

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H208285

TERESA A. WRIGHT,
EMPLOYEE

CLAIMANT

LOWE'S HOME CENTERS, LLC,
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES
INC., INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 12, 2025

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

Claimant represented by the HONORABLE MARK ALAN PEOPLES,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE RANDY P. MURPHY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed October 2, 2024. The administrative law judge found that the claimant proved a cervical anterior fusion was reasonably necessary. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove a cervical anterior fusion was reasonably necessary.

I. HISTORY

The parties stipulated that the employment relationship existed on September 20, 2022. Teresa Wright, now age 58, testified on direct examination:

Q. You got hurt back in September of 2022. Tell the judge what happened.

A. I worked for the MST team, and we moved beams and set bays in Lowe's. We do all the preparation to get it done, so we were moving a beam 15 feet off the floor....So we were moving that beam from one location to another, and we were waiting on a tape measure because we didn't get that spot marked; and the – while we were standing there holding the beam, the other girl that was on the other end of that beam – 'cause it's like 75 to 100 pounds for one beam, so two people had to do it – she dropped her end of the beam, and I did not see it happening. And we were on ladders, and the beam started falling, and it pulled on my arm and almost pulled me over the side of the ladder as it was falling and jerked me real bad. And my shoulder was hurting, my back was hurting, my neck was hurting, my left shoulder was hurting, all of my arm.

The parties stipulated that the claimant “sustained compensable injuries to her right shoulder, arm, elbow, neck, and back” on September 20, 2022.

According to the record, the claimant received emergency treatment on September 20, 2022: “C/O right shoulder pain. Limited ROM to right shoulder. Pt was at work at Lowe's. She and a coworker were on ladders. Each of them were holding an end of a metal beam. Pt reports her coworker dropped her end of the beam.”

An x-ray of the claimant's cervical spine was taken on September 20, 2022:

1. No fractures or subluxations are evident in the cervical spine.
2. Spondylosis at the C4-5 through C6-7 levels.
3. Mild facet arthropathy is present in the lower cervical spine.

A physician diagnosed “Right shoulder strain” and “Elbow sprain, right.”

Dr. Michael Hussey performed a right arthroscopic rotator cuff repair on November 15, 2022. The post-operative diagnosis included “1. Rotator cuff tear.” The claimant received a series of physical therapy visits at Physical Therapy Institute beginning January 3, 2023. Physical therapy was primarily related to the claimant’s right shoulder.

An x-ray of the claimant’s cervical spine was taken on January 16, 2023 with the following findings:

Cervical alignment and vertebral body height appear normal. The disc spaces are mildly narrowed see 5-6-7. The lateral masses are aligned. No osseous lesion or level suspicious for acute fracture. There is no evidence of prevertebral soft tissue swelling. Loss of lordosis.
IMPRESSION: No acute traumatic osseous abnormality.

An MRI of the claimant’s cervical spine was taken on January 30, 2023 with the following conclusion:

1. Moderate spinal canal stenosis at C5-C6 secondary to a broad-based posterior disc protrusion and ligamentum flavum thickening. There is mass effect on the ventral cord without definitive cord signal abnormality. Moderate bilateral neural foramen stenosis is also present at this level.
2. Severe left and moderate right neural foramen stenosis at C6-C7 secondary. Mild spinal canal stenosis is also present at this level.
3. Additional mild multilevel spinal canal and neural foramen stenoses as above.

The record indicates that Dr. Edward Saer examined the claimant on or about February 21, 2023:

Ms. Wright is a 56-year-old woman who works at Lowe's and injured her neck at work on September 20, 2022. She was on a ladder with another coworker on another ladder, stacking shelving beams. The other person dropped [hers] and, Ms. Wright had to actually go down a couple steps on the ladder as she tried to hold onto [hers] and it jerked her right shoulder and she subsequently was diagnosed with a rotator cuff tear and other problems. She had surgery for that by Dr. Hussey on November 15, 2022. She also jerked her neck and says she has diffuse posterior cervical pain....

X-rays: AP lateral cervical films show degenerative disc changes at C6-7, mild disc narrowing at C5-6 and a little bit at C4-5.

MRI of the cervical spine done at RAPA on January 30, 2023 was reviewed. There is a central disc bulge at C5-6 that abuts but does not compress the cord. There is some foraminal narrowing at C6-7 on the left. Otherwise she has mild degenerative changes that are relatively normal for age.

Dr. Saer assessed "Probable cervical strain/sprain. I think some physical therapy would be helpful and I will give her a referral for that. She may continue working with the same restrictions, that Dr. Hussey gave. I will plan to see her back in several weeks."

A note at Physical Therapy Institute on February 24, 2023 indicated, "Pt states her doctor thinks she has whiplash due to her incident at work....Add cervical exercises and manual therapy techniques to reduce pain in her neck per new script."

The claimant followed up with Dr. Saer on March 28, 2023: "She has been going to physical therapy and went for about 4 weeks. She thinks it

helped. She is still having pain in the back of her neck....I reviewed her imaging with her today and we had a long discussion about this. I explained that the problem is not the bulging disc in her neck. She has likely had a soft tissue strain or sprain causing her pain. That will improve but is going to take some time. I will give her a referral for some more PT since that seems to be helping her.”

Dr. Hussey performed surgery on May 11, 2023: “Right elbow extensor tendon debridement and repair.” The pre- and post-operative diagnosis was “Right elbow high-grade partial-thickness extensor tendon tear.”

The diagnosis at Physical Therapy Institute on July 3, 2023 was “Pain in right shoulder” and “Cervicalgia.”

An MRI of the claimant’s cervical spine was taken on September 26, 2023 with the following impression:

1. Multilevel degenerative disease.
2. Severe left foraminal stenosis at C6-7.
3. Moderate foraminal stenoses on the left at C3-4 and on the right at C6-7.
4. Mild foraminal stenoses on the right at C3-4 and bilaterally at C5-6. Mild central canal stenoses at C3-4, C4-5, C5-6, and C6-7.
5. Broad central protrusion type disc herniation at C3-4, with contact of the left ventral cord.
6. No evidence of cord contusion, epidural hematoma, compression fracture, or ligament disruption.

Dr. Saer's diagnosis on September 26, 2023 was "Radiculopathy, cervical region." The symptoms were described as "Neck pain that radiates into Rt arm. 1 yr."

Dr. Saer noted on October 2, 2023, "Ms. Wright was seen on September 28, 2023. She is at MMI from the standpoint of her cervical spine and has no permanent restrictions related to her cervical spine. There is no permanent impairment related to her cervical spine."

Dr. Hussey reported on December 28, 2023:

1. Patient may return back to work without restrictions to the right upper extremity.
2. Patient is now at MMI as of date 5/28/2023 with a 2% impairment rating to the right upper extremity, which corresponds to a 1% whole person impairment rating according to the 4th Edition AMA Guides to the Evaluation of Permanent Impairment. Impairment is due to mild restriction in range of motion of the shoulder joint.
3. No further follow-up is necessary. The statements given above are within a reasonable degree of medical certainty.

The claimant began treating with Dr. Reza Shahim on January 4, 2024:

Patient was involved in a work-related injury last 2022 September resulting in shoulder and arm injury she has had right shoulder surgery right elbow surgery continues to have radicular pain she also has severe axial neck pain interscapular pain suboccipital headaches is persistent. She has had physical therapy for many weeks on her cervical spine without any improvement. Since the extremity symptoms are persistent I will ask Worker's Comp. to consider referring to orthopedics for second opinion.

She does have a cervical disc injury at C5-6 and some degrees of C6-7 I would suggest she goes through series of cervical injection in preparation for possible surgical intervention if she does not improve she is a smoker and a diabetic. I would recommend smoke cessation prior to the surgical treatment in the cervical spine.

Dr. Shahim planned on February 12, 2024, "Patient has a work-related injury in 2021 has been followed by orthopedics outside clinic she continues to have radicular symptoms. I had requested spinal injection which was not approved previously she says she prefer to have surgery since she has significant spinal stenosis C5-6 and degenerative disc disease at C6-7 I would recommend an anterior fusion at C5-6 and possibly at C6-7. I will reach out to the Worker's Comp. authorization if that procedure was denied and I will release her from my care until the condition is settled through the Worker's Comp. adjuster's."

A pre-hearing order was filed on April 10, 2024. The parties agreed to litigate the following issues:

1. Whether Claimant is entitled to any additional reasonable and necessary medical treatment.
2. Whether Claimant is entitled to temporary partial disability benefits (TPD) due to work hours being substantially reduced.
3. Whether Claimant's attorney is entitled to controverted attorney's fees. All other issues are reserved.

Dr. Owen L. Kelly corresponded with the respondents' attorney on May 13, 2024 and stated in part:

Ms. Wright was involved in an accident at work on 9/20/22. She was holding a heavy beam when a co-worker dropped one side and it jerked her arm. She underwent treatment for the right shoulder, right elbow, and cervical spine.

1. MAXIMUM MEDICAL IMPROVEMENT:

Per the medical records, Dr. Hussey has placed Ms. Wright at Maximum Medical Improvement and assigned an impairment rating of 2% to the right upper extremity and 1% whole person. Both of these seem consistent/reasonable. MMI date was placed at 5/8/23 which appears consistent.

2. FURTHER/FUTURE TREATMENT:

Further treatment for Ms. Wright's right elbow and right shoulder are not necessary or indicated. Both of these accepted injuries have reached maximum medical improvement as documented in the provided records.

3. CERVICAL SPINE:

The cervical spine MRI findings confirm degenerative findings. Ms. Wright may have sustained a sprain/strain, but the objective MRI findings are not related to injury or trauma. No further medical treatment or surgery would be recommended for the cervical spine as it relates to incident of 9/20/22.

An anterior cervical fusion has been suggested by a subsequent treating physician. This physician indicated that injury was the reason for the surgery. This directly contradicts the opinion of the initial treating spine specialist. The initial treating spine specialist documented clearly and precisely the reasoning while surgery would not be related. This initial opinion appears correct, objectively based and is supported by the medical records. The anterior cervical fusion procedure would not be related to the one-time isolated accident.

4. RESTRICTIONS/ABILITY TO WORK:

The Functional Capacity Evaluation results were reviewed. The functional pain results were unreliable per the testing therapist. Dr. Hussey's letter noted the unreliable results and Ms. Wright was released for full duty to the right upper extremity. There is no disagreement with Dr. Hussey's release for full duty. Without an accurate and honest effort/result, full duty is recommended.

Dr. Shane McAlister corresponded with the respondents' attorney on June 17, 2024 and stated in part:

You have asked me to review medical records and diagnostic imaging on Ms. Teresa Wright (dob 08/04/1966) and provide you with a written report of the findings contained therein.... These records report that Ms. Wright was standing on a ladder on 9-20-2022 holding one end of a steel "beam" while a co-worker at her work place was on another ladder holding the other end. The co-worker dropped their end. Ms. Wright said she had both hands holding the piece of shelving, her left hand released, and her right hand didn't, thereby pulling her right shoulder down. She was seen that day at Baptist Health North Little Rock....

In summary, Ms. Wright was holding a steel shelving beam while standing on a ladder on 9-20-2022. Her coworker, who was holding the other end, dropped it. The beam fell from Ms. Wright's left hand while her right hand was still holding it. She stated this pulled her right shoulder down. She was seen that day in the ED with right shoulder pain. Physical examination and diagnostic imaging revealed no objective finding of acute traumatic injury. She later had right shoulder and right elbow surgery for repair of tendon tears that were confirmed on MRI scanning. She later had neck symptoms that were diagnosed as a sprain/strain by a spine specialist, Dr. Saer. MRI scanning revealed age commensurate degenerative changes with no evidence of any bony or soft tissue injury.

Sprain/strains are diagnosed when the patient reports symptoms, but there is no evidence of any anatomic injury. They typically resolve in days to weeks....

These records and the diagnostic imaging submitted do not document any traumatic injury to the cervical spine from the incident on 9-20-2022. There was no axial loading on the spine as a mechanism for injury to the discs or vertebral bodies, and the MRI scanning is the most sensitive imaging available for evaluation acute injury or soft tissue injury, and none was found. Any further treatment for the cervical symptoms would be related to the underlying degenerative process or other etiology.

These findings are stated to a reasonable degree of medical certainty.

After a hearing, an administrative law judge filed an opinion on October 2, 2024. The administrative law judge found, among other things, that the claimant proved a cervical anterior fusion was reasonably necessary. The respondents appeal to the Full Commission.

II. ADJUDICATION

The 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)(Supp. 2024). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). 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 70 (1984).

An administrative law judge found in the present matter, “3. The Claimant has proven, and I find by the preponderance of the evidence that Claimant has proven that a cervical anterior fusion for her C5-C6, not her C6-C7, is reasonable and necessary medical treatment for her

compensable neck injury.” The Full Commission does not affirm this finding.

The parties stipulated that the claimant sustained compensable injuries to her right shoulder, arm, elbow, neck, and back on September 20, 2022. The claimant testified that she sustained a compensable injury while helping to stack a shelving beam. An x-ray of the claimant’s cervical spine on September 20, 2022 showed mild facet arthropathy, spondylosis, and “no fractures or subluxations.” Dr. Saer subsequently described the compensable injury to the claimant’s neck as a “probable cervical strain/sprain.” The claimant was provided conservative medical treatment in connection with her compensable neck injury. An x-ray of the claimant’s cervical spine on January 16, 2023 showed “No acute traumatic osseous abnormality.” An MRI of the claimant’s cervical spine on January 30, 2023 showed moderate spinal canal stenosis and a “broad-based posterior disc protrusion.” The claimant was provided physical therapy as a result of her cervical strain/sprain. The claimant reported benefit from physical therapy.

Dr. Saer reported on October 2, 2023, “She is at MMI from the standpoint of her cervical spine and has no permanent restrictions related to her cervical spine. There is no permanent impairment related to her cervical spine.” The claimant began treating with Dr. Shahim on January 4, 2024. Dr. Shahim recommended “an anterior fusion at C5-6 and possibly at

C6-7.” However, Dr. Kelly opined on May 13, 2024, “No further medical treatment of surgery would be recommended for the cervical spine as it relates to incident of 9/20/22.” Likewise, Dr. McAlister examined the medical records and did not opine that surgery was reasonably necessary. Dr. McAlister reported on June 17, 2024, “Any further treatment for the cervical symptoms would be related to the underlying degenerative process or other etiology. These findings are stated to a reasonable degree of medical certainty.”

A claimant who has sustained a compensable injury is not required to offer objective medical evidence in order to prove she is entitled to additional benefits; however, the claimant bears the burden of proving she is entitled to additional medical treatment. *See Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408. In the present matter, the Full Commission finds that the claimant did not prove she was entitled to surgical treatment recommended by Dr. Shahim. The evidence demonstrates that the claimant sustained a compensable cervical strain/sprain on September 20, 2022, for which the claimant received reasonably necessary medical treatment. The Full Commission attaches significant evidentiary weight to Dr. Saer’s opinion that the claimant reached maximum medical improvement no later than October 2, 2023.

We recognize that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). In the present matter, the evidence does not demonstrate that surgery recommended by Dr. Shahim would be geared toward management of the compensable cervical injury. It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Full Commission finds in the present matter that the expert opinions of Dr. Saer, Dr. Kelly, and Dr. McAlister are entitled to significant evidentiary weight and are more credible than the opinion of Dr. Shahim. Neither Dr. Saer, Dr. Kelly, or Dr. McAlister opined that surgical treatment was reasonably necessary.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove a cervical anterior fusion was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Supp. 2024). We therefore reverse the administrative law judge's opinion, and this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The ALJ found that the Claimant proved by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment for her compensable neck injury including an additional cervical anterior fusion at the C5-C6 level. After conducting a thorough review of the record, I would concur with the ALJ, and dissent with the majority.

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 reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

The Arkansas Court of Appeals has held a claimant may be entitled to additional medical treatment even after the healing period has ended, if said treatment is geared toward management of the injury. See *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing 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); *Artex*, supra.

In the present case, the Claimant suffered a compensable injury to her cervical spine on September 20, 2022. Claimant was initially treated by Dr. Michael Hussey for a compensable right shoulder injury resulting from the work accident on September 20, 2022. During Claimant's treatment, she was also assessed as having a probable cervical sprain and sent to physical therapy. The treatment initially resolved some of Claimant's cervical symptomology, but as her symptoms worsened the Claimant was seen by Dr. Edward Saer who recommended an additional MRI. The MRI impression identified a disc osteophyte complex, joint hypertrophy and stenosis at the C5-6 level of the Claimant's cervical spine. Following this

MRI, Dr. Saer was hesitant to continue treatment or had no further treatment to offer Claimant. As a result, the Claimant requested and received a Change of Physician Order and began Treatment with Dr. Reza Shahim. Dr. Shahim opined on January 4, 2024, that Claimant had a cervical disc injury and recommended a series of cervical injections in preparation for possible surgical intervention if she did not improve as a result from the September 20, 2022 accident. Dr. Shahim further states that he reviewed the Claimant's cervical spine MRI which found the Claimant as having cervical spondylosis with stenosis at the C5-6 and C6-7 levels. On February 12, 2024, Claimant followed up with Dr. Shahim who recommended an anterior fusion at C5-6 and possible C6-7 levels of her cervical spine due to her compensable cervical injury. At that time, Dr. Shahim also stated that the insurance carrier had denied his request to perform injections for the continued radicular symptoms the Claimant was suffering from.

In light of the admittedly compensable cervical injury, the continued symptoms the Claimant suffered from and the credible evidence in the record, I would rule that the Claimant has proved by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a cervical anterior fusion of the C5-C6 as recommended by Dr. Shahim.

For the reasons stated above, I respectfully dissent.

M. SCOTT WILLHITE, Commissioner