

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H110044**

**SCOTT METZGER, EMPLOYEE**

**CLAIMANT**

**v.**

**WINSUPPLY, INC. EMPLOYER**

**RESPONDENT**

**SENTRY CASUALTY INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JULY 18, 2023**

Hearing before Administrative Law Judge, James D. Kennedy, on the 23<sup>rd</sup> day of May, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents are represented by Mr. Jarrod S. Parrish, Attorney-at-Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 23<sup>rd</sup> day of May, 2023, to determine the sole issue of additional medical treatment as recommended by Doctor Gary Frankowski. A copy of the Prehearing Order dated March 21, 2023, was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided the parties stipulated that the Arkansas Workers' Compensation had jurisdiction of the claim and that an employer/employee relationship existed on November 4, 2020, at which time the claimant sustained compensable injuries, including but not limited to his neck and back. The claimant's average weekly wage was \$1080.00 which entitled him to temporary total disability and permanent partial disability in the amount of \$711.00 / \$533.00, respectively.

The claimant's and respondent's contentions were set out in their respective responses to the prehearing questionnaire and made part of the record without objection. The sole witness to testify was the claimant, Scott Metzger. The claimant submitted one exhibit without objection, which consisted of one hundred thirty-four (134) pages of medical. The respondents submitted two (2) exhibits without objection, with "Respondent's Exhibit One" consisting of medical reports of Dr. Frankowski, consisting of five (5) pages, and "Respondent's Exhibit Two" consisting of three (3) pages which included a Form AR-2 and correspondence from Sentry Insurance addressed to Dr. Frankowski. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on November 4, 2020, the date that the claimant suffered a compensable injury, including but not limited to his neck and back.
3. That the claimant's average weekly wage was \$1080.00, which entitled him to temporary total disability and permanent partial disability in the amount of \$711.00 / \$533.00, respectively.
4. That the claimant has failed to satisfy the required burden of proof, by a preponderance of the credible evidence, to prove that the medical treatment recommended by Dr. Frankowski is causally related to and reasonably necessary for his work-related injuries.
5. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The claimant, Scott Metzger, testified that he was fifty-nine (59) years old at the time of the hearing; was born on April 30, 1964; and graduated the 12<sup>th</sup> grade. He was working for the respondent when he was involved in a motor vehicle accident and was still with the company. The accident occurred when another vehicle hit a concrete barrier on the interstate and lost its load which consisted of a large pallet of energy drinks that then skidded across the highway. The claimant was unable to avoid the pallet. The accident totaled the truck the claimant was driving, and he ultimately was treated by Dr. Paulus, who provided medications, with the claimant receiving injections to his neck and back. The claimant received surgery to his neck on December 17, 2021. His treatment was provided by the workers' compensation insurance carrier. He suffered pain in his lower and middle back, and his neck. He also stated he suffered from shooting pain through his arms and down his back, and was still suffering from, "shooting pains constantly, the sciatic is going down my legs every day, even with the medications." The claimant stated that he had difficulty turning his head from side to side and from looking up, with pain radiating down both arms. (Tr. pp. 5-8) The claimant was still taking medications for his back at the time of the hearing. (Tr. p. 9) After surgery, the claimant testified that his neck was better with no more numbness and, "no more really hurting." In regard to his back, he still had, "sharp, sharp pain still today." He went on to state that he suffered sciatica every day which is sometimes left and sometimes right and is, "very, very painful, sharp, sharp." (Tr. p. 10) The claimant had received injections in his back from February 12, 2021, up until October or November when he became aware that the "insurance people" were not going to pay for them anymore. Dr. Frankowski was trying to

schedule a nerve blocking test at the time and it was denied. He then used his health insurance for the test, and a nerve abrasion was then set up for June 16<sup>th</sup>, for cauterizing the nerves. (Tr. p.11) This had been previously performed on the middle of his back by Dr. Paulus. He denied any other accidents but did admit that he had tripped and “chipped the eyeball.” (Tr. p.12) The claimant stated his current symptoms consisted of lower back pain and that he takes hydrocodone twice a day, which doesn’t stop the pain, but does knock the sharpness off. He also takes gabapentin twice a day, plus tizanidine, a muscle relaxer, once a day. These medications were prescribed by Dr. Frankowski. (Tr. p.16) The claimant had a medical appointment on June 16<sup>th</sup> and he last saw Dr. Frankowski on April 21<sup>st</sup>, he thought, when he received the nerve block. (Tr. p.17)

Under cross-examination, the claimant admitted that he currently was working from 7:00 a.m. to 4:00 p.m. for the respondent at the same pay that he made prior to the accident, and that as far as he knew he would be able to continue long-term. He also admitted to performing basic household chores, which included cutting the grass and maintaining his yard. He admitted hunting with a crossbow on a stand which was how he injured his orbital when he fell out of the stand onto the ground. He admitted that while hunting from a deer stand, he had to climb up a ladder and also admitted fishing. He admitted to receiving three (3) branch block injections, and that the last two (2) only gave him six (6) to seven (7) hours of relief before he was back to his baseline, but the relief he received was tremendous. (Tr. pp.18-20) The claimant was specifically questioned about page 105 of his medical exhibit packet and which provided that he had received an ablation at L4-5 and he denied receiving the ablation of the lower back. (Tr. p. 21) He

went on to state that if Dr. Pauls' records provided he had received an ablation of the lower back, "I have to disagree with it."

"Claimant's Exhibit One", included a report from Ortho Arkansas and Dr. Onyekwelu, dated March 16, 2023, which provided that the claimant had reached MMI with a ten percent (10%) impairment rating, with no restrictions for work with respect to the cervical spine. (Cl. Ex. 1, PP. 1-2) A second document from Ortho Arkansas dated October 28, 2022, provided that Dr. Frankowski had been asked to give an opinion on how the claimant's injuries could or could not relate to an injury that he sustained in November of 2020. Dr. Frankowski opined as follows:

"And I was asked to give his statement whether this was felt to be linked to the injury from the accident based upon patient's MRI findings. I cannot with reasonable medical certainty state that this is a causation and related to the injury resulting in the patient's back pain. This could represent a condition resulting from degenerative changes but with an acute worsening after the accident but it is very difficult to delineate based on MRI findings. And again the patient initially presented to January 2021 and my first visit in regards to the patient's back pain and discussion of his back pain took place on 9/1/2022." (Cl. Ex. 1, P. 3)

On October 7, 2022, the procedure note provided the claimant had received a bilateral L4-L5 diagnostic medial branch block. The claimant had presented with symptomatic lumbar spondylosis. (Cl.Ex.1, PP. 4-7) The claimant had previously presented to Dr. Frankowski on October 4, 2022, and also September 1, 2022. The October visit referred to lumbar facet arthropathy with a right L4-5 level facet cyst and that the claimant had received radiofrequency neurotomy for the innervation of the bilateral L4-5 facets. The claimant was also diagnosed with lumbar spondylosis. (Cl. Ex. 1, PP. 8-14) The procedure note by Dr. Frankowski dated July 29, 2022, provided for symptomatic lumbar spondylosis and the claimant was offered a facet rhizotomy. (Cl. Ex 1, PP. 15-16) The claimant earlier presented to Dr. Frankowski on July 11, 2022. This

report also referred to lumbar spondylosis with facet arthropathy at L4-L5. (Cl. Ex. 1, PP. 17-25)

The claimant had previously presented to Dr. Cayne of Ortho Arkansas on June 14, 2022, with low back and neck pain. The report provided he was following-up due to the diagnostic medial branch blocks for the innervation of the bilateral L4-L5 and L5-S1. The records stated the patient had lumbar radiculopathy and received epidural steroid injections and a diagnostic medial branch block. (Cl.Ex.1, PP. 26-34) A cervical MRI dated June 14, 2022, provided for mild to moderate spinal canal stenosis at C5-C6 and C6-C7. The report also provided for moderate to severe foraminal stenosis bilaterally at C5-C6, severe right at C6-C7, moderate severe left at C6-C7, and mild to moderate right at T2-T3. The report also provided there was a possible degenerative signal versus post-op change, or low-grade bony stress at the C6-C7 pedicles bilaterally. (Cl.Ex.1, PP. 35) Dr. Cayne had previously performed an electrodiagnostic study on June 14, 2022, which provided there was electrodiagnostic evidence of a carpal tunnel syndrome and ulnar neuropathy, generalized neuropathy, focal nerve entrapment, or cervical radiculopathy in the bilateral upper limbs. (Cl.Ex.1, PP. 36-37)

The claimant was seen by Dr. Frankowski on May 17, 2022. The report provided the claimant had been undergoing bilateral L4-5 transforaminal epidural steroid injections and also provided that the claimant had lumbar radiculopathy. (Cl.Ex.1, PP. 44-48) The claimant had previously presented to Dr. Onyekwelu on May 10, 2022, who provided that there was a concern for a cubital tunnel syndrome versus an acute radiculopathy at C8. (Cl.Ex.1, PP. 38-43) The claimant had earlier been seen by Dr. Frankowski on April 18, 2022, for an epidural steroid injection. (Cl.Ex.1, P. 49) On April

1, 2022, the claimant was seen by Dr. Frankowski, who provided a lumbar radiculopathy. (Cl.Ex.1, PP. 50-54) Dr. Frankowski had treated the claimant with a bilateral transforaminal epidural steroid injection at the L5-S1 on March 11, 2022. (Cl.Ex.1, P. 55)

The claimant was seen by Dr. Onyekwelu on February 22, 2022. The report provided that the claimant had presented due to low-back pain. Spinal stenosis of the lumbar region was noted. The report also provided for a history of a cervical spine fusion. (Cl.Ex.1, PP. 56-60) An MRI of February 17, 2022, provided for severe facet arthropathy at L4-L5 with bilateral facet diffusions and subchondral marrow edema, likely reflecting acute reactive/degenerative changes. (Cl.Ex.1, P. 61) Prior to the MRI, the claimant had been seen by Dr. Onyekwelu on February 1, 2022. The report provided the claimant wanted to discuss his low-back and neck pain. It also provided that they had recently performed an anterior cervical decompression fusion surgery at the C5-C6 and the C6-C7 with interval improvement with radicular arm pain. (Cl.Ex.1, PP. 62-67) The claimant had been seen by Dr. Onyekwelu on January 4, 2022, following the surgery. The report provided there was full range of motion of the cervical spine with no tenderness, and there was also full range of motion of the lumbar and thoracic spine without pain and tenderness. The shoulders also had a full range of motion. (Cl.Ex.1, PP. 68-72) Surgery had been performed on December 17, 2022, by Dr. Onyekwelu, for cervical stenosis at the C5-6 and C6-7, with C6-C7 left radiculopathy. An anterior cervical decompression, discectomy, and fusion at the C5-C6 and C6-C7 was performed. (Cl.Ex.1, PP. 73-76) The records provided the claimant first presented to Dr. Onyekwelu on August 31, 2021, with a complaint of neck pain which radiated down the left side of his neck into his shoulder and left arm. (Cl.Ex.1, PP. 77-81)

The records also provided the claimant initially presented to Stephen Paulus on January 8, 2021, suffering from neck pain with degeneration of the cervical intervertebral discs at C5-C6 and C6-C7, and also with low back pain. (Cl.Ex.1, PP. 128-132) The initial MRI of record dated January 26, 2021, provided the claimant suffered moderate to advanced L4-L5 facet arthropathy with subtle degenerative anterolisthesis of the L4 and L5, along with L3-L4 and L4-L5 shallow disc bulges, without significant canal stenosis or no significant neural foraminal narrowing, and no focal disc protrusion or extrusion and no acute fracture. (Cl.Ex.1, PP. 126-127) The claimant continued to present to Dr. Paulus from January 26, 2021, through August 27, 2021. Dr. Paulus provided for degeneration of the cervical intervertebral disc with spinal stenosis of the cervical region and also lumbosacral spondylosis without myelopathy. The report also provided for a possible referral to Dr. Frankowski for an evaluation. (Cl.Ex.1, PP. 82-125) Although much of the treatment by Dr. Paulus related to the cervical spine, on May 21, 2021, Dr. Paulus performed a bilateral medial branch radio frequency neurotomy at L3 and L4. (Cl.Ex.1,PP. 104-106)

The documents of “Respondents Exhibit One” were reviewed as part of the claimant’s documents. “Respondents Exhibit Two” consisted of an AR–2 Form and a letter from the workers’ compensation carrier dated October 14, 2022, and addressed to Dr. Frank Frankowski, requesting that he offer his opinion in regard to the claimant’s injuries. (Resp.Ex.2, P.2)

### **DISCUSSION AND ADJUDICATION OF ISSUES**

In the present matter, the parties stipulated the claimant sustained compensable injuries including but not limited to his neck and back, on November 4, 2020. The claimant

is therefore not required to establish “objective medical findings” in order to prove that he is entitled to additional benefits. *Chamber Door Indus., Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997)

However, when assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze the proposed procedure and the condition that it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers’ Compensation filed December 13, 1989. (Claim No. D512553). The respondent is only responsible for medical services which are causally related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. *Foster v. Kann Enterprises*, 2009 Ark. App. 746, 350 S.W.2d 796 (2009). Liability for additional medical treatment may extend beyond the treatment healing period as long as the treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 180 S.W.3d 31 (2004).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers’ Compensation Act and must sustain that burden by a preponderance of the evidence. *Dalton v. Allen Engineering Co.*, 66 Ark. App 260, 635 S.W.2d 543. Injured employees have the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary for the treatment of the compensable injury. *Owens Plating Co. v. Graham*, 102 Ark. App 299, 284 S.W. 3d 537 (2008). What constitutes reasonable and necessary treatment is a question of fact for

the Commission. *Anaya v. Newberry's 3N Mill*, 102 Ark. App. 119, 282 S.W.3d 269 (2008).

The claimant was involved in a motor vehicle accident on November 4, 2020, when a vehicle hit a concrete barrier on the interstate and a large pallet of energy drinks broke loose, came across the interstate, and the claimant hit the pallet with the vehicle he was driving, totaling his vehicle. The claimant testified that following the accident, he was suffering from lower and middle back pain, with pain shooting down his arms and legs. The claim was accepted as compensable and the claimant was treated by Dr. Paulus with the original treatment of record being January 8, 2021. The report provided that the claimant was suffering from neck pain with degeneration of the cervical intervertebral discs at C5-C6 and C6-C7 along with low back pain. The MRI dated January 26, 2021, provided that the claimant suffered from moderate to advanced L4-L5 facet arthropathy with subtle degenerative anterolisthesis of the L4 and L5, along with L3-L4 and L4-L5 shallow disc bulges without significant canal stenosis and with no significant neural foraminal narrowing and with no focal disc protrusion and no acute fracture. Although much of the treatment of Dr. Paulus involved the cervical spine, he performed a bilateral medial branch radio frequency neurotomy at L3 and L4 on May 21, 2021. The claimant appeared to treat with Dr. Paulus up until August 27, 2021, with that report providing for degeneration of the cervical intervertebral disc with spinal stenosis of the cervical region and lumbosacral spondylosis without myelopathy. The report also provided for a possible referral to Dr. Frankowski for an evaluation.

The claimant received an anterior cervical decompression, discectomy, and fusion at C5-C6 and C6-C7 by Dr. Onyekwelu on December 18, 2021, which apparently

resolved the issues involving the claimant's cervical spine. A follow-up by Dr. Onyekvwelu on January 4, 2022, provided there was a full range of motion of the cervical spine without pain or tenderness. The report also provided there was a full range of motion of the lumbar thoracic spine without pain and tenderness. The claimant was then treated by Dr. Frankowski for lumbar facet arthropathy along with a L4-5 level cyst and Dr. Frankowski offered a facet rhisotomy.

The insurance carrier contacted Dr. Frankowski by a letter dated October 14, 2022, requesting that he opine in regard to the claimant's condition involving his lower back. He responded two (2) weeks later with a letter that provided he could not with a reasonable degree of medical certainty determine that the motor vehicle accident was the cause of the claimant's resulting back pain. "This could represent a condition resulting from degenerative changes but with an acute worsening after the accident, but it is very difficult to delineate based on MRI findings."

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Powers v. City of Fayetteville*, 97 Ark. App. 251, 248 S.W.3d 516 (2007). Where there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, 258 S.W.3d 394 (2007). The Commission has authority to accept or reject medical opinions and to determine its medical soundness and probative force. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998). However, the Commission may not arbitrarily disregard the testimony of any witness. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

It is also noted that in workers' compensation law, the employer takes the employee as he finds him and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). The parties agreed that the claimant suffered a compensable injury to his back and neck from a work-related injury on November 4, 2020. Various imaging modalities provided the claimant suffered from arthritic issues as do most people who are approximately sixty (60) years of age. The testimony of the claimant does not resolve the issue of the additional treatment recommended by Dr. Frankowski, nor does the opinion issued by Dr. Frankowski, the treating physician, in regard to the additional treatment which he proposed being work-related. Speculation and conjecture cannot substitute for credible evidence. *Liaromatis v. Baxter county Regional Hospital*, 95 Ark App. 296, 236 S.W.3d. 52 (2006).

After reviewing all of the evidence, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove, by a preponderance of the credible evidence, that the medical treatment he requested, specifically additional treatment by Dr. Frankowski is causally related and reasonably necessary for the treatment of the compensable work-related back and neck injury.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge