

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H009343

NATALIE J. VALENCIA, Employee	CLAIMANT
HARRY G BARR COMPANY, Employer	RESPONDENT
ACCIDENT FUND INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 23, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by LAURA J. PEARCE, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On November 7, 2022, the above captioned claim came on for hearing at Fort Smith, 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 right shoulder on October 20, 2020.

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

1. Claimant's entitlement to additional medical treatment recommended and

provided by Dr. Cox after July 12, 2022.

The claimant contends the medical services recommended by Dr. Cox are reasonably necessary for the claimant's compensable injury of October 19, 2020 and should be the liability of the respondent. By controverting the claimant's entitlement to the medical services recommended by Dr. Cox, the respondents have controverted any further benefits arising out of such services.

The respondents contend that the claim was accepted as compensable and benefits were paid at the time subsequent to the injury. Claimant was provided treatment for this injury, which resulted in Dr. Smith performing a surgical procedure on March 30, 2021 to repair a partial labral tear and to remove an associated paralabral cyst. Claimant was released to return to full duty on August 16, 2021. Once released to full duty, additional treatment was provided by Dr. Smith due to ongoing complaints, despite claimant's non-compliance with treatment. Respondents contend claimant was non-compliant with the treatment recommendations of her authorized physician. Claimant failed to keep scheduled doctor's appointments and to attend the course of physical therapy as directed by her treating physician. Respondents contend any permanent partial disability benefits to which claimant would be entitled have been paid. An FCE was performed on December 14, 2021 resulting in an assessment that she could perform work in the medium classification of work. A 1% impairment rating was assigned and paid in full. Respondents have provided all reasonably necessary evaluation and treatment and claimant is not entitled to additional benefits.

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 met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment recommended by Dr. Cox subsequent to July 12, 2022.

### FACTUAL BACKGROUND

The claimant is a 44-year-old high school graduate who worked for respondent approximately seven months before her accident on October 20, 2020 while working as a press operator. The parties have stipulated that claimant suffered a compensable injury to her right shoulder on that date. Claimant reported her injury to her supervisor and was sent for medical treatment.

Claimant eventually came under the care of Dr. Bryan Smith who performed surgery on claimant's right shoulder on March 30, 2021. The surgery consisted of a right shoulder arthroscopy; indirect cyst decompression, and superior labral repair. Following the surgery, Dr. Smith recommended that claimant undergo physical therapy, but claimant testified that she did not undergo the physical therapy because her arm "did not feel right."

Claimant returned to see Dr. Smith on October 25, 2021, and he noted that

claimant was complaining of continued pain in her right shoulder and was concerned that something had happened since the surgery. Dr. Smith recommended an ultrasound-guided injection to the acromioclavicular which would hopefully improve her pain and also serve as a diagnostic tool. He indicated that if claimant did not experience relief with the injection further consideration would be given to a workup in the glenohumeral joint. Dr. Smith indicated that he would see claimant back in eight weeks to assess her response to the injection.

After claimant's visit with Dr. Smith on October 25, 2021, he completed a work note dated November 3, 2021 indicating that claimant was released to return to work with no restrictions. After that date claimant underwent a functional capacities evaluation on December 14, 2021 and the evaluation report indicates that claimant gave a reliable effort with 54 of 54 consistency measures within expected limits. The evaluation determined that claimant demonstrated the ability to perform work in the Medium classification of work.

Claimant testified that after the functional capacity evaluation she received a letter from Dr. Smith addressing her work restrictions; however, that documentation was not submitted into evidence. Claimant subsequently filed for and received a change of physician to Dr. Wesley Cox. Claimant's initial evaluation with Dr. Cox occurred on July 12, 2022. He recommended that claimant undergo an updated MRI arthrogram and then return for a further evaluation. Respondent accepted liability for the initial visit with Dr. Cox, but has denied liability for further treatment. Claimant has filed this claim contending that she is entitled to additional medical treatment recommended by Dr. Cox after July 12, 2022.

### ADJUDICATION

Claimant contends that she is entitled to additional medical treatment from Dr. Cox subsequent to July 12, 2022; including, the recommended MRI arthrogram and further evaluation. 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. A.C.A. §11-9-508(a). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Cox.

Following her right shoulder surgery by Dr. Smith, claimant continued to have complaints of right shoulder pain. Dr. Smith noted those continued complaints in his report of October 25, 2021. Based on those complaints he recommended an ultrasound-guided injection to the acromioclavicular joint. He stated that the injection would hopefully improve her symptoms and it would also serve a diagnostic function. He indicated that if the injection did not provide relief he would have to consider further workup in the glenohumeral joint. He also indicated that claimant should return in eight weeks to assess her response to the injection. The record does not contain any

indication that this assessment occurred.

Shortly after his evaluation on October 25, 2021, Dr. Smith indicated in a note dated November 3, 2021 that claimant could return to work without restrictions. He also ordered a functional capacities evaluation which determined that claimant gave a reliable effort and was capable of performing work in the Medium classification.

Claimant filed for and received a change of physician to Dr. Cox and was evaluated by him on July 12, 2022. Dr. Cox has recommended a new MRI to evaluate claimant's symptoms. In doing so he stated:

[I] reviewed her MRI and her MRI arthrogram prior to surgery and her operative report. I agree with everything that I have seen in the record and sounds like her surgery was done really well. I do not see anything that I disagree with there and certainly would defer to Dr. Smith with regard to slap repair versus biceps tenodesis which it sounds like both of these things were discussed as options. We spent some time today talking about shoulder pain after slap repair which even in perfectly healed and perfectly performed procedures is a very realistic and in some cases likely unfortunate result. This may be what is going on here or she may have failed to heal the repair. Either way I think a couple of things are clear. First, this is directly related to her original work related injury. Second, we need a new MRI arthrogram to determine exactly what is going on here as to whether [or] not she is having bicipital pain from the slap repair or failure to heal the repair. (Emphasis added.)

In summary, at the time of her last visit with Dr. Smith claimant was having continuing complaints of right shoulder pain. He ordered an injection and indicated that claimant should return in eight weeks to assess her response to the injection. There is no indication that this assessment took place. Following a change of physician, Dr. Cox

has opined that claimant should have a new MRI scan and further evaluation. He also indicated that claimant's current symptoms are related to her original injury. I find that Dr. Cox's opinion is credible and entitled to great weight.

Based on the foregoing evidence, particularly the opinion of Dr. Cox, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment from Dr. Cox. This includes, but is not limited to, the MRI scan and follow-up evaluation.

### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Cox subsequent to July 12, 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).

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$345.95.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE