

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G807375

TRACY SCROGGINS, EMPLOYEE	CLAIMANT
WAYNE HOLDEN & COMPANY, EMPLOYER	RESPONDENT NO. 1
ACCIDENT FUND INSURANCE, THIRD PARTY ADMINISTRATOR (TPA)	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 29, 2023

This matter comes before Administrative Law Judge Chandra L. Black on the record.

Claimant represented by the Honorable Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the Honorable Ms. Karen H. McKinney, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the Honorable Christy L. King, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On June 19, 2023, the above-referenced referenced claim was submitted on the record, by agreement of the parties, as an alternative to an in-person hearing. A prehearing telephone was held in this claim on January 18, 2023. On that same date, a Prehearing Order was entered. The crucial issue presented for adjudication involves the Claimant's entitlement to additional medical treatment for his admittedly compensable accidental injury of October 26, 2018. Specifically, the

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parties agreed to have the issues of controversy involving the Claimant's entitlement to additional medical services under the care of Dr. Brent Lawrence and at Bowen Hefley considered on the record.

Stipulations:

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant sustained a compensable injury to multiple parts of his body on October 26, 2018, including but not limited to his left knee, left hip, and lower back.
3. The Claimant earned an average weekly wage at the time of his injury sufficient to entitle him to the maximum weekly compensation rates of \$673.00 for temporary total disability and \$505.00 for permanent partial disability.
4. The Claimant received and signed the AR-N on November 8, 2018.
5. Respondents No. 1 initially accepted only the left hip and left knee injuries as compensable.
6. As of December 27, 2021, Respondents No. 1 acknowledged and accepted the lower back injury as compensable.
7. The Claimant's authorized treating physician for his hip and knee injuries was Dr. Henry Wallace.
8. The Claimant first treated with Dr. Brent Lawrence on August 5, 2019, and Dr. Lawrence recommended "for now, we will watch his hip" and either "possible ligament and posterolateral corner repair or replacement surgery" for the knee and he recommended a referral to "Dr. Joel Smith to discuss this further."
9. The Claimant petitioned for and received a change of physician from Dr. Wallace to Dr. Joel Smith on October 22, 2019.

10. Dr. Smith recommended a left total knee replacement.
11. Respondents No. 1 requested and obtained an IME from Dr. Lowry Barnes.
12. After Dr. Barnes agreed that a total knee replacement was reasonable and necessary, Respondent-employer approved this treatment.
13. Dr. Smith performed a left total knee replacement on February 20, 2020.
14. Dr. Smith opined the Claimant reached maximum medical improvement from his left total knee replacement on October 13, 2020.
15. Dr. Smith assessed Claimant with a 37% impairment to the left lower extremity.
16. The Claimant sought treatment from Bowen Hefley on April 16, 2020, without obtaining authorization for this treatment from the respondent-carrier.
17. The Claimant returned to Dr. Brent Lawrence for additional treatment without a referral from Dr. Smith or seeking authorization for this treatment from respondent-carrier.
18. Dr. Brent Lawrence performed left hip replacement surgery on May 10, 2021.
19. Dr. Brent Lawrence did not obtain preauthorization for this hip replacement procedure pursuant to Commission Rule 099.30.
20. Dr. Brent Lawrence performed a revision of the total left knee replacement on October 11, 2021.
21. Dr. Lawrence did not obtain preauthorization of the revision of the total left knee as required by Commission Rule 099.30.
22. Respondent-carrier paid temporary total disability benefits for each of the Claimant's surgeries performed by Dr. Lawrence.
23. The Claimant reached maximum medical improvement from his compensable injuries on April 18, 2022.
24. Respondents have accepted the Claimant as being permanently and totally disabled as a result of his compensable injuries.

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25. The Death & Permanent Total Disability Trust Fund will assume liability for permanent and total disability benefits on July 11, 2028.

Issue(s)

By agreement of the parties, the central issue to be decided is as follows: whether the medical treatment that the Claimant received under the care of Dr. Hefley and Dr. Lawrence was unauthorized medical treatment pursuant to Commission Rule 099.30, for which Respondents No. 1 are not liable for because the Claimant did not obtain valid referrals and preauthorization prior to treating with these physicians. In the event the Claimant is able to overcome these hurdles, he must show that the medical treatment he received from them was reasonable and necessary for his injuries.

Contentions

Claimant: The Claimant contends that on October 26, 2018, Claimant was involved in an incident where he was pinned/crushed between two pieces of heavy equipment and sustained multiple injuries in the scope and course of his employment. Primarily, the Claimant injured his back, left hip, left knee, left ankle and his ribs. The Claimant was taken to Shreveport LSU for emergency treatment.

LSU Emergency Room Department diagnostic tests revealed a fracture of the left femoral head and Claimant underwent surgery with hardware on October 28, 2018.

Claimant was transferred back to Arkansas to treat with Dr. Henry Wallace. An MRI to the Claimant's left knee revealed a tear. Dr. Wallace recommended surgery to the knee. Claimant underwent the arthroscopic knee surgery on December 28, 2018.

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An FCE ordered and the Claimant gave a reliable effort, with 53 of 53 consistency measures. Dr. Wallace released the Claimant at MMI for his knee and gave him an 11% rating to the knee on April 23, 2019. Dr. Wallace noted that the Claimant could not return to his previous employment. Dr. Wallace also ordered a CT of the Claimant's left hip.

The Claimant followed up with AR Care and additional treatment was being provided to the Claimant regarding his injuries. A nerve conduction study was ordered, and Dr. Anderson noted that the EMG was an abnormal study.

The Respondent then sent the Claimant to Rick Byrd for rating evaluations. On June 24, 2019 Rick Byrd assessed the Claimant with a 4% rating to the hip and a 9% LE rating to the knee.

On July 11, 2019, Dr. Anderson ordered a Lumbar Spine MRI, which revealed a disc extrusion at L3-L4. The Respondents, however, denied the low back injury in its entirety.

Claimant was seen by Dr. Brent Lawrence, who diagnosed the Claimant as having post traumatic arthritis as a result of the work accident and recommended that the treatment left would be total joint replacement for the knee and wanted to monitor the treatment of the hip.

Claimant filed a Change of Physician to Dr. Joel Smith, who performed a left total knee arthroplasty surgery on February 20, 2020. The Respondents paid for this treatment. On October 13, 2020 Dr. Smith released the Claimant at MMI with 37% LE rating.

Claimant followed up with Dr. Lawrence, who recommended another MRI on the Claimant's hip and noted that the Claimant would eventually require a hip replacement surgery. Dr. Anderson confirmed on April 9, 2020 that the Claimant would eventually need a total hip replacement. This was denied by the respondent-insurance carrier. Claimant underwent the total

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hip arthroplasty on May 10, 2021.

Dr. Anderson referred the Claimant to Dr. Siddiqui, which was also denied by the Respondents.

Claimant was treated at Bowen and Hefley when Dr. Lawrence left the practice. A bone scan was ordered and appeared normal. Claimant followed-up with Dr. Siddiqui, who recommended that the Claimant be seen by a neurologist, and he was referred to Dr. Burba. Dr. Burba ordered additional testing, which revealed that the right and left peroneal nerve was reduced in amplitude, that both motor and sensory nerves were reduced in amplitude and chronic denervation of the lumbar spine at L4. Dr. Burba opined that the Claimant suffers from polyneuropathy, severe axonal motor and sensory poly neuropathy in the legs, and that the Claimant suffers from CRPS. As a result, Dr Siddiqui has not recommended a spinal stimulator.

Claimant has had the trial spinal cord stimulator, which was successful. Claimant then had the replacement of the spinal cord stimulator on August 9, 2021. It was successful.

Claimant was followed up with by Dr. Lawrence who recommended a revision of the left total arthroplasty, which was denied by the workers' compensation carrier. The Claimant underwent the surgery.

The Claimant then underwent a FCE and was assigned impairment ratings. Respondents No. 1 accepted the Claimant as permanently and totally disabled.

The Claimant contends that the medical bills from Dr. Lawrence in connection with the hip and knee surgery are both reasonable and necessary and should be paid by Respondents No. 1.

Respondents No. 1:

The Claimant sustained compensable injuries to his left knee and left hip for which he has

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received both authorized and unauthorized medical treatment. Respondents now acknowledge the compensability of Claimant's back injury as well. The Claimant received and signed an AR-N on November 8, 2018. Accordingly, Respondents No. 1 contend that they are not liable for any unauthorized medical treatment received by the Claimant.

Unbeknownst to Respondents, the Claimant first saw Dr. Lawrence on August 5, 2019. Dr. Lawrence recommended that "for now, we'll watch his hip" and either "possible ligament and posterolateral corner repair or replacement surgery" for the knee. The Claimant then sought treatment from Dr. Joel Smith on August 16, 2019. Dr. Smith ordered an MRI and saw him in follow up on August 30, 2019. At the follow up appointment on September 17, 2019, Dr. Smith recommended a total knee replacement. The Claimant then petitioned for a Change of Physician to Dr. Joel Smith. The Change of Physician was approved on October 22, 2019, approving Dr. Joel Smith as Claimant authorized treating physician. Prior to approving the total knee replacement, Respondents sent the Claimant to Dr. Lowery Barnes for IME. After receiving Dr. Barnes' report, Respondent No. 1 authorized the total knee replacement. Dr. Smith released the Claimant at MMI from this surgery on October 13, 2020 and assessed the Claimant a 37% impairment to the lower extremity. This rating has been paid in full.

Dr. Barnes also opined that total hip replacement would be related to the compensable injury, but he did not recommend a total hip replacement at that time. Respondents have never denied liability for a total hip replacement. The only physician to recommend a total hip replacement was Dr. Lawrence and neither he nor the Claimant have ever provided the Respondents with copies of medical records making this recommendation.

The Claimant sought unauthorized treatment from Bowen Hefley on April 16, 2022 with complaints of left hip pain. (Contrary to the statement in Claimant's Contentions, Dr. Lawrence was never associated with Bowen Hefley.) It was noted that the MRI of the left hip did not reveal any pathology and a bone scan was ordered. The bone scan performed on April 28, 2020, was normal. At a follow-up appointment at Bowen Hefley on May 4, 2020, no additional treatment was recommended for Claimant's left hip.

Dr. Smith saw the Claimant on March 5, 2021, as a follow up on both the left knee and left hip pain. Dr. Smith did not recommend any additional treatment at that time.

Respondents have been advised the Claimant underwent a total hip replacement by an unauthorized physician, Dr. Brent Lawrence, on May 10, 2021, which was not preauthorized as required by Rule 099.30. Respondents did not controvert this surgery and treatment as they were never made aware of the fact that the Claimant was treating with Dr. Lawrence while also receiving authorized treatment from his authorized treating physician, Dr. Joel Smith and unauthorized treatment from Bowen Hefley Orthopedics. Upon learning of this procedure, Respondents initiated temporary total disability payment beginning the date of surgery.

Upon receipt of medical records from Dr. Brent Lawrence, Respondents discovered that the claimant has also undergone an additional revision surgery on his total knee replacement on October 11, 2021. Again, this surgery was not authorized as the authorized physician did not seek authorization for his procedure. Nevertheless, Respondents acknowledge liability for the period of temporary total disability related to this unauthorized procedure.

After receiving medical records, Respondents now acknowledge that the Claimant also sustained a compensable injury to his low back. However, it is unknown how the Claimant came to be treated by Dr. Siddiqui and Dr. Burba as neither physician was authorized to treat Claimant and neither physician has submitted medical records to Accident Fund nor billed Accident Fund for their treatment. Respondents are attempting to pay medical bills for the Claimant's back by requesting the medical care providers of whom they are aware bill Accident Fund for their services so the bills can be paid pursuant to the Arkansas Fee Schedule. Upon information and belief, the Claimant underwent surgery for placement of a spinal cord stimulator by Dr. Michael Calhoun on August 9, 2021. Respondents do not have any medical records related to his procedure. The Claimant was still within his healing period and receiving TTD for his total hip replacement procedure when he underwent this procedure.

Respondent No. 2: The Trust Fund waived their participation in the adjudication of the issues at controversy.

Evidentiary Record

The parties have agreed that the record consists of the following documentary exhibits:

1. Prehearing Order of January 18, 2023.
2. The parties' respective responsive filings to the Prehearing Questionnaire.
3. The parties filed Agreed to Stipulations with the Commission on January 17, 2023.
4. Respondents No. 1's Non-Medical Records consisting of ninety-five (95) numbered pages.

5. A Joint Medical Exhibit consisting of one thousand and one hundred forty-three (1,143) numbered pages.¹
6. The parties simultaneously filed Post-Trial Briefs on February 20, 2023.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to review all of the relevant evidence, 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 of this claim.
2. I hereby accept the afore stipulations as fact.
3. The preponderance of the credible shows that the Claimant was furnished a Form AR-N, and that the treatment that the Claimant's received from Dr. Lawrence and Bowen Hefley was unauthorized and shall not be the responsibility of Respondents No. 1.
4. Based on the above finding, the remaining issues relating to preauthorization under Commission Rule 099.30, and whether the medical treatment was reasonable and necessary have been rendered moot and not discussed herein.

¹ There is a clerical error in the Prehearing Order of January 18, 2023, on page 2, under the section of the Designated Record, at #5. It incorrectly states that there are eleven thousand and one hundred forty-three pages of the Joint Medical Exhibit, instead of one thousand and one hundred forty-three (1,143).

Discussion

The Claimant sustained multiple injuries on or about October 26, 2018, in the course and scope of his employment with the respondent-employer. His accidental injury occurred while he was attempting to help a newly hired delivery driver. The driver was trying to knock the equipment off of the “lowboy” trailer by striking the back of the equipment with the bucket of a “trackhoe.” The Claimant started to help the delivery driver remove the equipment off the trailer. Then, he got in the seat of the equipment that need to be removed. As the Claimant tried to move the equipment, the driver started another attempt to move it. At that point, the equipment shifted forward, and the Claimant became pinned against the steering wheel and control panels. The Claimant immediately heard his left hip “pop.”

Shortly, thereafter the Claimant was life lifted by helicopter to LSU Health Shreveport. The Claimant was evaluated and treated for injuries primarily to his hip and knee. Respondents No. 1 accepted compensability for both of these injuries. However, Respondents No. 1 later accepted compensability for an injury to the Claimant’s low back. Respondents No. 1 have paid indemnity and medical benefits on this claim. The Respondents have accepted the Claimant as being permanently and totally disabled as a result of his injuries.

An overview of the Claimant’s treatment has been provided as outlined in the parties’ stipulations, contentions, and briefs. Therefore, I will not repeat all of those facts here.

Nevertheless, the Claimant’s treating physician for his hip and knee injuries was Dr. Henry Wallace. The parties stipulated that the Claimant petitioned the Commission for a change of physician to switch from treating with Dr. Wallace to treat with Dr. Joel Smith. The Administrator

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of the Medical Cost Containment Department entered a change of physician order for the Claimant to treat with Dr. Smith, on October 22, 2019.

At issue is whether the medical treatment that the Claimant received from Dr. Lawrence and Hefley Bowen was authorized medical expenses. Under these change-of-physician rules, the “employer has the right to choose the initial primary care physician. Once a physician has been chosen, a Claimant is only allowed to change physicians once, and then only by petitioning the Commission. “Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing, except emergency treatment, shall be at the Claimant’s expense.” Ark. Code Ann. §11-9-514(b) (emphasis added).

After being notified of an injury, the employer or insurance carrier must deliver to the Claimant (in person or by certified or registered mail, return receipt requested) a copy of a notice approved or prescribed by the Commission, which explains the Claimant’s rights and responsibilities concerning change of physician. Ark. Code Ann. §11-9-514(c). Providing this notice is critical. If an employer fails to provide this notice, then the change-of physician rules do not apply. However, if the employer does provide this notice, then any unauthorized medical expenses incurred after the Claimant has received a copy of the notice “shall not be the responsibility of the employer.” Ark. Code Ann. § 11-9-514(c)(3) (emphasis added).

As a general rule, proof of delivery of a Form AR-N is a prerequisite to application of the change of physician rules as a bar to liability for unauthorized treatment. See generally Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). However, the Commission has concluded that, once a Claimant petitions the Commission for a change of physician, delivery of

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the notice is not an issue. William M. Johnson v. Ranch Properties, Inc., Full Workers' Compensation Commission, Opinion filed December 21, 1993 (E111447).

The parties stipulated that the Claimant received and signed the Form AR-N on November 8, 2018. During his deposition testimony, the Claimant confirmed that he signed for the Form AR-N and his wife filled the form out for him. Based on this evidence, and the fact that the Claimant obtained a change of physician October 2019, I find that the Claimant received the Form N (both pages) on November 8, 2018, by hand delivery, and had knowledge of his rights and responsibilities. Therefore, treatment or services furnished to or prescribed by an unauthorized physician shall be at the Claimant's expense. Ark. Code Ann. §11-9-514.

In the case at bar, neither Dr. Brent Lawrence nor Bowen Hefley is the Claimant's treating physician. The evidence before me shows that the Claimant began treating with Dr. Lawrence on August 5, 2019, for continued knee pain without a valid referral. The parties stipulated that the Claimant returned to Dr. Lawrence for additional medical without a valid referral from Dr. Smith. They further stipulated that on May 10, 2021, Dr. Lawrence performed left hip replacement surgery. On October 11, 2021, Dr. Lawrence performed a total left replacement surgery.

Moreover, the parties stipulated that the Claimant sought medical treatment from Bowen Hefley Orthopedics (for his hip pain) beginning on April 16, 2020, without receiving authorization from the respondent-carrier. There is no probative evidence of record demonstrating that the Claimant treated with Bowen Hefley on a valid referral or due to emergency treatment.

Based on my review of the record, I am unable to find that Dr. Lawrence or Bowen Hefley was ever the Claimant's authorized treating physician or that the Claimant sought treatment from

them on a valid referral. Nor does the record show that the Claimant sought medical service from either Dr. Lawrence or Bowen Hefley under conditions which would be characterized as “emergency treatment.” Furthermore, there is no evidence proving that Respondents No. 1 controverted the Claimant’s medical treatment during the time he sought medical treatment from Dr. Lawrence or Bowen Hefley. In fact, the Claimant testified during his deposition testimony that he found Dr. Lawrence on his own, on the Internet. However, during his deposition testimony, the Claimant maintained that he did not recall who referred him to Dr. Hefley. Considering the Claimant was provided a Form AR-N on November 8, 2018, informing him of his rights and responsibilities, I find that the medical treatment the Claimant sought from Dr. Lawrence and Bowen Hefley was unauthorized medical treatment obtained at his own expense. Therefore, Respondents No. 1 are not liable for the medical services that the Claimant received from these unauthorized physicians.

The issues relating to preauthorization under Commission Rule 099.13, and whether the medical care was reasonable and necessary for the injuries received by the Claimant have been rendered moot and not discussed in this opinion.

ORDER

Based on the foregoing findings and conclusion and of law, I find that Respondents No. 1 hand delivered to the Claimant a Form AR-N on November 8, 2018. Therefore, the medical treatment the Claimant received from Dr. Lawrence and Bowen Hefley was unauthorized medical services for his compensable injury of October 26, 2018.

Accordingly, Respondents No. 1 shall not be liable for any medical expenses incurred by

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the Claimant while under the care of Dr. Lawrence and Bowen Hefley. All remaining issues relating to the afore mentions medical services have been rendered moot and not addressed in this opinion.

IT IS SO ORDERED.

Hon. Chandra L. Black
Administrative Law Judge