

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H003228

KIMBERLY PARKER, EMPLOYEE	CLAIMANT
NIDEC MOTOR CORP., EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 9, 2024

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

Claimant represented by the HONORABLE DAVID L. SCHNEIDER,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, 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 November 7, 2023. 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 May 8, 2023, and contained in a Pre-hearing Order filed May 9, 2023, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her neck on or about October 2, 2019.

3. The claimant has failed to prove by a preponderance of the evidence her entitlement to medical treatment for her alleged neck injury.
4. The claimant has failed to prove her entitlement to additional medical treatment for her compensable right shoulder injury.
5. The claimant has failed to prove her entitlement to reimbursement for out-of-pocket medical expenses regarding both her alleged neck injury and her admittedly compensable right shoulder injury.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits from March 3, 2021, to a date yet to be determined.
7. The claimant has failed to prove by a preponderance of the evidence that her attorney is entitled to an attorney's fee.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's November 7, 2023 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

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs and dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as “ALJ”) found that the Claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her neck on or about October 2, 2019, nor did the Claimant prove she was entitled to additional medical treatment for her alleged neck injury or her compensable right shoulder injury. Further, the ALJ found that the Claimant failed to prove her entitlement to reimbursement for out-of-pocket medical expenses regarding both her alleged neck injury and compensable right shoulder injury, or temporary total disability benefits from March 3, 2021 to a date yet to be determined or attorney’s fees. After a *de novo* review, I concur in part and dissent in part. I would rule in favor of

the Claimant for her neck injury and additional medical treatment of such injury and concur with the rest of the ALJ's findings.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

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). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; or to maintain the level of healing achieved; or to prevent 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).

On October 2, 2019, Claimant was moving four ten-pound coils from a table in front of her to a table behind her when she felt a pop in her neck and shoulder. The parties stipulated that the Claimant suffered a compensable right shoulder injury. However, medical treatment failed to fully alleviate the symptoms. The Claimant contended that she also sustained injuries to her neck. The ALJ found that there was a derangement in the Claimant's cervical spine, but that there was insufficient proof of a causal connection to the work accident. I disagree and find that this conclusion fails to fully consider the medical evidence in the record.

Claimant testified in the hearing with the ALJ that she told her medical providers about her neck difficulties and there are mentions of neck pain in the Claimant's medical records along with Claimant's compensable shoulder injury. (Hearing Transcript page 35 Line 7, and Cl. Ex. 1 p. 48). Claimant underwent right shoulder surgery with Dr. Cordell on September 30, 2020 for her compensable right shoulder injury. (Cl. Ex. 1 p. 40-41). Dr. Cordell opined that Claimant's scapular pain "may be related to c spine pathology." (Cl. Ex. 1 p. 48). Claimant's authorized physician, Dr. Timothy Garlow noted on May 10, 2021 and January 16, 2023 that Claimant was suffering from

periscapular pain related to underlying cervical issues. (Cl. Ex. 1. p. 54-56, 60). Claimant underwent an MRI on February 3, 2023 which showed objective medical findings in the cervical spine including a disc protrusion, and posterior spurring protrusions. (Cl. Ex. 1. p. 62).

Claimant suffered an admittedly compensable injury to her shoulder as a result of her work-related accident on October 2, 2019. Dr. Cordell identified that Claimant's scapular pain may be related to cervical spine pathology placing Claimant at maximum medical improvement with no impairment for her shoulder. (Cl. Ex. 1, p. 48). Claimant's shoulder injury had been fully-treated but no alleviation of the symptoms occurred. Claimant was then evaluated by Dr. Garlow who found objective medical findings of an injury in Claimant's cervical spine. In consideration of Claimant's consistent complaints of symptoms in the shoulder and cervical areas, and the identification of a clearly objective cervical injury, I find that there is sufficient causal connection between the work accident and the cervical injury. Therefore, Claimant's cervical injury should be deemed a compensable injury for which she should receive additional medical treatment that is reasonable and necessary.

Therefore, I find that the Claimant proved she sustained a compensable cervical injury for which she is entitled to additional reasonable and necessary medical treatment. Based upon the evidence in the record I concur with the remainder of the ALJ's findings.

For the foregoing reasons, I concur in part and dissent in part.

M. SCOTT WILLHITE, Commissioner