

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H109839

NANCY HOLMAN, Employee

CLAIMANT

WALMART ASSOCIATES, INC., Employer

RESPONDENT

WALMART CLAIMS SERVICES, Carrier
RESPONDENT

OPINION FILED APRIL 5, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On March 20, 2023, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 7, 2022 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The claimant sustained a compensable injury to her low back on October 24, 2021.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Temporary total disability or temporary partial disability benefits from October

25, 2021 through March 24, 2022.

2. Temporary total disability benefits from July 25, 2022 through a date yet to be determined.
3. Additional medical treatment.
4. Attorney's fee.
5. Compensation rates.

At the time of the hearing claimant indicated that she is no longer requesting temporary total or temporary partial disability benefits from October 25, 2021 through March 24, 2022, but is only requesting temporary total disability benefits from July 25, 2022 through a date yet to be determined. The parties also indicated at the hearing that they would resolve the compensation rate issue and that it was no longer an issue to be litigated.

Claimant contends she is entitled to temporary total disability benefits from July 25, 2022 until a date yet to be determined. Claimant contends she is entitled to medical treatment by or at the direction of Dr. Blankenship, including a referral to Dr. Cannon. Claimant contends her attorney is entitled to the appropriate attorney's fee in regard to any indemnity benefits owed but not previously paid.

The respondents contend the claimant is not entitled to any additional temporary total disability benefits. Claimant initially sought treatment on her own and once the injury was accepted, respondents paid claimant back TTD in the amount of \$1,018.31 to cover the period of October 24, 2021 through November 15, 2021, when claimant returned to light duty. Claimant remained on light duty and was accommodated until she was released at MMI on March 24, 2022 with no physical impairment from the injury on

October 24, 2021. Claimant sought and received a change of physician to see Dr. Blankenship. Dr. Blankenship relied on the same MRI that was relied upon at the time she was released at MMI. Claimant's condition is not a consequence of her accepted work-related 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 a pre-hearing conference conducted on September 7, 2022 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury as recommended by Dr. Blankenship.

3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning July 25, 2022 and continuing through a date yet to be determined.

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

FACTUAL BACKGROUND

The parties have stipulated that claimant suffered a compensable injury to her low

back while working for respondent on October 24, 2021. The claimant primarily worked in respondent's deli department, but on that day was asked to unload a pallet of bulk food. It was while claimant was engaged in this unloading that she injured her low back.

Two days after her injury claimant was evaluated by Noma Kellner, APRN, who recorded a history of claimant complaining of lower back pain wrapping to her stomach. She also noted that claimant was having a difficult time walking. Kellner diagnosed claimant's condition as acute low back pain and prescribed Diazepam due to claimant's inability to take steroids or NSAIDS. Kellner also ordered an MRI scan.

Three days later, on October 29, 2021, claimant was seen by Keena Melton, APRN. Melton noted that claimant was not taking any pain medication, but had been taking over-the-counter Tylenol which was not very effective.

Claimant underwent the MRI scan on November 1, 2021, and it was interpreted as showing a central disc herniation indenting the epidural fat at L5-S1. Following the scan, claimant was seen by her primary care physician, Dr. Timothy Johnson. He noted that claimant's condition had significantly improved and that he would hold off on any further testing or treatment. Based on the finding of the herniated disc, he did indicate that claimant should avoid any heavy lifting.

On November 10, 2021, claimant was evaluated by Dr. Scott Kuykendall, who diagnosed claimant's condition as low back pain and he prescribed physical therapy twice a week for six weeks. Medical records indicate that claimant began undergoing physical therapy on November 22, 2021, and according to Dr. Johnson's report of December 8, 2021, it did not provide any significant improvement. In his report of December 13, 2021, Dr. Kuykendall indicated that claimant stated that she was unable to tolerate the physical

therapy and he referred claimant for a neurosurgical evaluation.

Claimant was seen by Dr. Edward Saer, orthopedic surgeon, on January 6, 2022. He did not have the benefit of claimant's MRI scan, but did have the interpretive report. He was of the opinion that claimant had low back pain as the result of an overuse type injury and noted that claimant would improve with time. He indicated that he would like to review the MRI scan and recommended that claimant continue with physical therapy.

Claimant returned to Dr. Saer on January 27, 2022, and his report indicates that claimant stated that she was feeling worse. He reviewed the MRI scan and was of the opinion that there was no evidence of disc herniation. He informed claimant that she was going to have good days and bad days and that her expectations were probably unrealistic. He also prescribed continued physical therapy.

On February 22, 2022, claimant was evaluated by Dr. Anthony Davis, neurologist. Dr. Davis ordered a repeat MRI scan and indicated that he would prescribe gabapentin.

On March 3, 2022, claimant returned to Dr. Saer who noted:

I reviewed her prior x-rays and MRI. She has a mildy degenerative disc at L3-4. I explained that so far we have not been able to pinpoint a problem. Most likely she has had a soft tissue injury. I recommend getting a SPECT-CT scan of the thoracic and lumbar spine to make sure that she does not have another, more significant problem.

On March 8, 2022, claimant underwent the repeat MRI which was interpreted as primarily showing degenerative changes. Claimant returned to Dr. Davis on March 10, 2022 and she informed him that she had not started the gabapentin after reading about possible side effects. In his report he states that claimant has now agreed to try the

gabapentin.

On March 24, 2022 claimant underwent the whole body bone scan that had been recommended by Dr. Saer. Following that scan claimant returned to Dr. Saer for the last time on March 24, 2022, and he noted that the bone scan for claimant's lumbar spine was normal. He further stated:

We had a very long discussion today. She is literally in tears because she wants to return to her job but simply cannot. I explained that she does not have any evidence of malignancy or other problems that need surgery. She has been through physical therapy. She again tells me today that she has to get her brother to help her get out of bed, and has to have someone standing by when she takes a shower.

I explained that she is going to need to start working on trying to move better and get more active on her own.

There is simply no easy way to do this.

As far as work goes, I think she is going to need to look for something in the sedentary category. I doubt an FCE would be of any value. She is at MMI. There is no permanent impairment for this injury.

Claimant filed for and received a change of physician to Dr. Blankenship, neurosurgeon, and was initially evaluated by him on July 25, 2022. He diagnosed her condition as SI joint dysfunction and recommended that she see Dr. David Cannon for a right SI joint injection and that she continue with physical therapy. He also prescribed Mobic and Lyrica.

Apparently, claimant saw Dr. Blankenship for a second time in February 2023; however, his report from that visit is not in the record. Dr. Blankenship did discuss that

visit in his deposition stating that claimant had not undergone the injection with Dr. Cannon due to her past reaction to steroid medication. Instead, Dr. Blankenship was recommending a numbing injection before deciding whether claimant was a candidate for surgery on the SI joint.

Respondent has denied additional medical treatment recommended by Dr. Blankenship and as a result claimant has filed this claim contending that she is entitled to additional medical treatment as well as temporary total disability benefits and a controverted attorney fee.

ADJUDICATION

Claimant contends that she is entitled to additional medical treatment for her compensable low back injury. Claimant has the burden of proving by a preponderance of the evidence that additional medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Blankenship.

First, I note that respondent has submitted into evidence a number of medical records dating back to 2011. I note that some of those records indicate that claimant has made complaints of similar low back pain in the past and that many of her other complaints have not been supported by objective findings. Claimant acknowledges that she has had some back complaints in the past, but states that her current complaints are

much worse than her prior complaints. Indeed, the prior medical records do not reflect a history of back complaints as significant as those noted since her injury on October 24, 2021.

With regard to claimant's compensable low back injury, I note that it is the opinion of Dr. Blankenship that her complaints are related to an SI joint dysfunction. Dr. Blankenship bases his opinion that claimant suffers from an SI joint dysfunction on his clinical examination of claimant as well as her response to five different tests he performed on claimant and her responses to those tests. Dr. Blankenship acknowledges that the five tests are subjective in nature. He also acknowledges that her reaction to an injection would be objective in nature and at his deposition indicated that MRIs, x-rays, and bone scans are not helpful in diagnosing an SI joint dysfunction.

However, I note that respondent has accepted an admittedly compensable injury to claimant's low back and an injured worker is not required by law to establish a need for ongoing medical treatment through the evidence of objective medical findings. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W. 3d 408. Instead, claimant has the burden of proving by a preponderance of the evidence that the medical treatment is reasonable and necessary. *Goyne v. Crabtree Contracting Company*, 209 Ark. App. 200, 301 S.W. 3d 16.

Here, claimant has been treated by several physicians and has undergone extensive physical therapy which has done little to alleviate her low back complaints. Following her change of physician claimant came under the care of Dr. Blankenship who has diagnosed claimant as suffering from an SI joint dysfunction. Dr. Blankenship has recommended additional medical treatment which needs to be performed in the form of

a numbing injection before he can determine whether claimant is in need of a surgical procedure. I find that the opinion of Dr. Blankenship is credible and entitled to great weight.

Accordingly, based upon the opinion of Dr. Blankenship, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Blankenship.

Claimant also contends that she is entitled to additional temporary total disability benefits beginning July 25, 2022 and continuing through a date yet to be determined. In order to be entitled to temporary total disability benefits, claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981). Claimant has remained within her healing period as reflected in the opinion of Dr. Blankenship. I also note that at the time of claimant's first visit with Dr. Blankenship on July 25, 2022, he indicated that claimant should remain off work until the time of his next visit. Apparently, that visit did not occur until February 2023. At his deposition, Dr. Blankenship indicated that he would not want claimant to continue working for the respondent at this time. He specifically indicated that claimant could not stand for any prolonged periods of time, twist, bend at the waist, or lift more than 10 to 20 pounds. Based upon the opinion of Dr. Blankenship, I find that claimant has proven by a preponderance of the evidence that she remains within her healing period and that she suffers a total incapacity to earn wages and has done so since July 25, 2022. Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total

disability benefits beginning July 25, 2022 and continuing through a date yet to be determined. Respondent has controverted claimant's entitlement to unpaid indemnity benefits.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury as recommended by Dr. Blankenship. She has also proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from July 25, 2022 through a date yet to be determined. Finally, respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$756.45.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE