

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC FILE № H104907**

CEDRICK BENNETT, EMPLOYEE

CLAIMANT

PINE BLUFF SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOCIATION,
CARRIER/TPA**

RESPONDENT

OPINION FILED 7 AUGUST 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 9 May 2024 in Pine Bluff, Arkansas.

Davis Law Firm, Mr. Gary Davis, for the claimant.

Worley, Wood & Parrish, PA, Ms. Melissa Wood, for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 9 May 2024 in Pine Bluff, Arkansas. The parties participated in a pre-hearing telephone conference on 26 March 2024. A Prehearing Order, admitted to the record without objection as Commission's Exhibit № 1, was entered on 15 April 2024.

The Order stated that the only **ISSUE TO BE LITIGATED** was whether the claimant was entitled to additional medical treatment.

The parties' **CONTENTIONS**, as set forth in their Prehearing Questionnaire Responses, were incorporated into the Prehearing Order.

Per the claimant's **CONTENTIONS**, he was permitted a change of physician and then seen by Dr. Angela Lovett. The respondents paid for his initial evaluation, but have since controverted his entitlement to additional treatment.

Per the respondents' **CONTENTIONS**, the claimant has received all appropriate benefits regarding his accepted injury of 2 June 2021. They have denied additional

treatment as being reasonable and necessary since 6 May 2022. Any treatment sought without the respondents' knowledge prior to that date was unauthorized. They also contend that the claimant had preexisting problems with his cervical spine and that any additional treatment sought in relation to that issue is not related to the 2 June 2021 injury.

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed on or about 2 June 2021.

The claimant was the sole WITNESS to testify at the hearing.

The EVIDENCE presented consisted of the testimony along with Commission's Exhibit No 1 (the 15 April 2024 Prehearing Order), Claimant's Exhibit No 1 (120 pages of medical records and two pages of non-medical records), and Respondents' Exhibit Nos 1 (22 pages of medical records) and No 2 (7 pages of non-medical records).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that he is entitled to additional medical benefits.

III. HEARING TESTIMONY & MEDICAL EVIDENCE

Claimant Cedric Bennett

The claimant has been an employee of the Pine Bluff School District for twenty-eight years, working as a mechanic for twenty-six of those years. He was involved in an on-the-job accident on 2 June 2021 while working to replace an exterior light on a school bus. The

claimant was on a ladder behind the bus when it unexpectedly started to roll backwards. He was knocked from the ladder, and the bus rolled over his hand and elbow. While trying to get out from under the bus, he also hit his head. The claimant attributed the accident to the bus's airbrake not being properly applied prior to starting repairs.

According to the claimant, he has experienced pain, numbness, and tingling in his legs and arms, along with difficulty turning his head after the accident. He offered that he has felt some relief on his left side since having an SI joint procedure. The claimant stated that he would like to proceed with a similar procedure for his right side.

After the accident, the claimant was initially treated at MedExpress and Jefferson Regional Medical Center. He then presented to OrthoArkansas, where he was seen by Dr. Victor Vargas, who ordered imaging and some injections for pain relief. The claimant recalled the respondents ending their authorization of ongoing care on 6 May 2022. Thereafter, he sought treatment utilizing his group health plan. Since coverage was denied by the carrier, the claimant has seen several providers, including but not limited to a pain specialist and a rheumatologist. The claimant stated that his treatment has involved imaging and diagnostics, along with injections and prescriptions for pain.

In December of 2023, the claimant saw Dr. Angela Lovett through a change of physician authorized by the Commission. According to his testimony, Dr. Lovett was willing to provide ongoing treatment, but that was not authorized by the respondents.

The claimant regularly takes Advil, Tylenol, and prescribed Hydrocodone for pain. He stated that his job duties are limited to lighter work because of his pain problems. According to his testimony, the claimant had previously experienced some back troubles, but he had not required injections for his pain.

On cross examination, the claimant confirmed that he fell about four feet from the ladder into a seated position on the ground and that he bumped his head while getting up.

He acknowledged testifying at his deposition, “I bumped my head and I hurt my lower back and my tail bone and the left hand and elbow.” [TR at 21.] Discussing his treatment after the accident, he went on:

Q: Okay. I asked you in the deposition, “What body parts hurt?” Your response was, “I bumped my head and I hurt my lower back and my tail bone and the left hand and elbow.” Is that right?

A: Yes, ma’am.

Q: Okay. Now, as far as your treatment with Dr. Vargas, you indicated that you had CT scans done, x-rays, he also gave you some pain pills, a boot or something like that for your foot, is that right?

A: I had a pouch on my foot, yeah.

Q: Okay. And he also gave you a brace for your elbow, sent you for some injections, and physical therapy, is that right?

A: Yes, ma’am.

Q: You would agree it’s been several years now since you’ve seen Dr. Vargas, correct?

A: Yeah, I can’t think of the exact – yeah, yes, ma’am.

Q: Okay. And after Dr. Vargas indicated to you that he couldn’t do anything else, that’s when you started going to your family doctor, Dr. Harris, for treatment, is that right?

A: Yes, ma’am.

[TR at 21-22.]

The claimant further testified that he believed that a previous hip surgery was related to his work injury and that he is wanting surgery on his right hip, too, which he relates to his work injury. He acknowledged a medical report in July of 2021 that noted neck pain for the two or three months preceding that appointment. He did not dispute Dr. Vargas’ 4 August 2021 record indicating that he was to be off work for the following three weeks and that he would then return to full duty. The claimant did not recall Dr. Vargas assigning him a zero percent impairment rating. He acknowledged beginning treatment at the Pain Treatment Centers of America after his release from Dr. Vargas’ care; but he would not endorse the accuracy of his complaints listed in their records.

Q: That report though shows that you were there for pain your lower back, leg, neck, knee, mid-back, abdomen, ankle, hand, foot, chest, joints, nerves, and your shoulder. Does that sound like all the things you would have talked to your doctors there about?

A: I'm not going to agree—not that I know of. Not with all that. I just—I ain't gonna say yes or no about that.

[TR at 25.]

When asked about a long-term disability application, he acknowledged that the form relates to an injury in August of 2022, that the form denies any relation to a workplace injury, and that the form denies the filing of any workers' compensation claim.

At the conclusion of direct and cross examination, the claimant was asked by the Commission to clarify the treatment he was seeking in his claim. In response, he explained, “I just want someone to fix me like I was before it happened with my accident. If you talking about if he want to do another surgery on this side or whatever relieves me, that’s what I want. That’s the only thing.” [TR at 33.]

Medical Records

The emergency department record from 2 June 2021 notes, “Fell about 5 feet off a ladder At work. Working on a school bus, when brake released and bus rolled into him knocking him off the ladder. Bus rolled over left hand. Complains of left hand, left elbow and lower back. Hit head. No loss of consciousness. No neck pain.” He was discharged with Tramadol and Flexeril and instructions to follow up with his primary physician in one to two days or to return to the emergency department if any symptoms worsened.

He followed up on 8 June 2021 at Med Express with ongoing complaints of pain and a headache and was then referred to the emergency department for a CT. X-ray imaging of his foot and wrist were also ordered. The imaging was not remarkable but for degenerative changes observed at his cervical spine, wrist, and foot. The claimant was discharged with Tylenol #3 and instructions to follow up with an orthopedic consult if his symptoms did not improve. He was to return to work in three days.

The claimant received another off-work note from MedExpress on 9 June 2021, before seeing Dr. Victor Vargas on 17 June 2021. The notes from his appointment with Dr. Vargas relay cervical disc degeneration and lumbar or lumbrosacral disc degeneration that onset in 2014. The claimant's assessment for that visit included:

- Low back pain
- Degenerative disc disease
- Facet arthropathy
- Possible L5 spondylolysis
- Left wrist sprain
- Left wrist mild-to-moderate osteoarthritic changes

[Cl. Ex. № 1 at 26.] He was taken off work and ordered to undergo an MRI. According to a note from Dr. Vargas on 7 July 2021, they discussed the following MRI findings:

MRI of the lumbar spine showed a bulging disc at L5-S1 that contacts and displaces the traversing left S1 nerve root. Spondylolysis at L5 marrow edema signal is noted in the pars interarticularis on the right side.

[Cl. Ex. № 1 at 38.] An anesthetic and steroid injection at L5-S1 was given the same day, and the claimant received a note for returning to work on 4 August 2021. [Cl. Ex. № 1 at 40.]

The claimant saw Dr. Vargas again on 16 July 2021, when Dr. Vargas found no objective findings related to the claimant's complaints of left foot and neck pain. The claimant reported taking a muscle relaxer that was not prescribed by Dr. Vargas. Another injection and then reevaluation were planned for the following month. Additional physical therapy was also ordered.

Dr. Vargas saw the claimant again on 4 August 2021. He charted the following:

I have discussed with the patient that we have found no objective finding of injury of the lumbar spine, however [he] has been treated for an aggravation of the pre-existing condition but he has had transient relief of the symptomology.

I am considering that the patient has exhausted the options of treatment conservatively to mitigate his symptoms of pain. However, the pain is multifactorial and I am considered probably more likely than not his symptoms are due to the preexisting condition.

Consequently, I think the patient is having relief of the symptomology with the physical therapy and I highly recommended to continue physical therapy for the cervical spine and lumbar spine with extension of 3 weeks. After that I would consider that the patient has exhausted the options of treatment for conservative treatment and he can be considered at MMI when he finished 3 more weeks of physical therapy prescribed today.

Work status: The patient will be off work until 8/25/2021 where he will return to work on full duty no restriction.

Impairment rating: The patient is entitled to 0% impairment as a whole person based on the Guides to the Evaluation of Permanent Impairment, Fourth Edition, from the American Medical Association.

[Cl. Ex. No 1 at 58.]

The claimant then returned to see Dr. Vargas on 8 September 2021. According to that note:

Patient presented today to the clinic, however he has been released in the previous visit at MMI.

The patient stated that he finished physical therapy last week.

He complains of some headaches.

I explained [to] the patient that the patient was released at maximal medical improvement last visit and I have no further recommendations and he is supposed to return to work on full duty no restrictions on 8/25/2021.

For further details refer to my previous visit on 8/4/2021.

[Cl. Ex. No 1 at 68.] A return-to-work note for that day was provided.

On 26 October 2021, the claimant presented to Pain Treatment Centers of America as a new patient under the care of Dr. Heather Whaley. The note from that visit lists:

Chief Complaint: Lower Back and Leg Pain

Other Complaints: Headache, Neck Pain, Knee Pain, Mid Back Pain, Abdominal Pain, Ankle Pain, Hand Pain, Foot Pain, Chest Pain, Multiple Joint Pain, Nerve Pain, Shoulder Pain, Muscle Spasm.

[Resp. Ex. No 1 at 17.] He was prescribed Gabapentin, Tizanidine, and Tramadol, and his records from Dr. Vargas were requested; but there is no mention in the record of a workplace accident.

The claimant then presented to Legacy Spine & Neurological Specialists in August of 2022, reporting low back and neck pain. He reported his pain as increasing over the past

year. X-ray and MRI imaging studies were ordered and interpreted by Dr. Dominic Maggio.

His notes provide:

Lumbar spine MRI from 9/7/22 demonstrates degenerative disease. Of note at L5-S1 is a grade 1 anterolisthesis. There is moderate to severe left-sided and moderate right-sided neural foraminal stenosis. No central canal stenosis. At L4-5 there is mild to moderate bilateral neural foraminal stenosis. No central canal stenosis. No other areas of significant central canal or neural foraminal stenosis. There is preserved lumbar lordosis.

Cervical spine MRI from 9/7/22 demonstrates degenerative disease. Of note, at C6-7 there is moderate left-sided, no significant right-sided neural foraminal stenosis. At C4-5 there is moderate right-sided, no significant left-sided neural foraminal stenosis. No central canal stenosis. No other significant central canal or neural foraminal stenosis. No spondylolisthesis. There is preserved cervical lordosis.

...

AP views of the pelvis demonstrate bilateral SI joint degenerative disease. No evidence of SI joint arthritis. No evidence of pelvic fractures or masses/lesions near the SI joint.

[Cl. Ex. No 1 at 80.] A left-sided L5-S1 nerve block was planned.

The claimant returned to see Dr. Maggio several more times for ongoing lower back, hip, and buttock pain. He reported minimal or only temporary relief from injection therapy before agreeing to proceed with a left-sided SI fusion in January of 2023.

On 4 December 2023, the claimant saw Dr. Angela Lovett after exercising his right to a change of physician through the Commission. She coded the following diagnoses:

M5416 Radiculopathy, lumbar region
M4306 Spondylolysis
M4602 Spinal enthesopathy, cervical region
M4607 Spinal enthesopathy, lumbosacral region

[Cl. Ex. No 1 at 119.] She also administered a steroid injection at L4-L5-S1.

IV. ADJUDICATION

The stipulated facts are outlined above and accepted as fact. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their

demeanor, determines a witness' credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO ADDITIONAL MEDICAL BENEFITS.

The claimant is not entitled to additional medical benefits for ongoing medical treatment. He was treated for pain after his workplace accident; and as the course of his treatment went on, it became clear that his complaints were related to degenerative problems in his neck, lower back, and hips.

At issue is whether the claimant is entitled to ongoing treatment related to a workplace accident on 2 June 2021. His claim was initially accepted and benefits were provided thereafter while the claimant sought and received care from Dr. Vargas.

An employer is required to provide treatment that may be reasonably necessary in connection with a compensable injury. ACA § 11-9-508(a). Reasonable and necessary medical services may include those necessary to diagnose a compensable injury, to reduce or alleviate symptoms, to maintain healing, or to prevent further deterioration of damage. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995). 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). In so doing, he must also establish that the treatment is causally related to his accepted injuries from 2 June 2021. *Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 WL 5592602.

After several previous visits, Dr. Vargas saw the claimant again on 4 August 2021 and explained that his symptoms were due to preexisting, degenerative conditions. He assigned a zero percent impairment rating and returned the claimant to work at MMI, on

full duty, without restrictions on 25 August 2021. I find that opinion credible. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002) (the Commission may accept or reject a medical opinion and determine its probative value). I further credit his opinion on 8 September 2021 relaying again that the claimant was already released at MMI and that he had no further treatment recommendations as related to the workplace injuries.

The claimant later sought care on his own for pain management. Degenerative changes were observed across the imaging studies that were later performed, and the treatment he received was oriented towards relieving those degenerative conditions. Upon being granted a change of physician, the claimant saw Dr. Lovett who noted his many complaints and coded essentially chronic, degenerative conditions. She did not provide an opinion clearly relating his current complaints or possible future treatments to the incident in June of 2021.

Accordingly, I do not find that the claimant is entitled to additional medical benefits for ongoing treatment.

V. ORDER

Consistent with the Findings of Fact and Conclusions of Law stated above, this claim for additional benefits is denied and dismissed.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE