

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G900609

CALLA DUVALL, EMPLOYEE	CLAIMANT
AMERICAN AIR FILTER, EMPLOYER	RESPONDENT
SENTRY INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 30, 2022

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JARROD PARRISH, 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 March 23, 2022. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on July 28, 2021 and contained in an amended pre-hearing order filed November 15, 2021 are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment from Dr. Hagan.

3. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of post traumatic stress disorder as a result of her January 8, 2019 injury.

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 March 23, 2022 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.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion finding that (1) Claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment from Dr. Hagan; and (2) Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of post-traumatic stress disorder as a result of her January 8, 2019, injury.

Additional Medical Treatment

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 sustained compensable right shoulder and right upper extremity injuries as a result of a workplace accident on January 8, 2019. In his December 4, 2019, medical record, Dr. Michael Morse described the claimant's treatment history as follows:

She was a machine operator and was working around a machine that winds fiberglass into a blanket. She uses a knife to separate the different blankets on the roll. Her knife got caught and pulled her right arm between the blanket and a roller to the level of her elbow. She screamed at a coworker to stop the machine by pulling on a red rope. That was not done and instead he popped the bar of fiberglass but the rollers continued to spin. She was then pulled in to [sic] the level of her shoulder, chest and head. She was amnestic until EMT arrived and had to extract her. She's not sure if there was a loss of consciousness or not. She was taken to Washington Regional Medical Center and was found to have a fracture of the right third, fourth and seventh ribs and the left seventh rib. In addition she had bilateral lower lob atelectasis, very small lingular lung contusion versus atelectasis, and possible trace right lateral pneumothorax. She was treated and released and missed several days of work. She was then placed on light duty until last month. She is now on a 10 pound weight restriction.

In addition she had a fracture of her right hand and had 2 surgeries by Dr. Benfield. One was to do a pin and plate of her metacarpals on 1/22/19 and the second was a tendon release 8/13/19.

[In] addition she has seen a shoulder specialist and an MRI showed mild to moderate tendinosis of the rotator cuff without a tear. [T]he orthopedist does think she has a partial thickness tear of her rotator cuff.

...

I did review extensive medical records. She had an injury to her triangular fibrocartilage at the wrist joint per Dr. Jeff Johnson. She saw Dr.

Brian Benefield for an ORIF of the metacarpal with a diagnosis of right long finger proximal phalanx fracture, displaced, right metacarpal fracture, displaced, and right small metacarpal fracture, displaced. She had stellate ganglion blocks 5/14/19, 6/11/19, and 7/9/19 variable responses but with good short-term relief. Dr. Miedema felt she had complex regional pain syndrome type I. ...

Dr. Morse's assessment included "complex regional pain syndrome I of other specified site". Dr. Morse's plan regarding this diagnosis was as follows:

I believe her main issue is complex regional pain syndrome due to the on-the-job accident. Would recommend that she see an anesthesiology pain physician, Dr. Ennis, for his evaluation. Her clinical symptoms and her physical findings as well as a triple phase bone scan are most consistent with this diagnosis.

Dr. Ennis' initial evaluation of the claimant on December 12, 2019, confirmed the diagnosis of CRPS.

After a change of physician, the claimant came under the care of Dr. Chris Arnold at Advanced Orthopaedic Specialists for these injuries. Dr. Arnold performed surgical procedures on March 8, 2021, to repair the claimant's right shoulder rotator cuff tear.

The claimant saw Dr. Arnold on April 20, 2021, at which time Dr. Arnold noted a plan to refer the claimant to Dr. Keaton Hagan for neurogenic pain. In a May 28, 2021, medical record from Advanced

Orthopaedic Specialists, Jessica Shepherd recommended that the claimant be evaluated by Dr. Hagan. That medical record reads as follows:

Impression/plan:

... She reports that her shoulder feels better than before surgery. She has bothersome neurogenic pain which is inhibiting her recovery on her shoulder. Do not feel that her shoulder is stiff but due to neurogenic pain she cannot obtain full range of motion.

Paresthesia of skin

... Per Dr. Arnold's last note he recommended evaluation by Dr. Hagan. Work Comp has not approved this. Would still recommend evaluation by Dr. Hagan for neurogenic pain.

The claimant's treating physician has recommended that the claimant be evaluated by Dr. Hagan for an evaluation regarding her ongoing neurogenic pain. Based on this opinion I find that the claimant is entitled to additional medical treatment as recommended by Dr. Arnold.

PTSD Compensability

The evidence also preponderates that the claimant sustained a compensable mental injury. Ark. Code Ann. §11-9-113 states in pertinent part:

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

On March 18, 2020, the claimant was initially evaluated by Dr.

H. Gene Chambers, a neuropsychologist. Dr. Chambers noted the following:

Mrs. Duvall, currently, is concerned about her physical health and maintains that there are issues that she is having that have not been addressed. She maintained that she was told she had Complex Regional Pain Syndrome (CRPS) and that there is no physical reason why her hand does not work effectively. She did have surgery on her right hand and still has damage to her wrist and nerve damage in one of her fingers. There are other concerns, such as neck pain, radiating pain all the way from her right eye to her fingers on her right hand, as well as from neck and shoulder, through her spine, to her right leg, and occasionally to her left leg. This has not been thoroughly addressed according to her. She reported, 'They are not doing anything with my headaches and back aches'.

Mrs. Duvall's reason for seeing this writer was to assess and treat for PTSD. She, in addition, has had other complaints, such as memory loss, slow processing speed, and the feeling that she has been mistreated by coworkers who appear to have been joking about her accident and were not responsive to her emergency. Overall, she has anxiety and anger in regards to these issues.

Currently, she stated she cannot stretch out her right arm and make a fist with her right hand, and she continues with nightmares and flashbacks. She has seen several medical doctors/specialists approved by workman's comp but no medical doctors that she has requested to see for a second opinion. It is her belief that there is more damage to her body that has not been properly attended. Some of these concerns do include headaches, back pain, and blurriness in her right eye.

...

Discussion: Mrs. Duvall's test outcomes are consistent with a diagnosis of Posttraumatic Stress Disorder, Major Depression, Attention Deficit Hyperactive Disorder (preexisting) and Neurocognitive Disorder, due to Traumatic Injury. While she does carry a diagnosis of ADHD, which is preexisting, her injuries and subsequent depression and PTSD, have heightened her inability to sustain her focus and [concentration] have exacerbated this condition, to where she is unable to cognitive function effectively.

...

Recommendations:

1. It is recommended that Mrs. Duvall receive the opportunity to receive a second opinion, regarding her health concerns, at the expense of her employer.
2. Psychotherapy to treat PTSD.
3. It is recommended that Mrs. Duvall be off from work, at the present time, as it would be most beneficial for therapy on her PTSD. Being physically present at the facility is anxiety-provoking, and she is unable to work effectively. A one-month period of being away from the facility should allow her to make gains in her

mood (depression) and behaviors (anxiety).
Reassessment in one month can then occur.

Dr. Chambers authored letters in May of 2020, June of 2020, and July of 2020 indicating that the claimant was unable to return to work. A letter dated August 20, 2020, that indicated that the claimant discontinued sessions "due to very limited finances". Dr. Chamber did not indicate that the claimant could return to work.

The claimant continued her treatment with Dr. Chambers in September of 2020. Dr. Chambers again noted that the claimant was unable to work due to her physical limitations and post-traumatic stress. There are similar work excuses from Dr. Chambers that are dated October 21, 2020, November 13, 2020, December 17, 2020, and January 31, 2021. Dr. Chambers released the claimant to return to work, subject to Dr. Arnold's restrictions, effective March 8, 2021.

Dr. Garrett Andrews performed an IME on September 15, 2020. Based on his evaluation, Dr. Andrews reached the following conclusions:

Inconsistent performance during the testing was identified by the internal performance validity measures; she failed multiple performance validity checks. The results are not reflective of her actual cognitive functioning ability.

On the psychological portion of the assessment, her performance indicated an over reporting approach to the task. The results of the MMPI-2-RF are not valid for general interpretation and

indicate that the reported psychological distress is over reported or exaggerated. The results of this test are not reliable and cannot be interpreted.

Given her performance, no verifiable diagnosis can be made with regard to psychiatric or psychological sequela because of her injuries or resulting stress.

According to the Slick et. Al. Malingering Criteria Ms. Duvall would meet the criteria for Definite Malingering.

In response to Dr. Andrews' opinion, Dr. Chambers wrote a letter dated December 28, 2020. Dr. Chambers noted the following points:

Report provided by Garrett Andrews, PsyD,
ABPP/CN

1. In the evaluation provided by Dr. Andrews, Mrs. Duvall reported never having met or discussed any information with him regarding her current circumstances. Dr. Andrews wrote his report without ever seeing or meeting Mrs. Duvall, and subsequently, was apparently unaware of the extent of her pain or her current need for pain injections in her neck and back that were not provided. Furthermore, he was not aware of her stressful financial situation, her PTSD reactions, or her difficulty in having to drive 'solo' from Fayetteville to Little Rock for her evaluation.
2. ...
3. In Dr. Andrews' mental status portion of his report, he commented that Mrs. Duvall had breaks 'every 10 minutes or so due to pain in her arm and head.' Clearly, she could not provide her best effort in assessment under those

circumstances, yet, they persisted with assessing her further.

4. In using the TOMM, a malingering test, there was included a picture of scissors, which was a significant tool used during her work accident. Seeing this picture triggered a post-traumatic reaction to this particular stimulus and notably distressed her. Again, the assessment was continued.

5. While using numerous indices of 'reporting/exaggeration of cognitive problems' and 'significant over-reporting/exaggeration of psychological distress', there was not a further evaluative effort regarding PTSD. Yet, this was a major complaint by Mrs. Duvall.

6. Mrs. Duvall recorded a portion of the assessment, in which she maintains one can hear encouragement in taking breaks, when needed for pain. However, her breaks were critically remarked by Dr. Andrews.

7. The overall impression is that Dr. Andrews' evaluation was intended to look for indices of malingering, and that is what they found.

8. In my office, I do not evaluate individuals without having met and interviewed them. I, at times, have had to discontinue evaluations due to patients becoming too emotionally upset to provide a valid performance. In my opinion, this is what occurred with Mrs. Duvall. Under the circumstances, she was incapable of providing a valid effort due to her pain and emotional distress. I would hesitate to call it 'DEFINITE MALINGERING.' Rather, I might have called it 'rule out malingering.'

Dr. Andrews clarified his opinion in a letter dated December 29, 2021, to wit:

Ms. Duvall failed multiple empirically supported validity indicators across multiple domains. Her performance meets the criteria for definite malingering with mixed presentation (Neurocognitive, Somatic, and Psychiatric) as compared to the criteria set forth by Sherman, Slick, and Iverson in 2020. When compared to the criteria from 1999, her performance would fall under 99% certainty of malingering. Chronic pain, depression, stress, PTSD, ADHD or other psychiatric illnesses cannot and does not account for her performance.

A review of the claimant's mental health records demonstrates a clear causal connection between the claimant's mental injury and her workplace injuries. I first note that this accident was significant and caused severe physical injuries to the claimant. It is certainly understandable that an accident of this nature could cause the claimant to experience PTSD. The impact that the claimant's compensable injuries had on her mental health is borne out in the records of Dr. Chambers.

According to the Dr. Chambers' medical records, many of the claimant's concerns center around her physical condition and the belief that her injuries are not being properly treated. Additionally, the claimant suffers with chronic pain which negatively affects her mental condition.

I acknowledge the opinion of Dr. Andrews that the claimant is malingering; however, I assess little weight to this opinion. Dr. Andrews

saw the claimant for one 6-hour visit, whereas Dr. Chambers treated the claimant for several months. Dr. Chambers has clearly indicated that the claimant suffers with PTSD as a result of her workplace accident. Dr. Chambers does not agree with Dr. Andrews' assessment that the claimant is malingering. Considering the level of treatment provided by each doctor, I assess greater weight to Dr. Chambers' opinion.

I find that Dr. Chambers' records provide sufficient proof that the claimant's mental injury or illness was caused by the physical injury to her body. Thus, I find that the claimant proved, by a preponderance of the evidence, that she sustained a compensable mental injury or illness and is entitled to benefits in the form of medical treatment and temporary total disability.

For the foregoing reasons, I dissent from the majority opinion.

M. Scott Willhite, Commissioner