

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H101899**

FELICIA PARKER, EMPLOYEE

CLAIMANT

**UNIVERSITY OF ARKANSAS
FOR MEDICAL SCIENCES, SELF-INSURED EMPLOYER**

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA

RESPONDENT

OPINION FILED JULY 19, 2023

Hearing before Administrative Law Judge Steven Porch on June 20, 2023, in Little Rock, Arkansas.

Claimant represented by Ms. Sheila F. Campbell, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by Mr. Charles H. McLemore, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on this claim on June 20, 2023. Claimant was represented by Ms. Sheila F. Campbell, Attorney at Law of North Little Rock, Arkansas; Respondents were represented by Mr. Charles H. McLemore, Attorney at Law of Little Rock, Arkansas.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. An employer/employee relationship existed on February 4, 2021, when Claimant sustained a compensable injury to her head, neck, and back, for which certain benefits have been paid by the Respondents,
3. The Claimant's average weekly wage on February 4, 2021, was sufficient to entitle her to compensation rates of \$407.00 and \$305.00 for temporary total and permanent partial disability benefits, respectively; and,

4. The Respondents have controverted the additional benefits sought herein, inclusive of the Claimant's alleged bilateral knee injuries of February 4, 2021.

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether the Claimant is entitled to additional reasonably necessary medical care in relation to her compensable head, neck, and back injuries of February 4, 2021.
2. Whether Claimant sustained compensable bilateral knee injuries on February 4, 2021, and is entitled to appropriate benefits associated therewith.
3. Whether Claimant is entitled to additional temporary total disability benefits from March 23, 2021, through a date yet to be determined, in relation to her compensable head, neck, and back injuries of February 4, 2021.
4. Whether Claimant provided sufficient notice of her alleged left knee injury of February 4, 2021, in accordance with A.C.A. §11- 9-701.
5. Attorney's fees with respect to controverted indemnity benefits.

All other issues are reserved.

CONTENTIONS

Claimant's and Respondents' contentions are set out in their responses to the Prehearing Questionnaire. Said contentions are hereby incorporated by reference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, Claimant and Respondents' post hearing briefs that are blue-backed and made a part of this record and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant, the sole witness in this claim, and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant is entitled to additional medical treatment for her head, neck, and back injuries of February 4, 2021.
4. The Claimant is entitled to additional temporary total disability benefits from March 23, 2021, through a date to be determined.
5. Claimant did not sustain a compensable bilateral knee injury on February 4, 2021.
6. Claimant is entitled to controverted attorney fees.

CASE IN CHIEF

Summary of Evidence

The sole witness at the hearing was the Claimant. In addition to the prehearing order discussed above, I also admitted into evidence Claimant's and Respondent's exhibits that were properly admitted before the Commission. Claimant suffered an injury, during the course and scope of her employment with the University of Arkansas for Medical Sciences (hereinafter, "UAMS"), as a travelling medical assistant, when she was involved in a motor vehicle incident while heading to another patient's home injuring her head, neck, and back. Claimant was driving a vehicle owned by UAMS at the time of the vehicle incident. Respondents accepted the head, neck, and back injuries as compensable. Since the vehicle incident, Claimant has received treatment for her neck and back. Dr. Michael Cassat ordered physical therapy and also sent Claimant to a spine and pain clinic to receive some nerve blockers. Both treatment efforts provided some

benefit to the Claimant. Despite these efforts, Claimant still had significant pain from her injuries. Nevertheless, Dr. Cassat released Claimant to return to light duty work on March 15, 2021.

The Respondent offered Claimant a position as a Phone MA where she would help schedule client visits and refills. The Claimant continued to have difficulties and be in pain while attempting to perform her new job duties. Subsequently, the Claimant requested and received approval for a change of physician to Dr. Ahmad Ghaleb from the Commission. The Claimant made the request because she was unable to sit or stand comfortably which resulted in her missing substantial time from work. Claimant was later found to be disabled by the Social Security Administration.

Adjudication

- A. Whether Claimant is entitled to additional reasonably necessary medical care in relation to her compensable head, neck, and back injuries of February 4, 2021.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and

necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness's credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Claimant has continued to have pain in her neck and back ever since her compensable February 4, 2021, injury. When Claimant was released by Dr. Cassat to light duty work, Claimant's employer offered her a desk job. Claimant accepted that new

assignment. But due to her work related back and neck injuries, sitting was uncomfortable for her. As a result, she missed a lot of work in her new position. Dr. William Ackerman reviewed the patient's MRI and found that she has a left paracentral disc protrusion at L1/2 with compression of the left L2 nerve root. Dr. Michael Cassat's March 1, 2021, progress note states that Claimant is suffering from a multilevel degenerative change with multiple herniations, areas of central and foraminal stenosis, and areas of facet hypertrophy. I find by the preponderance of evidence that Claimant's release to light duty work on March 15, 2021, was not the end of Claimant's healing period. I do find by the preponderance of the evidence that claimant's continued treatment of her neck and back were reasonable and necessary medical care related to her compensable head, neck, and back injuries of February 4, 2021. As a result, the Respondents are ordered and shall pay all Claimant's bills for the treatment and pain management of her head, neck, and back. Though Respondent, at the full hearing, argued Claimant had a pre-existing back condition and there is a lack of objective findings for Claimant's head, neck, and back injuries, those issues were not properly before the Commission per the October 6, 2022, Pre-Hearing Order. To the contrary, both parties have stipulated in that Order that Claimant's head, neck, and back injuries were compensable and that certain benefits were paid. I have accepted those stipulations. Therefore, the issues of whether Claimant had a pre-existing condition and new objective findings will not be addressed in this opinion. But this still leaves the question of whether the Claimant is entitled to temporary total disability benefits from March 23, 2021, to a date to be determined?

Temporary total disability for unscheduled injuries is that period within the healing period in which the Claimant suffers total incapacity to earn wages. *Ark. State Highway*

and Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Claimant continues to go through treatment for her neck and spine to improve her final condition. Pursuant to Dr. William Ackerman's clinical note for Claimant's April 14, 2021, visit he makes clear Claimant's treatment plan will be to "prevent progression of the patient's chronic illness and provide supportive care, so the patient is able to perform activities of daily living without restriction, based on her current pathology." No evidence has been presented to show that these efforts will not improve Claimant's final condition. Claimant has missed large amounts of work since her February 4, 2021, injury. Thus, I find by the preponderance of evidence that Claimant is entitled to temporary total disability from March 23, 2021, to a date to be determined when she is stable or has reached maximum medical recovery.

B. Whether Claimant has sustained compensable bilateral knee injuries on February 4, 2021, and is entitled to appropriate benefits?

In this action, Claimant has alleged that she suffered compensable injuries by specific incident to her knee(s) on February 4, 2021, as she was heading to see her next patient as a travelling medical assistant. The alleged injury occurred during a motor vehicle incident during the course and scope of her employment with UAMS. Respondents argued that this injury is not compensable and, in the alternative, the Claimant failed to give timely notice.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged injuries, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

In *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77, the Arkansas Supreme Court stated:

In order for an accidental injury to be compensable, it must arise out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2009). The phrase “in the course of employment” and the term “employment services” are not defined in the Workers’ Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). Thus, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. *Id.*

An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.*; *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). We use the same test to determine whether an employee is performing employment services as we do when determining whether an employee is acting within

the course and scope of employment. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. *Id.* In *Conner*, 373 Ark. 372, 284 S.W.3d 57, we stated that where it was clear that the injury occurred outside the time and space boundaries of employment, the critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. Moreover, the issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Id.*

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The Claimant has not satisfied her burden with any credible objective findings as to her alleged work-related injuries to her knees. Thus, I find by the preponderance of the evidence that Claimant did not meet her burden of compensability for her knee(s) and this claim must be denied. Since this is my finding there is no need to explore whether the Claimant submitted timely notice to her employer.

ATTORNEY FEES

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). Under Ark. Code Ann. § 11-9-715 (Repl. 2012):

(B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee . . . In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall

direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (1/2) by the employer or carrier in addition to compensation awarded; and one-half (1/2) by the injured employee or dependents of a deceased employee out of compensation payable to them.

Discussion. The evidence before me clearly shows that Respondents have controverted Claimant's entitlement to additional indemnity benefits. Thus, the evidence preponderates that her counsel, the Hon. Sheila F. Campbell, is entitled to the fee as set out above.

CONCLUSION

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge