

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H105026

TABITHA KRUGER, Employee	CLAIMANT
NORTECH GRAPHICS, INC., Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED DECEMBER 7, 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 GUY ALTON WADE, Attorney, Little Rock, 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 21, 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 left arm on May 17, 2021.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$480.00 for total disability benefits and \$320.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's neck and left breast on May 17, 2021.
2. Payment of medical relating to claimant's neck; payment of a mammogram; payment of physical therapy for claimant's left shoulder; and payment of an EMG.
3. Temporary total disability benefits.
4. Attorney's fee.

At the time of the hearing claimant clarified that her request for payment of physical therapy is for physical therapy that has been provided for her compensable injuries and not specifically to the left shoulder. She also clarified that she is requesting temporary total disability benefits beginning March 2, 2022 and continuing through a date yet to be determined with respondent entitled to a credit for any payments made during that period of time.

The claimant contends she sustained compensable injuries to her left arm, neck, and breast on May 17, 2021. She contends she is entitled to payment of medical relating to her neck, payment of a mammogram, payment for physical therapy, and payment of an EMG. Claimant contends she is entitled to temporary total disability benefits. Claimant reserves all other issues.

The respondents contend they accepted the claimant's May 17, 2021 left arm injury as compensable and have paid the applicable indemnity and medical benefits. Respondents contend that claimant's new neck complaints are not compensable and as a result, are not the responsibility of the respondents.

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 21, 2022 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine or left breast on May 17, 2021. Accordingly, claimant has failed to prove by a preponderance of the evidence that respondent is liable for payment of medical relating to claimant's neck or for a mammogram.

3. Claimant has met her burden of proving by a preponderance of the evidence that respondent is liable for payment for any physical therapy provided for her compensable left arm injury. This includes physical therapy provided before and after her ulnar nerve surgery. Respondent is also liable for payment of the EMG performed on August 26, 2021.

4. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits subsequent to March 2, 2022.

FACTUAL BACKGROUND

The claimant is a 36-year-old woman who began working for respondent in January 2020. On May 17, 2021, she was working in respondent's squeegee department using a buffer machine to buff aluminum squeegee handles to remove rough edges.

While performing this activity a part of the machine broke causing an injury to her left arm by pulling it into the machine. Claimant described the incident as follows:

Q So when it pulled you in, what part of your body did it pull?

A It pulled into my left side.

Q And can you describe the machine for us?

A It's about four to five feet long. It has like - it's a wire wrapped around it with a bunch of bristles coming out of that wire, and that's what was unraveling and started to just wham, wham, wham at like thousands of RPMs.

Q And when it was whamming, was that hitting you?

A Yes, ma'am. Yes, ma'am.

Q Was there any sort of guard around the machine?

A No, ma'am, there was no guards. There was no emergency shutoffs. There was nothing.

Q How did you get the machine to stop?

A I pulled away from it, was screaming, hollering. Some guys come running. There was like metal holes in the metal ceiling from it. They had to use a plywood chill board to cover themselves to walk up to it to shove it off, majorly.

Q And what it was shut off, what was your condition?

A I was bleeding everywhere because Miles and them come out and got me. They tried to clean it up, like had me over a trash can, was like rinsing me with stuff, you know, like saline or whatever to get whatever it is might have been in there, and it wouldn't quit bleeding, and then they seen how bad it was, and he wrapped me up and took me to Urgent Care.

After her treatment at Urgent Care, claimant sought additional medical treatment from her primary care physician, Dr. Chu, whose initial evaluation occurred on May 24, 2021. He diagnosed claimant's condition as pain of the left upper extremity with the following physical exam findings:

Left upper extremity: Marked bruising and swelling of the left hand, laceration in the thenar eminence, multiple abrasions the forearm and upper humerus, bruising noted throughout the whole arm, decreased range of motion of upper shoulder, inability to totally grip without pain.

Claimant returned to Dr. Chu on June 7, 2021, at which time he referred claimant to an orthopedic specialist, Dr. Yakin. Claimant's initial visit with Dr. Yakin was on June 30, 2021, at which time he diagnosed claimant's condition as a contusion of the left arm. His recommended treatment included medications and physical therapy which was provided at Jones Physical Therapy in Harrison.

In his report of August 25, 2021, Dr. Yakin referred claimant to Dr. Hagan for an evaluation. Claimant was seen by Dr. Hagan on August 26, 2021, and he diagnosed her with cervical radiculopathy and recommended conservative management with observation.

Also on August 26 claimant underwent an EMG ordered by Dr. Hagan. The EMG was read as abnormal showing left ulnar compression neuropathy at the level of the elbow and mild cubital tunnel syndrome. The EMG showed no evidence of left median neuropathy or left cervical radiculopathy.

Subsequent to the EMG, claimant returned to Dr. Yakin who noted that the test was positive for cubital tunnel syndrome and diagnosed her condition as a lesion of the

ulnar nerve of the left upper limb. He gave claimant a splint to wear and discussed surgical options, but did not recommend surgery at that time. Dr. Yakin did eventually recommend surgery in the form of a cubital tunnel release and ulnar nerve transposition in his report of October 1, 2021. This surgery was performed on November 4, 2021.

Following her surgery, Dr. Yakin ordered additional physical therapy. On March 2, 2022, Dr. Yakin indicated that claimant could return to work as of that date with a 20-pound lifting restriction and no heavy gripping.

Since that time claimant has continued to treat with Dr. Hagan for neck pain. A cervical MRI was performed which was interpreted as showing a disc herniation at C5-6. Dr. Hagan's treatment has consisted of an epidural steroid injection, medication, and physical therapy. Claimant also underwent a mammogram on December 21, 2021, which was read as normal with no evidence of breast cancer.

Claimant has filed this claim contending that in addition to the injury to her left arm, she also suffered a compensable injury to her neck and to her left breast on May 17, 2021. Claimant requests payment for medical relating to her neck as well as payment of physical therapy, the mammogram, and the EMG. She also contends that she is entitled to additional temporary total disability benefits beginning March 2, 2022 and continuing through a date yet to be determined with respondent entitled to a credit for any benefits paid during this period of time.

ADJUDICATION

Claimant contends that in addition to the stipulated injury to her left arm, she also suffered compensable injuries to her neck and left breast on May 17, 2021. Claimant's

claim is for a specific incident, identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered compensable injuries to her neck or her left breast on May 17, 2021.

First, claimant alleges that she suffered a compensable injury to her neck on May 17, 2021 at the time of her accident. Immediately after her accident claimant was taken for medical treatment at Urgent Care. That medical record is not in evidence. Thereafter, claimant sought medical treatment from her family physician, Dr. Chu, on May 24, 2021. His medical report of that date does not mention any complaints of neck pain. Likewise, his report of June 7, 2021 does not mention any complaints of neck pain.

Dr. Chu referred claimant to Dr. Yakin, orthopedic surgeon, for treatment and his initial visit with claimant was on June 30, 2021. His report does not mention any complaints of neck pain. Dr. Yakin treated claimant on several occasions and ordered physical therapy for claimant's left arm injury. Neither Dr. Yakin's medical records nor the physical therapist's reports indicate complaints of neck pain. Dr. Yakin did refer claimant

to Dr. Hagan for an evaluation which took place on August 26, 2021. Dr. Hagan's medical report of that date indicates a diagnosis of cervical radiculopathy which he referred to as a new diagnosis. This is the first mention of complaints of neck pain and it is more than three months after the incident on May 17, 2021.

At the hearing claimant acknowledged that she did not mention neck pain to Dr. Chu and that it was probably a few months later that she mentioned an issue or problem with her neck.

Q In fact, it was quite a few months later before you mentioned any issue or problem with your neck. Correct?

A Probably; yes.

In addition to the fact that claimant made no complaints of neck pain until more than three months after the accident, I also note that claimant testified that she did not know whether the machine struck her neck or not. Finally, I note that in a medical report of December 7, 2020, which was more than five months before her accident, claimant's chief complaints with Dr. Chu included headaches and neck pain.

In short, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her neck as a result of the accident on May 17, 2021. Here, the medical records indicate that at least five months before her accident the claimant had complaints of neck pain which she made to Dr. Chu. Following her accident, the claimant received medical treatment from Dr. Chu and Dr. Yakin as well as physical therapy on multiple occasions with no mention of any neck complaints in those medical reports. It was not until Dr. Hagan's medical report of August 26, 2021 that neck complaints were noted and at that time Dr. Hagan indicated that this was a new diagnosis.

Given this evidence, I simply find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her neck as a result of the accident on May 17, 2021.

Claimant also contends that she suffered a compensable injury to her left breast on May 17, 2021. Claimant testified that after the accident her left breast was exposed and lacerations were present. As previously noted, claimant was taken to Urgent Care for medical treatment; however, those records were not submitted into evidence. Claimant subsequently treated with Dr. Chu and she testified that she informed Dr. Chu that she had a problem with her left breast as a result of the accident. However, a review of Dr. Chu's medical reports fails to note any complaints involving her left breast in the form of lacerations or otherwise.

Again, claimant was referred to Dr. Yakin for further treatment by Dr. Chu. A review of Dr. Yakin's medical reports fails to mention any complaints involving claimant's left breast. Left breast pain is not noted until a report from the WR Family Clinic on October 26, 2021, which indicates that claimant was seen for a follow up for left breast pain. That report specifically states:

.... She also would like a lump on her left breast checked out. She did have a MVA about a month ago that caused some bruising to her left breast and it is very painful for her still she can feel a lump inside.

Claimant denies having been involved in a motor vehicle accident one month prior to October 26, 2021. Notably, the physical exam performed on October 26 indicates that multiple nodules were palpitated in both claimant's left and right breast. As a result, she was referred for a mammogram due to multiple lumps in bilateral breasts.

Claimant's mammogram was performed on December 21, 2021, and the results were determined to be normal with no evidence of breast cancer.

Again, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left breast as a result of the accident on May 17, 2021. I find that she has failed to meet that burden of proof. Claimant has not submitted any medical records supporting her contention that she suffered lacerations to her left breast on May 17, 2021. The evidence does contain medical records indicating that claimant was making complaints of left breast pain following a motor vehicle accident in the fall of 2021. Although claimant denies having been involved in a motor vehicle accident at that time, medical reports indicate that multiple lumps were observed in both of claimant's breasts, not just the left one. As a result, a mammogram was ordered which was read as normal. Accordingly, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left breast on May 17, 2021.

Having found that claimant failed to meet her burden of proving by a preponderance of the evidence that she suffered compensable injuries to her neck or left breast on May 17, 2021, claimant has likewise failed to meet her burden of proving by a preponderance of the evidence that respondent is liable for payment of any medical treatment relating to claimant's neck or for the mammogram.

Claimant also contends that respondent is liable for payment of physical therapy and for an EMG. Based upon the finding that claimant has failed to prove a compensable injury to her neck, respondent is not liable for any physical therapy relating to claimant's neck. However, respondent is liable for payment of any physical therapy provided to

claimant for her compensable left arm injury. This includes physical therapy that was provided both before and after her ulnar nerve surgery.

I also find that respondent is liable for payment of the EMG performed on August 26, 2021. While that EMG was apparently ordered by Dr. Hagan, it did confirm that claimant had a left ulnar compression neuropathy at her elbow and that she suffered from mild cubital tunnel syndrome. Based in part upon those test results, Dr. Yakin eventually performed surgery on November 4, 2021, which included an ulnar nerve transposition. Clearly, this test was beneficial in Dr. Yakin's diagnosis and his decision to perform surgery. Accordingly, respondent is liable for payment of the EMG performed on August 26, 2021.

The final issue for consideration involves claimant's request for temporary total disability benefits subsequent to March 2, 2022. Having found that claimant failed to prove a compensable injury to her neck or left breast, the only compensable injury in this claim is the stipulated compensable injury to claimant's left arm which is a scheduled injury. A claimant who suffers a scheduled injury is entitled to temporary total disability benefits during their healing period or until they return to work. A.C.A. §11-9-521(a); *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). However, claimant's "failure to return to work must be causally related to the injury." *Foster v. Tyson Poultry*, 2013 Ark. App. 172, 426 S.W. 3d 563 citing *Fendley v. Pea Ridge School District*, 97 Ark. App. 214, 216-17, 245 S.W. 3d 676, 677-78 (2006); *Pettus v. Department of Education*, Full Commission Opinion filed November 30, 2011 (G100550).

Here, claimant has not worked since the date of her injury on May 17, 2021. Claimant testified that she is not currently working because she has constant pain and

cannot use her left arm. However, it was the opinion of Dr. Yakin that claimant could return to work as of March 2, 2022. In his report of that date, Dr. Yakin stated:

Tabitha Kruger may return to work on 03/02/22.

Dr. Yakin went on to indicate that claimant had a lifting restriction of 20 pounds and should perform no heavy gripping. Significantly, it was the opinion of Dr. Yakin that claimant could return to work with respect to her left arm. Accordingly, based upon the opinion of Dr. Yakin which I find to be credible and entitled to great weight, I find that claimant's failure to return to work is of her own choosing and is contrary to the opinion of Dr. Yakin, her authorized treating physician. Accordingly, I find that claimant has failed to meet her burden of proofing by a preponderance of the evidence that she is entitled to additional temporary total disability benefits subsequent to March 2, 2022.

AWARD

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her neck or left breast on May 17, 2021. Respondent is not liable for any medical treatment provided in connection with claimant's neck or left breast. Respondent is liable for payment of any physical therapy provided in connection with claimant's left arm injury. This includes physical therapy performed both before and after her ulnar nerve surgery. In addition, respondent is liable for payment of the EMG performed on August 26, 2021. Finally, claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits subsequent to March 2, 2022.

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).

The respondent is liable for payment of the court reporter’s charges for preparation of the hearing transcript in the amount of \$682.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE