permanent restrictions?

A Yes, sir.

Q And you don't think that you can do anything above those restrictions?

A Not full time, no, sir.

Q So if you had an FCE and they said that you could do more than those restrictions, would you return to a heavier duty job?

A I can't make that decision at this moment.

Q Okay. But it is your testimony and you told me in your deposition that you don't think you can do anything above those restrictions; correct?

A There is a lot of things I am not able to do, yes, sir.

Q So you agree with the restrictions, but not the impairment rating?

A Yes, sir.

Q And Dr. Thomas has not given you an impairment rating; correct?

A Not that I am aware of.

It is certain that the claimant has a desire to seek financial compensation for her

compensable back injury, as I am certain most every injured worker does. That desire, however, does not change the fact that the respondent's chosen orthopedic surgeon, Dr. Saer; the claimant's PCP, Dr. Beaver; and a neurosurgeon, Dr. Thomas, who has treated the claimant, have all recommended an FCE that the respondent has refused to authorize.

In *Gansky, supra*, the Supreme Court of Arkansas dealt with a very similar case. The claimant in that matter had some pre-existing back issues, but suffered a compensable injury, as is the case at hand. The ALJ had ordered the respondent to provide the FCE that was recommended by his treating physician but was reversed by the Full Commission, which found the FCE was not reasonable and necessary medical treatment for the claimant's compensable injury. The Arkansas Court of Appeals in a 3-3 decision upheld the Full Commission's decision. The Supreme Court reversed the Court of Appeals. In the *Gansky* case the doctor ordered an FCE but refrained from releasing him until it was complete. The respondent then refused to pay for the FCE and a final evaluation by the doctor, who was a neurosurgeon, was never made. The Court believed the Full Commission relied upon physical therapist's reports as opposed to those of the doctor. The Court stated, "Under these circumstances when the treating neurosurgeon has prescribed a functional capacity assessment and that was not done because Hi-Tech (the respondent) would not pay for it, we cannot agree with the Commission that additional medical treatment was not reasonable, necessary, or that the healing period had ended. We conclude that fair-minded persons, viewing the same evidence, could not decide otherwise."

In the present case there are no physical therapist reports, but Dr. Saer, an orthopedic surgeon, ordered an FCE that was refused by the respondent. Then after that refusal, he placed restrictions and released the claimant at MMI. Dr. Beavers, the claimant's PCP, ordered an FCE after the claimant was released by Dr. Saer. Finally, on June 7, 2023, Dr. Thomas, a

neurosurgeon who has treated the claimant, recommended an FCE. Despite all three recommendations, the respondent has refused to provide the FCE. In fact, the respondent makes clear in this hearing transcript that it does not believe an FCE is even medical treatment.

Q Ms. Treadwell, so far both neurosurgeons that have seen you have said that you do not need surgery. Isn't that true?

A Yes, sir.

Q So no one plans to do any surgery or treatment at this time; is that correct?

A Not at this time.

Q And you don't know of any treatment, medical treatment that you need at this time beyond the FCE?

A I am not aware of any.

MR. RYBURN: Okay. And just for the record, I am not conceding that an FCE is medical treatment.

Certainly, the Court in *Gansky* believed an FCE to be medical treatment. Here we have three medical providers, all doctors, all recommending an FCE for the claimant; two of which specialize in the type of compensable back injury the claimant has suffered.

As previously stated, the *Gansky* case is similar to this case but admittedly there are differences, as in all cases. I find that the claimant is able to prove by a preponderance of the evidence that the FCE ordered by Dr. Saer, Dr. Beavers, and Dr. Thomas is reasonable and necessary medical treatment for the claimant's compensable back 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 the pre-hearing conference conducted on January 22, 2024, and contained in a Pre-hearing Order filed January 23, 2024, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an FCE.

ORDER

The respondents in this matter shall pay for the costs associated with the FCE that has been recommended by the claimant’s current treating physician through a change of physician, Dr. Beavers.

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.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**