

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G904652

NELA JIKATAKE, Employee	CLAIMANT
CARGILL MEAT PRODUCTS, Employer	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, Carrier/TPA	RESPONDENT

OPINION FILED NOVEMBER 30, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by LAURA J. PEARCE, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On November 9, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 7, 2022 and a pre-hearing order was filed on September 13, 2022. 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 prior Full Commission Opinion of October 14, 2021 is final.

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

1. Claimant's entitlement to additional medical treatment in the form of surgery

as recommended by Dr. Dougherty.

The claimant contends she is entitled to surgery for her compensable shoulder injury as recommended by her authorized treating physician, Dr. Dougherty. Dr. Arnold had recommended surgery, which was awarded by the Full Commission. Dr. Arnold now refuses to treat her as a workers' compensation case. Therefore, she requested a change of physician to Dr. Dougherty, and he has recommended surgery for her work-related condition. Claimant reserves all other issues.

The respondents' contentions are as follows:

"This claim came before the Commission for a hearing on May 13, 2021. It was the Opinion of the ALJ that Claimant failed to meet her burden of proving by a preponderance of the evidence that surgery recommended by Dr. Arnold was reasonable and necessary medical treatment for her compensable left shoulder injury. That decision was appealed by the Claimant to the Full Commission. The Full Commission reversed and awarded the Claimant the "additional medical treatment in the form of an arthroscopic procedure as recommended by Dr. Arnold".

Dr. Arnold had recommended a surgical procedure consisting of a subacromioplasty, distal clavicle excision and a rotator cuff repair based upon his identification of a "high-grade partial tear of the supraspinatus" on the MRI performed on 2/19/2020. When Claimant attempted to return to Dr. Arnold to schedule the surgery, Dr. Arnold refused to perform the surgery. A second Change of Physician was authorized and on June 20, 2022, Claimant was evaluated by Dr. Dougherty.

Dr. Dougherty states in his report that "her MRI of the left shoulder shows a split tear in biceps tendon". As it was the first and only visit to Dr. Dougherty, he had not ordered a new MRI, consequently, he must have been utilizing the MRI of 2/19/2020 to come to this conclusion. It had been the contention of the Respondents previously that when Dr. Marvin interpreted the MRI he noted "no rotator cuff tear, tendon retraction, or muscle atrophy" which was contradicted by Dr. Arnold's reading. Additionally, Dr. Marvin wrote in his report:

The long head of the biceps tendon rests normally in the bicipital groove. Intra-articular biceps tendon is normal in appearance...Intact biceps labral complex.

Dr. Dougherty's assessment now supports Dr. Marvin's interpretation of the rotator cuff tendons showing no tear and contradicts the opinion of Dr. Arnold in that Dr. Dougherty does not identify a tear in the supraspinatus, does not recommend a distal clavicle recession nor a rotator cuff repair. Instead, Dr. Dougherty contradicts both Dr. Marvin and Dr. Arnold by identifying a bicep tendon tear.

It is the contention of the Respondents that the Full Commission authorized a surgical procedure consisting of a subacromioplasty, distal clavicle excision and a repair of Claimant's left supraspinatus as recommended by Dr. Arnold, basing much of their Opinion in the fact that Dr. Arnold "believe[d] [this procedure] is reasonable and necessary". Dr. Dougherty, Claimant's new treating physician does not recommend the procedure the Full Commission found to be reasonable and necessary, but instead believes a completely different procedure is needed. The procedure recommended by Dr. Dougherty is not the surgery awarded by the Commission, therefore, the Respondents contend that Claimant is not entitled to the surgery proposed by Dr. Dougherty."

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 September 13, 2022 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 in the form of surgery as recommended by Dr. Dougherty.

FACTUAL BACKGROUND

Claimant is a 52-year-old woman who began working for respondent in October

2015 deboning chicken. She suffered an admittedly compensable injury to her left shoulder when she tripped on a pallet on June 11, 2019.

Claimant was treated for her injury by Dr. Heim who diagnosed claimant's condition as adhesive capsulitis. He performed an arthroscopic adhesiolysis with subacromial decompression and manipulation under anesthesia on September 23, 2019. On October 30, 2019, Dr. Heim stated that claimant had reached maximum medical improvement and he assigned her an impairment rating of 4% to the body as a whole.

Claimant filed for and received a change of physician to Dr. Arnold who diagnosed claimant with a probable rotator cuff tear and adhesive capsulitis. He also ordered a new MRI scan and in a report dated April 7, 2020 stated:

PLAN: She has failed therapy, anti-inflammatories, arthroscopy, and subacromial injection. I think the next step would be an arthroscopy and possible cuff repair. I think it is reasonable, given the profound cuff weakness, her failure to therapy, anti-inflammatories, injection, and arthroscopy and the MRI findings. At the current time, I would recommend arthroscopy, possible cuff repair....

In response to Dr. Arnold's recommendation, Dr. Heim opined that claimant had reached maximum medical improvement and was not in need of any further treatment or diagnostic studies. Respondent denied liability for additional medical treatment and claimant filed a claim requesting the treatment; including surgery that had been recommended by Dr. Arnold. In an opinion filed May 26, 2021, this Administrative Law Judge found that claimant had failed to meet her burden of proving by a preponderance of the evidence that she was entitled to the additional medical treatment recommended by Dr. Arnold. Claimant appealed that decision to the Full Commission, which in an

opinion filed October 14, 2021 reversed and found that claimant had proven by a preponderance of the evidence that she was entitled to additional medical treatment in the form of an arthroscopic procedure as recommended by Dr. Arnold.

Since the time of the Full Commission's opinion filed on October 14, 2021, Dr. Arnold has chosen not to treat the claimant in the workers' compensation system. As a result, claimant sought additional medical treatment from Dr. Dougherty, who has also recommended an arthroscopic procedure on claimant's left shoulder; albeit, a different procedure than that recommended by Dr. Arnold and previously approved. Claimant has filed this claim contending that she is entitled to additional medical treatment in the form of surgery as recommended by Dr. Dougherty.

ADJUDICATION

This case presents an unusual fact situation in that claimant was previously awarded additional medical benefits in the form of an arthroscopic procedure recommended by Dr. Arnold. Subsequent to that award, Dr. Arnold chose not to treat claimant within the workers' compensation system. Claimant has now been evaluated by Dr. Dougherty who has also recommended an arthroscopic procedure on claimant's left shoulder.

Following a new MRI scan, Dr. Arnold indicated in his report of April 7, 2020:

At the current time, I would recommend arthroscopy,
possible cuff repair....

Dr. Dougherty has also reviewed the new MRI scan and has stated:

She is here today as a new patient for continued pain in her left shoulder s/p work accident in June 2019. Her MRI of the left shoulder shows a split tear in biceps tendon. Her exam is consistent with left biceps tendonitis and adhesive capsulitis. She has failed conservative care of injections and physical therapy and over 3 years of symptoms. She needs to be set up for a left shoulder arthroscopy and MUA, lysis of adhesions and biceps tenotomy.

Dr. Dougherty indicated that claimant's condition was related to her work injury in a letter to claimant's counsel dated August 18, 2022, wherein he stated:

In response to your question addressed in your letter dated July 15, 2022, yes the bicep tear is related to her injury when she fell on her outstretched arm. Biceps tenotomy is indicated. If the bicep is unstable due to the rotator cuff tear, it will not be known until the time of surgery.

Respondent contends that the procedure proposed by Dr. Dougherty "is not the surgery awarded by the Commission, therefore, the Respondents contend that Claimant is not entitled to the surgery proposed by Dr. Dougherty." However, the issue is not whether the surgery proposed by Dr. Dougherty is different than the procedure proposed by Dr. Arnold but whether claimant can meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment recommended by Dr. Dougherty. Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Goyne v. Crabtree Contracting Company*, 2009 Ark. App. 200, 301 S.W. 3d 16.

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 proof. While Dr. Arnold

and Dr. Dougherty have recommended different procedures, there is no question that claimant continues to suffer from left shoulder complaints relating to her work injury of June 11, 2019. In fact, the fact that the MRI scan showed that claimant continued to suffer from tendonitis in her left shoulder was a basis for the Full Commission's ruling which stated:

Despite the difference between Dr. Arnold's findings and Dr. Marvin's findings, there is no question that the MRI showed that the claimant continued to suffer from tendonitis in her left shoulder. This diagnosis alone warrants granting the claimant additional medical treatment. (Emphasis added.)

While Dr. Dougherty has recommended a different procedure than the one previously proposed by Dr. Arnold, I find that his opinion is credible and that the proposed procedure is reasonable and necessary medical treatment for claimant's compensable left shoulder injury. While Dr. Dougherty has recommended a different procedure than the one previously recommended by Dr. Arnold and awarded by the Commission, that fact alone is not dispositive of the case. The issue in this claim is whether claimant can meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery as recommended by Dr. Dougherty. I find based upon the evidence presented that claimant has met her burden of proving by a preponderance of the evidence that the surgery proposed by Dr. Dougherty is reasonable and necessary medical treatment for her compensable left shoulder injury.

AWARD

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. Dougherty.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

Respondents are liable for payment of the court reporter’s charges for preparation of the hearing transcript in the amount of \$415.95.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE