

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G109153

WHITNEY HARDER, EMPLOYEE CLAIMANT

WASHINGTON REGIONAL MEDICAL CENTER, EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED AUGUST 22, 2022

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

Claimant represented by the HONORABLE JARID M. KINDER, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, 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 4, 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 the pre-hearing conference conducted on November 3, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment by Dr. Luke Knox, including physical therapy as the claimant has failed to prove that

physical therapy is reasonable and necessary medical treatment for her compensable cervical spine 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 March 4, 2022 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 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 the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment by Dr. Luke Knox, including physical therapy, as the claimant has failed to prove that physical therapy is reasonable and necessary medical treatment for her compensable cervical spine injury.

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).

On October 22, 2011, the claimant sustained a compensable cervical spine injury. The claimant was initially treated at the Emergency Department of Washington Regional Medical Center and diagnosed with a cervical strain. The claimant initially received conservative treatment in the form of physical therapy.

The claimant underwent an MRI on December 7, 2011, that revealed the following:

IMPRESSION:

**1. SHALLOW CENTRAL DISC PROTRUSION
AT C5/6 CREATES MILD TO MODERATE
CANAL STENOSIS.**

**2. DIFFUSE ANNULAR DISC BULGE AT C3/4
PRODUCES BORDERLINE CANAL
STENOSIS.**

After reviewing the MRI results, the claimant's treating physician, Dr. Gary Moffitt, opined, "I don't think either of these lesions are related to her symptoms" and recommended that the claimant complete another round of physical therapy.

Dr. Moffitt eventually referred the claimant to Dr. Larry Armstrong, who is a neurologist. Dr. Armstrong recommended that the claimant continue physical therapy.

The claimant next treated with Dr. Charles Nalley. Dr. Nalley referred the claimant to Dr. George Deimel who performed a cervical epidural steroid injection.

The claimant came under the care of Dr. Luke Knox in August of 2017. Dr. Knox referred the claimant to Dr. Jared Ennis for evaluation of

“C5-6 Marcaine disc space injection” which was performed on April 23, 2018.

The claimant returned to see Dr. Armstrong on June 6, 2018. Dr. Armstrong’s medical record from that date contains the following plan:

At this point my recommendation is to continue with conservative care without surgical intervention. I know she is looking for improvement in her symptomatology however with episodes that last [a] couple [of] weeks occurring 3 to 4 times a year I doubt that these episodes will diminish in frequency or severity. During these episodes she can have trigger point injections as was recommended by the worker’s comp nurse or she could go to physical therapy which is more of what I would recommend and continued care under Dr. Knox is [sic] spine program. I would avoid surgical intervention until absolutely necessary. I know additionally worker’s Comp would like to close out her claim and would like projections for MI [sic] but I cannot make those based on the fact I do not think she should be called MMI [at] the present time because she is going to continue to have problems over the years from this.

Following Dr. Armstrong’s recommendation, Dr. Knox referred the claimant to physical therapy, recommended that she check on a TENS unit and prescribed Flexeril for her cervical spasms.

Dr. Wayne Bruffett performed an IME on October 11, 2021 wherein he determined that the claimant had reached MMI. On October 29, 2021,

the claimant returned to Dr. Knox for a follow-up visit. Dr. Knox noted the following at that time:

HPI: Ms. Whitney Harder was seen in the Northwest Arkansas Neurosurgery Clinic on 10/29/21 for follow-up. She continues to be evaluated for recurring neck pain. Apparently, she underwent a recent Independent Medical Evaluation by Dr. Bruffett, and I appreciate his evaluation and opinions.

As previously noted, I have taken care of Whitney for many years. She comes in with recurring neck pain due to an injury occurring in 2011, while working as a nurse. She requires repeated evaluations and physical therapeutic endeavors concerning recurrent neck pain. She has been able to avoid surgery through the years.

PLAN: I would recommend that she go ahead and continue with physical therapy. We will plan to follow her up as needed. She is to contact us in the future if needed. Otherwise, I would recommend that she continue with the physical therapeutic endeavors as previously detailed.

I find that the claimant has proven by a preponderance of the evidence that physical therapy as recommended by Dr. Knox is reasonably necessary. It is noted throughout the claimant's medical records that her ultimate goal is to avoid surgery. To that end, the claimant has consistently followed her doctors' orders and participated in physical therapy. Also, the

claimant testified that physical therapy reduces her pain, which further supports a finding that this treatment is reasonable and necessary. To date, physical therapy has proven to be an effective measure against surgical intervention. Thus, I believe the claimant should be allowed to continue this recommended course of treatment.

When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). A physician's special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. *Id.*

I am not unmindful of the opinions offered by Dr. Wayne Bruffett in this matter. The claimant was referred to Dr. Bruffett for an Independent Medical Evaluation. Dr. Bruffett opined that the proposed physical therapy was not reasonable and necessary. According to Dr. Bruffett, reasonable treatment for such an injury would "probably be a few months or so". Dr. Bruffett further opined that the claimant has reached MMI and no further active treatment for the work injury is indicated. However, I assess greater weight to the opinion of Dr. Knox who has been the claimant's treating physician for several years.

For the aforementioned reasons, I find that the claimant is entitled to medical treatment recommended by Dr. Arnold, including physical therapy.

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

M. SCOTT WILLHITE, Commissioner