

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H201515

JACKIE JOHNSON, Employee	CLAIMANT
AR DEPARTMENT OF TRANSPORTATION, Employer	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, Carrier	RESPONDENT

OPINION FILED NOVEMBER 13, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Harrison, Boone County, Arkansas.

Claimant represented by F. S. "RICK" SPENCER, Attorney, Mountain Home, Arkansas.

Respondents represented by ROBERT MONTGOMERY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 10, 2024, the above captioned claim came on for hearing at Harrison, Arkansas. A pre-hearing conference was conducted on May 8, 2024, 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 his low back on February 10, 2022.
3. Claimant was earning an average weekly wage of \$650.58 which would entitle him to compensation at the weekly rates of \$434.00 for total disability benefits and

\$326.00 for permanent partial disability benefits.

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

1. Claimant's entitlement to additional medical treatment in the form of pain management by Dr. Matthew McNelley at Interventional Pain Management Associates.
2. Claimant's entitlement to permanent partial disability benefits based on a permanent impairment.
3. Attorney's fee on benefits paid subsequent to April 2022.

At the time of the hearing claimant reserved the issues relating to permanent partial disability benefits and an attorney fee; leaving as the only issue claimant's entitlement to additional medical treatment.

The claimant contends he is entitled to continual medical treatment by Dr. Matthew McNelley for the management of his pain related to his compensable lower back injury.

The respondents contend they accepted claimant's February 10, 2022 low back injury as compensable and appropriate benefits have been paid. Respondents contend that the claimant has received all reasonably necessary medical treatment to which he may be entitled relative to his compensable injury. Claimant was referred to Dr. McNelley at Interventional Pain Management Associates and a lumbar epidural steroid injection was authorized by respondents on September 12, 2022. Respondents authorized and paid for all reasonably necessary medical treatment through October 9, 2023. Respondents were at that point notified that claimant experienced multiple different intervening events, namely, he fell off the roof of a house while on paternity leave, reported falling from a ladder the next week, and injured himself while picking up an air conditioner. The medical treatment the claimant now seeks is not related to the February

10, 2022 compensable injury, but rather to the various intervening events he experienced.

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 witnesses and to observe their 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 May 8, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury.

FACTUAL BACKGROUND

Claimant is a 51-year-old man who began working for respondent in October 2017, driving a tractor on a mowing crew. The parties have stipulated that claimant suffered a compensable injury to his low back on February 10, 2022, when he felt back pain while he was turning with a 5-gallon bucket of water while up on a salt brine tank.

Claimant eventually came under the care of Dr. Allan Gocio, a neurosurgeon in Mountain Home. In a report dated April 20, 2022, Dr. Gocio stated that imaging of claimant's low back revealed disc bulging with degenerative disc disease; disc space narrowing at L3-4 and L4-5; and mild stenosis. He also noted that claimant's EMG/NCV studies were normal. He stated:

Patient is not likely to benefit from surgical treatment.

Dr. Gocio recommended continued therapy and referred claimant to pain management. He also instructed the claimant to return as needed. Finally, Dr. Gocio indicated that claimant could return to work as of April 20, 2022, with work restrictions and opined that claimant had a 0% impairment rating. Dr. Gocio reiterated the 0% impairment rating in a report dated May 12, 2022.

In his next report dated June 13, 2022, Dr. Gocio stated that claimant had undergone a functional capacities evaluation with 51/52 consistency measures within expected limits and that claimant had been placed in the medium work classification. Dr. Gocio stated that claimant could return to work within the restrictions set out in the May 23, 2022 FCE.

Following this release by Dr. Gocio, claimant did return to work for respondent performing his prior job. He testified that he had help from co-employees when performing heavier jobs at work and that he would be hurting when he returned home after a day from work. Claimant continued to work for respondent until he took off work for paternity leave on July 12, 2023, which he believes lasted twelve weeks. Claimant testified that he returned to work for respondent after the paternity leave ended in October 2023.

On October 9, 2023, claimant sought medical treatment from the emergency room at North Arkansas Regional Medical Center for complaints of back, knee, and shoulder pain with an onset of the day before after falling nine feet from the roof of his house. Claimant was diagnosed with acute low back pain and instructed to follow up with his doctor for a possible MRI scan if his symptoms did not improve. A CT scan of that same date was interpreted as showing no acute fracture.

On October 12, 2023, claimant was again seen at the emergency room at Baxter Medical Center by Dr. Mark West. At that time claimant attributed his back pain to the injury in February 2022 with no mention of the fall from the roof.

On October 13, 2023, claimant was seen by Asa Smith, APRN at Interventional Pain Management with reports of pain in his low back and into his left leg. The report states that claimant indicated that his current medications were not effective since falling off the roof a week ago. Finally, the report indicates that claimant had seen Dr. Gocio in the past and it was recommended that claimant return to Dr. Gocio.

On December 14, 2023, claimant was again seen at Interventional Pain Management by Dr. Michael Munn, APRN. Claimant indicated that he had a worsening of his pain in his low back after lifting an air conditioner. Claimant was given medication and again instructed to return to Dr. Gocio.

Finally, claimant was seen by Kimberly Cudworth, APRN at Cross Roads Family Clinic on August 19, 2024, where he was diagnosed with lumbar degenerative disc disease; lumbar back pain; and weakness of the left lower extremity. Claimant was prescribed medication and again referred back to Dr. Gocio and to Dr. McNelley at Interventional Pain Management.

Respondent initially accepted liability for additional medical treatment, but upon receiving the reports regarding falling from a roof and lifting an air conditioner denied payment of additional medical. Claimant has filed this claim requesting payment of additional medical treatment from Dr. McNelley at Interventional Pain Management.

ADJUDICATION

Claimant contends that he is entitled to additional medical treatment for his compensable low back injury. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proof.

As previously noted, after claimant's injury on February 10, 2022, he came under the care of Dr. Allan Gocio who treated claimant with physical therapy and pain management. He also released claimant to return to work with permanent restrictions as of June 13, 2022. Claimant did return to work for respondent and continued working for respondent until he took paternity leave on July 12, 2023, more than one year later. He testified that this leave lasted approximately twelve weeks and that he returned to work for respondent on an unknown date in October 2023. There are no medical records in evidence regarding any medical treatment for the compensable injury during this more than one-year period of time.

The next medical record after claimant was released to return to work by Dr. Gocio on June 13, 2022 is dated October 9, 2023 from the emergency room of North Arkansas Regional Medical Center. At that time, claimant was complaining of back, knee, and shoulder pain. The emergency room report states the following:

50 year old male presents complaining of low back, left shoulder and wrist pain. Patient complains of pain shooting down his left leg. No loss of bowel or bladder function. No leg weakness.

Occurred: yesterday.

Severity: moderate
Injuries/Pain location: back
Context: slipped, OTHER (fell about 9 ft from the roof)

The emergency room report does not indicate that claimant attributed his low back complaints to his prior work-related injury as opposed to the fall from the roof the day before. At the hearing claimant contended the fall from the roof did not worsen his back pain; that he simply went to the emergency room to make sure he had not worsened his back pain; and that he fell because his legs were weak due to his work injury. I find no merit to these contentions. As previously noted, claimant did not mention the prior work-related injury at the emergency room; instead, he gave a history of back, wrist and left shoulder pain after falling nine feet from the roof of his house. Furthermore, there is no notation in the medical record that claimant attributed his falling to weakness in his leg caused by his prior work-related injury.

There is also a medical report from Asa Smith, APRN at Interventional Pain Management, dated October 13, 2023. The report clearly indicates that claimant has been seen at the clinic before that date; however, none of the prior medical reports were submitted into evidence or the dates that claimant previously received treatment. That report also indicates:

This is a very pleasant patient who returns to the clinic for follow-up on chronic lumbar and radicular leg pain. He complains of some worsening after a fall off a roof about a week ago. (Emphasis added.)

In short, claimant returned to work for respondent in June 2022 and continued

working there until he took paternity leave in July 2023. There are no medical records for treatment of the compensable injury during this period of time. The next medical record is from October 2023 when claimant sought medical treatment for back complaints after falling nine feet off of his roof at home.

The medical reports also contain a history of a second incident. In a report dated December 14, 2023, Michael Munn, APRN, notes:

Patient states he was lifting a small air conditioner two days ago and when he twisted he experienced immediate worsening pain in his low back with weakness in his bilateral legs.

Very pleasant patient returns in follow-up of his low back pain worsened since falling off a roof in October, now with reinjury 2 days ago. (Emphasis added.)

Further confusing in this claim is claimant's testimony that he was sent to see Dr. Knox by respondent and that Dr. Knox is the physician that referred him to Interventional Pain Clinic. The documentary evidence contains no medical reports from Dr. Knox. Furthermore, the reports from Interventional Pain Clinic indicate that claimant was referred to the claimant by Dr. Gocio, not Dr. Knox. In fact, the clinic recommended that claimant return to see Dr. Gocio.

In summary, claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. Here, claimant returned to work for respondent and continued working there for over a year until he took paternity leave. Shortly after returning from paternity leave, claimant sought medical treatment from the emergency room for back pain resulting from a nine-

foot fall from his roof at home. Based upon the evidence presented, I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable low back injury. Therefore, his claim for additional compensation benefits is hereby denied and dismissed.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$449.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE