

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H201972**

JAMES BEAUCHAMP, Employee	CLAIMANT
CONAGRA FOODS PACKAGED FOODS LLC, Employer	RESPONDENT
BROADSPIRE SERVICES INC., Carrier	RESPONDENT

OPINION FILED **JANUARY 17, 2023**

Case submitted on the record before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD S. PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 10, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 15, 2022, and a pre-hearing order was filed on that same date. A copy of the prehearing order has been marked as Commission's Exhibit No.1 and is made part of the record without objection.

At the prehearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on January 4, 2022.
3. The respondents have controverted the claim regarding claimant's right hip and pelvis.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether claimant sustained a compensable injury on January 4, 2022, regarding his

right hip and pelvis.

2. If compensable, whether claimant is entitled to temporary total disability benefits, and medical benefits.
3. Compensation rate.
4. Attorney fees.

All other issues are reserved by the parties.

The claimant contends that “he is entitled to medical treatment for his right hip and pelvic fractures in addition to treatment respondents are providing for his left hip. Claimant contends he is entitled to temporary total disability benefits from the date last worked to a date yet to be determined. The claimant reserves all other issues.”

The respondents contend that “claimant did not suffer a right hip injury on or about January 4, 2022. Respondents further contend that in the event compensability is found, the medical records do not support entitlement to medical treatment or indemnity benefits for the right hip.”

From a review of the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his 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 a pre-hearing conference conducted on February 15, 2022 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met his burden of proving that he suffered a compensable injury to his right hip and pelvis on January 5, 2022.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injuries.

4. Claimant is entitled to temporary total disability benefits beginning January 4, 2022, the date of his injury, less any payments he received for working light duty before February 17, 2022.

5. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

At the hearing, the parties advised they would attempt to reach an agreement on claimant's average weekly wage and advise me if they did so. After the hearing, the parties stipulated to an average weekly wage of \$925.36, making the temporary total disability rate \$617.00 per week.

HEARING TESTIMONY

Claimant had been employed with Con-Agra for twenty-five years when on January 4, 2022, he tripped and fell on his left hip and knee. He was immediately taken to Arkansas Occupational Medicine Services where he was examined by physician assistant, Daniel Nicholas. Claimant said he was bruised from his left knee up to his hip. As the bruising went away, claimant stated he was going to therapy and his right side was hurting more than his left, then the pain went completely across his lower back.

Claimant saw a couple of orthopedic physicians, Dr. Mark Allard and Dr. Matthew Coker, but did not receive relief from them. He also saw his family doctor, Joseph O'Connell. Dr. O'Connell prescribed Oxycodone for claimant and ordered an MRI. He later saw Dr. Christopher Dougherty who ordered aqua therapy.

Claimant testified that following his fall, he has had difficulties both walking or sitting for any extended length of time. He first used crutches, but those did not help and now uses a walker. Claimant said he could not work at Con-Agra because he walked about twelve miles a day there during a ten-

to-twelve-hour shift and he could not do that. He did some light duty but eventually his doctor removed him from work entirely.

Claimant said when he went shopping with his wife on the weekend, he used a buggy but thought that was embarrassing. He now uses his walker but must take frequent rest breaks. Claimant said he tries to help around the house but is limited to five to fifteen minutes at a time. Claimant stated that he needs help putting his shoes and socks on and getting in and out of the bathtub.

Claimant disputed what nurse practitioner Daniel Nicholas had in his medical records that upon his examination of claimant's right hip, there was no bruising, swelling, and a normal range of motion.

On cross-examination, respondent asked claimant about his various statements about the onset of his pain in his right hip. Claimant was shown the Employee's Notice of Injury that he filled out on January 6, 2022, which mentioned an injury only to his left hip and left knee, and he verified that is what he reported at the time of the fall. During his deposition, claimant said he first experienced right hip pain in therapy at Arkansas Occupational Health. Claimant was asked about the therapist's record on February 1, 2022 that recorded he was sore on a Sunday and the right hip had started hurting that day. Claimant conceded that he had not been at physical therapy on Sunday. Claimant was shown his deposition testimony where he stated that the right hip discomfort started before therapy. Claimant was then asked about his deposition testimony where he said the right hip pain started while doing light duty at Con-Agra, but he did not report it to anyone at Con-Agra. He also thought that the crutches he was using may have caused his right hip pain. Although his medical records said that he had gone shopping with his wife and three-year-old grandson, claimant denied that his grandson had been shopping with him since he was hurt. Claimant responded that he had seen his grandson but had not gone shopping with him. He did not know how the entry was placed in his records that said

Beauchamp-H01972

otherwise.

Claimant was asked about a notation in his therapy records that on January 27, 2022 and February 1, 2022 it was noted that he had a contusion on his right hip. Claimant stated that he had never had a bruise on his right hip and that entry in his records was not true. Claimant was also asked about his testimony in his deposition where he quoted Dr. Allard as saying “Your left hip is fine. You are fine to go back to work.” Claimant said he did not remember being released to go back to work. Claimant said the pain in his right hip began after the bruising had gone away from his left hip, and he started feeling pain all the way across; claimant believed that was approximately three weeks after the injury to his left hip. Claimant had no explanation as to why the physical therapist made this entry on February 1, 2022, which stated that the diagnosis was “contusion of right hip”.

On redirect examination, claimant said that he had not had an incident after his fall at Con-Agra where he had injured any part of his body. He believed the pain in the right hip was a gradual thing.

Claimant was then shown testimony from his deposition where he was asked:

Q: (BY MR. PARRISH): Correct me if I am saying this wrong. It is my understanding that you were saying the right hip pain started in therapy?

A: Yeah. Well no. It was before the therapy because I couldn't get up on the bed. I could get up on my left side, but I couldn't get there on my right side. I had to go to the other side of the bed to get on top of it because I couldn't get up on the right side at all...

Q: OK. So, let's circle back. When I asked you earlier what you were doing when the right hip pain started, you told me you were in therapy, but now you say it was before therapy even started, right?

A: I don't remember. I am not trying to lie to you. I just don't really remember when it started. All I know is it was very painful.

Claimant recalled telling the physical therapist at some point his left hip was feeling better and it was the right hip that was bothering him. [This is reflected in the February 1, 2022, record from the physical therapist, reviewed below.] Claimant was then shown this portion of his deposition testimony:

Q: (BY MR. PARRISH): Have you told any of your doctors anything about shopping with your wife and having onset of right sided problems?

A: I went shopping with my wife. I used my walker and I get in one of them little buggies and every little bump I hit it hurts.

Q: My question was did you make any statement to your doctors about shopping with your wife at the time your right sided problems started?

A: I don't think so. And from shopping with my wife, I don't carry the groceries in. She won't let me do nothing.

Q: So how do you maintain that your right hip pain that you were telling me about is related to falling on your left side.

A. Because I broke my pelvis.

Q. You maintain that the pelvis break was related to the fall?

A. I know it is because I haven't fallen since.

On recross examination, the following exchange took place:

Q: (BY MR. PARRISH) Sir you were asked about your testimony at one point in the deposition where you said your right hip problems started before therapy. That is what your attorney just directed you to. Do you remember that?

A: Okay yes.

Q: Okay you agree with me that I am not making this up that you said your problems started in therapy at one point in the depo?

A: "I probably did"

Q: And at one point you said it started at home while doing therapy?

A: That could be too. I have said it happened in therapy and I meant at home, but I don't know where it started, or when it started, okay? I don't know how it started.

Q: You agree you have given five if not six different explanations for when the right hip problems started?

A: "I have given you five or six answers to what I think might have caused it.

Q: Okay?

A: I don't know.

Claimant again said he had no explanation of the documentation of the right hip contusion in his medical records at the end of January.

On redirect examination claimant said he had no problems with his right hip before he fell at Con-Agra nor with his left hip. He first reported the pain in his right hip to the therapist because he didn't see the doctors after he first noticed it.

On recross examination, claimant did not deny that there was an examination of his right hip, but he was disputing what was written regarding that examination. He said he didn't know if there was an examination as documented in the records from the Arkansas Occupational Health.

On redirect examination, claimant said he didn't think that the nurse practitioner examining him tried to move his right leg, but he didn't remember. He was concerned with his left leg at the time. He eventually said that P.A. Nicholas probably moved his leg around on the first visit, but he didn't really remember; on the second visit, he recalled his left leg was moved but he did not remember if his right leg had been moved around.

REVIEW OF MEDICAL RECORDS EXHIBITS

When Claimant fell on January 4, 2022, he was taken to the Arkansas Occupational Medicines Services and examined by Daniel Nicholas, P.A. P.A. Nicholas continued to follow claimant for the next couple of weeks and there was no mention of any pain in claimant's right hip. On January 27, 2022 claimant began a course of physical therapy at NWA Physical Ability Testing Center (NWA). The first record relates the history claimant gave: "His feet became caught in some pallet strapping causing him to fall, hitting his left knee and left hip on the floor. The chief complaint was pain in the left hip, difficulty walking." The physical therapy examination on that date showed claimant had good active range of motion as well as passive range of motion on his right hip, but markedly less range of motion on his left hip.¹ On February 1, 2022, the subjective portion of the report states "James states

¹ As discussed below, I have concluded that the diagnosis portion of the January 27, 2022, record was a coding error which resulted in an entry of a contusion of the right hip when no such contusion existed.

he was really sore on Sunday and it's the right hip hurting today, along with the middle low back. He tells me that his left hip is doing fine. He mentioned the pain management and asked if he needed that." Brandon Peyton, the physical therapist, recorded under the assessment portion of the report "He says his pain is more on the right side today and the low back. He tells me hip ER and IR caused a little pain in the mid low back. He may have overdone the HEP this weekend so we talked about not doing more than he can handle." From there, claimant's complaints are largely with his right hip and right lower back. In summary, the physical therapy records from January 27, 2022, showed no problem on claimant's right hip, but on February 1, 2022, the right hip became the primary complaint.

Claimant returned to Arkansas Occupational Medicine Services on February 8, 2022, and again saw physician assistant Nicholas. Consistent with what he said at physical therapy, claimant said his left hip was getting better but his right hip was getting worse. PA Nicholas recorded in the comments on the history of the present illness "James has significant improvement in his left hip. He has developed severe right hip pain with no specific injury."

Claimant testified he went to see his family physician when he felt he was not getting better and saw Dr. Joseph O'Connell on February 9, 2022. Dr. O'Connell believed that claimant needed a pelvic x-ray and administered therapeutic injections of Toradol and Betamethasone.

Dr. Mark Allard at Northwest Physicians was the next doctor to examine claimant. Dr. Allard ordered x-rays of claimant's right hip and found "radiographic findings: evidence of osteoarticular abnormality; he has got some early osteoarthritis of the right hip with some joint space narrowing and osteophyte formation. None on the left side. No evidence of fracture." Dr. Allard assessed claimant with a lumbar back strain and recommended that an MRI be performed. After reviewing only the x-ray, Dr. Allard opined "it is my medical opinion this is likely due to overuse two weeks ago and is not directly related to his work-related injury from six weeks ago." Dr. Allard did not schedule another

Beauchamp-H01972

appointment for claimant but said he could return as needed.

When claimant failed to make much progress, on February 23, 2022, he returned to see Dr. O'Connell. Dr. O'Connell saw claimant again on both March 8, 2022 and April 5, 2022. He ordered an MRI, which was performed on April 13. The impression from the MRI was:

“acute or subacute, mildly displaced fractures of the left superior and left inferior pubic rami. Nondisplaced acute or subacute fracture of the right sacral ala. No fracture of either proximal femora. Findings of femoroacetabular impingement of each hip, a chronic finding. On this MRI of the right hip, abnormal signal in the superior aspect of the right acetabular labrum is consistent with chronic degeneration of the labrum related to the femoroacetabular impingement.”

Claimant saw Dr. Matthew Coker on April 28, 2022. Dr. Coker recited the history to that point and reviewed the findings from the MRI. He recorded claimant “was also subsequently found to have a right sacral alae fracture. He did develop some right hip pain, but this was not associated with the fall on the left side. It started to bother him a few weeks later. The left side is a work-related injury, but the right side is not considered a work-related injury.”

Claimant was admitted to Encompass Health Rehabilitation Hospital on June 15, 2022 for inpatient physical therapy. It is unclear who the referring physician was for this course of rehabilitation, and nothing about it provided useful information regarding the issues in this case.

Following his discharge from Encompass, claimant began seeing Dr. Christopher Dougherty on June 22, 2022. In the assessment and plan following the August 3, 2022 visit, Dr. Dougherty stated that a CT scan showed “a left superior/inferior pubic ramus fracture and a right fracture of the aspect sacrum.” Dr. Dougherty directly attributed the fractures to claimant's fall at work and stated the claimant was not able to do even sedentary work due to the fractures. He referred claimant to aqua therapy at Trinity Rehabilitation, where claimant completed all physical therapy sessions which were allowed by his insurance company. The physical therapist, Thomas Curtner, said “his injuries are a

result of a work-related incident, and he will be transitioning his plan of care to be covered by his employer's workers' compensation insurance." Claimant's therapy included treatment for both his left and right side.

The final record introduced was a letter from Dr. O'Connell dated November 2, 2022. Dr. O'Connell stated that he has been claimant's primary care physician for over ten years and said claimant "has never had issues with his hips or pelvis."

ADJUDICATION

The issue in this case is if claimant's right hip injury is related to his admittedly compensable injury to his left hip which occurred in a fall on January 4, 2022. While claimant's testimony was somewhat confusing on the onset of his right hip pain, in reviewing the entire record, I find that he has shown by a preponderance of the evidence that his right hip injury was incurred during that fall.

Respondent pointed out the various answers claimant gave in his deposition testimony and in the medical records as to when the pain in his right hip began. Claimant conceded that at various times, he placed the onset of the issues with his right hip before he started therapy, due to the use of crutches, while working light duty, as the result of a therapy session and on a Sunday when he didn't have therapy. He denied an entry in a doctor's report that he had gone shopping with his wife and grandson and couldn't walk the next day. When pressed on the different answers as to when and how his right hip started hurting, claimant said he had given those answers as possible causes, because he didn't know what the cause was or just when the pain in his right hip started. His efforts to give a cause for how and when the right hip pain started caused more confusion than clarity, but I do not find those answers were given in an effort to deceive respondent or this court.

A review of the physical therapy records gives the likely answer as to when the right hip began to cause claimant a problem. Respondent asked claimant about the entries on the February 1, 2022.

Beauchamp-H01972

report from NWA, which is the first record regarding an issue with claimant's right hip. The questioning focused on why claimant disputed having a contusion on his right hip on that day. However, claimant was not asked about the NWA record of January 27, 2022, in which claimant was not complaining of any issues with his right hip, but rather was treated for left hip discomfort. I believe it would be unusual for a person doing physical therapy to be asked to disrobe for an inspection of a hip that had already been examined by the referring physician's assistant. It was also odd that every diagnosis—even the fifth one—continued to refer to the visit as an initial encounter. I am convinced the entry for the right hip on the first visit was a coding error and was not corrected during claimant's course of treatment with NWA. Each visit was coded with S70.01XA, the code for a "contusion of the right hip, initial encounter," but claimant did not complain of any issues with his right hip on his first visit to NWA. (See <https://icdlist.com/icd-10/S70.01XA> and <https://icdlist.com/icd-10/S70.02XA> for the medical codes for contusions to the right and left hip, initial encounter, respectively.)

As such, I find claimant's testimony that he did not have bruising on his right hip to be credible, and the physical therapy entries that reflected the presence of a contusion on his right hip was a mistake made by someone at NWA in coding the first visit. That mistake led respondent to believe claimant had a contusion on his right hip when none existed.

I also noted that there were no radiograph tests other than X-rays made of claimant's right hip before April 13, 2022. X-rays alone frequently do not show the type of sacral fracture that can be seen by an MRI.² As that was all Dr. Allard ordered, I give no weight to his opinion that the condition

² See SACRAL FRACTURES: CURRENT STRATEGIES IN DIAGNOSIS AND MANAGEMENT <https://pubmed.ncbi.nlm.nih.gov/19824583/>: "While displaced fractures can be easily diagnosed on high quality plain radiographs, nondisplaced or transverse fracture patterns may be difficult to diagnose without a computed tomography scan. Once identified, correct classification of a sacral fracture can facilitate ideal treatment strategies."

he saw on February 17, 2022, was “not directly related to his work-related injury from 6 weeks ago.”

Dr. Coker had the benefit of the MRI results and recognized the right sacral fracture. The wording of his opinion is a bit vague as it relates to the connection between claimant’s fall on his left hip and the pain in his right hip: “The left side is a work-related injury but the right side is not considered a work-related injury.” (Emphasis added) It is unclear if the right hip issues were not considered a work-related injury by Dr. Coker, or not considered to be such by the workers’ compensation carrier. It is evident Dr. Coker’s staff had been contacted by the adjuster for the carrier prior to examining claimant on April 28, 2022, because the contact information for that adjuster is provided under the heading “Patient’s Care Team.” From this wording, I cannot tell if Dr. Coker made an independent evaluation on whether the right hip injury was related to the fall, or recited what he had been told by the carrier about a right hip claim.

I am most persuaded by Dr. Dougherty’s unequivocal statement in his August 8, 2022 record. After noting fractures on claimant’s left and right side, he stated “All of these fractures are directly related to his fall at work.” The Arkansas Supreme Court in *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 447, 990 S.W.2d 522, 524 (1999) stated “The plethora of possible causes for work-related injuries includes many that can be established by common-sense observation and deduction.” Relating a fracture on the right side of claimant’s hip from a violent fall on his left side does not require speculation or guesswork; that claimant was initially focused on the damage to his bruised left side is not hard to understand. Any of the various possibilities claimant put forward—or a combination of them—could have caused the fractures on the right side to become symptomatic. Dr. Dougherty’s attribution of the right sacral ala fracture to the January 4, 2022, fall is consistent with the testimony and with the radiographic evidence from April 13, 2022 through August 8, 2022. As such, I find

claimant has proven by a preponderance of the evidence his right hip and pelvis injury is compensable.³

Having decided in claimant's favor on the issue of compensability, I turn now to the medical and indemnity benefits award. I am convinced that all of claimant's medical treatment has been reasonable and necessary. It is evident that he did not receive appropriate care early in the process and was reasonable in going to his own doctor to seek the treatment he was not provided by respondent. He is entitled to reimbursement for any out-of-pocket medical expenses he incurred.

I further find that claimant has not been able to work since he last performed light duty work for Con-Agra. Dr. Allard removed him from work on February 17, 2022, and I did not find that any physician returned him to work at even light duty after that time. I find claimant is entitled to temporary total disability benefits from the last day he worked for Con-Agra until the date of the hearing.⁴

ORDER

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the claimant.

³ While I was asked to decide the compensability of the right hip injury, it should be noted that claimant received treatment from Encompass, Dr. Dougherty, and Trinity Rehabilitation for the injury to his left hip during 2022. So there is no confusion, my finding is that the pelvic injuries—both sides-- are compensable and presently disabling.

⁴ The precise day claimant ceased working light duty was not provided during the hearing. Further, while respondent put on evidence of payments to claimant through a short-term disability policy provided entirely by the respondent employer, a request for a credit or offset pursuant to §11-9-411 was not made an issue in this matter. I cannot address it *sua sponte*, so I consider such to be a reserved issue as per the Prehearing Order.

Beauchamp-H201972

All issues not addressed herein are expressly reserved under the Act.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$ 795.95

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE