

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G702946

SUSAN WARREN,
EMPLOYEE

CLAIMANT

DOLLAR GENERAL STORE,
EMPLOYER

RESPONDENT

DOLGENCORP, INC.,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED MARCH 18, 2021

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE JASON A. LEE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on September 2, 2020. The Administrative Law Judge found that Claimant has not proven by a preponderance of the evidence that she is entitled to additional treatment. After our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an MRI and follow-up visit with Dr. Hussey.

I. HISTORY

The claimant, now 57 years old, was involved in a work-related accident on September 27, 2016. The claimant gave the following testimony as to how the work accident occurred:

Q We have stipulated to your injuries, but just briefly tell us what you injured and what happened.

A I was putting up a sky shelf, and it was really heavy, and it hurt my shoulder.

Q And it initially hurt your neck, your right arm, right shoulder, and wrist; correct?

A. Yes, sir.

Q But the main thing that is still ongoing is the what?

A The [right] shoulder.

The claimant was initially seen by Dr. Gary Myers at MedExpress on September 28, 2016. The exam revealed limited external rotation in the right shoulder due to pain, limited strength against resistance during internal rotation in the right shoulder, and the right A/C joint was tender to palpation. The right shoulder x-ray showed “arthritic changes and lateral calcinosis extra-joint”. The claimant was assessed with muscle spasm and prescribed Cyclobenzaprine. Dr. Myers placed the claimant on modified duty of “no reaching” and “no overhead reach”.

The claimant was referred to an orthopedic surgeon following an October 5, 2016 follow-up visit at MedExpress. The claimant began treating with Dr. Bruce Brown on December 5, 2016. Dr. Brown ordered physical therapy at 1-3 visits per week for 3-6 weeks. The claimant underwent ten sessions of physical therapy at River Valley Therapy. The claimant was discharged from physical therapy following her January 9, 2017 appointment.

The claimant underwent a right shoulder arthrogram on January 20, 2017. The Impression from the arthrogram was “mild supraspinatus tendinopathy”.

The claimant exercised her right to a one-time change of physician on November 20, 2017, changing from Dr. Brown to Dr. Michael Hussey. The claimant began treating with Dr. Hussey on December 13, 2017. Dr. Hussey noted the following in his medical records:

Shoulder Exam:

There is no obvious sign of trauma or deformity noted and there are no open skin lesions. The patient has moderate tenderness to palpation over the AC joint and bicipital groove. The patient has active range of motion to include 150, 110, 60 T8 level with moderate pain. Patient has 5/5 rotator cuff and deltoid muscle strength testing. There is a positive cross body adduction, O'Brien, speed test, but a negative Jobe, Neer, and Yergason test. Normal muscle quality is noted around the shoulder girdle. Mild scapular dyskinesis is noted.

The patient has full unlimited active range of motion of the elbow and hand with full strength and no limitations. Sensation is intact to all nerve distributions distally and there is brisk cap refill to all digits.

Medical Decision Making

X-ray Interpretation

4 view x-ray of the right shoulder: There is no obvious sign of trauma, deformity, or masses noted around the shoulder girdle. The glenohumeral and acromioclavicular joints are well aligned. There are no major signs of osteoarthritis of the glenohumeral joint and acromioclavicular joints.

Dr. Hussey noted the following Plan:

1. I have discussed with her that I need to obtain the CD of her MRI scan with report to go over findings for full recommendation. She states she will obtain the CD and bring it back to our clinic for me to review.
2. No restrictions at present time.
3. Follow-up after MRI obtained.

The claimant testified that she picked up the CD of her MRI scan from St. Mary's in Russellville and dropped it off with the receptionist at Dr. Hussey's office two days after her December 13, 2017 appointment with Dr. Hussey. According to the claimant, it is her understanding that the disk has been lost and there is not another CD of her MRI scan.

A pre-hearing order was filed on May 29, 2020. The claimant's contentions were as follows:

Claimant's average weekly wage will be determined by the contract of hire, wage records and Arkansas law. She contends that she

sustained injuries to her neck, right shoulder, right arm, and right wrist in the course and scope of her employment on September 27, 2016. Claimant obtained a change of physician to Dr. Hussey. Hussey saw the patient on one occasion and requested that the claimant provide him with the diagnostic studies. The claimant dropped the disk off with the doctor's office but the office apparently misplaced the disk. Respondents have refused to authorize a follow-up with Dr. Hussey. Claimant continues to have complaints and requests additional medical treatment for her compensable injuries. She is entitled to continued medical care and treatment, payment of medical expenses, and out-of-pocket expenses. All other issues are reserved.

The respondents' contentions are as follows:

Claimant contends that she sustained injuries to her neck, right shoulder, right arm and right wrist in the course and scope of her employment on September 27, 2016. Respondents accepted the claim and provided medical treatment. Dr. Bruce Brown of Arkansas Orthopaedic Center in Russellville treatment [sic] the claimant for neck and right shoulder pain. In January 2017, Dr. Brown ordered an MRI of the right shoulder, which revealed mild supraspinatus tendinopathy. In February 2017, she returned to Dr. Brown after the MRI. According to his report, Brown, concluded that she had right shoulder arthritis. A month later, on March 7, 2017, the doctor placed Claimant at maximum medical improvement and concluded that she did not warrant an impairment rating. Subsequently, Claimant obtained a change of physician to Dr. Michael Hussey, whom she saw on December 13, 2017. According to his report, Dr. Michael Hussey provided a differential diagnosis of injury to the AC joint versus a biceps injury. Hussey advised the claimant that he needed to review

the previous MRI, which she had not brought with her for the appointment, and instructed her to drop it off at his clinic. Upon information and belief, Claimant has never taken a copy of the MRI to Dr. Hussey as he asked. On April 27, 2017, the claimant filed a claim for compensation. On February 20, 2020, Respondents filed a motion to dismiss for failure to prosecute. Claimant never asked Respondents to authorize her to return to Hussey until the filing of the motion to dismiss. Respondents contend that Claimant's request for authorization to return to Dr. Hussey now over two years after she saw him is not reasonable and necessary.

The parties agreed to litigate whether the claimant is entitled to additional medical treatment. All other issues were reserved.

After a hearing, an Administrative Law Judge filed an opinion on September 2, 2020. The Administrative Law Judge found that Claimant has not proven by a preponderance of the evidence that she is entitled to additional treatment. The claimant appeals this finding to the Full Commission.

II. ADJUDICATION

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 he 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). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

The respondent-employer is required to provide reasonable and necessary medical treatment for the claimant's compensable injuries. Although Dr. Hussey noted that the claimant would obtain a copy of the MRI scan and deliver it to him, the claimant was not required to do so to be entitled to additional medical treatment. It is the respondent-employer's obligation to provide all reasonable and necessary medical treatment to the claimant. Dr. Hussey indicated that he needed to review the MRI scan before assessing the claimant's condition further. It appears that the CD containing the claimant's MRI scan has been misplaced. Therefore, we find that the claimant is entitled to have the benefit of a new MRI and follow-up visit with Dr. Hussey.

Therefore, for the foregoing reasons, the Full Commission finds that the claimant proved by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an MRI, a follow-up

visit with Dr. Hussey, and any additional reasonably necessary medical treatment that is causally connected to the claimant's compensable injuries.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an MRI, a follow-up visit with Dr. Hussey, and any additional reasonably necessary medical treatment that is causally connected to the claimant's compensable injuries. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority's finding that Claimant is entitled to additional medical treatment in the form of an MRI and

follow-up visit with Dr. Hussey. Claimant's request stems from a visit to Dr. Hussey, which concluded with Dr. Hussey determining that without the actual images from a prior MRI, he was unable to make any recommendation for additional treatment. Claimant admits that she had the disc and claims that she dropped it off at Dr. Hussey's office and the disc is now lost. Dr. Hussey does not indicate that Claimant needs further treatment and there is no telling what all changes have occurred over the two years that have lapsed since Claimant's lost MRI. Claimant requests a new MRI at Respondents' expense. Respondents should not be liable to pay for another MRI when either Claimant or her treating physician lost the disc containing the results from the previous MRI. Accordingly, I respectfully dissent.

CHRISTOPHER L. PALMER, Commissioner