

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H204710**

ALICE E. LAWRENCE, Employee	CLAIMANT
SEARCY COUNTY JUDGE, Employer	RESPONDENT
AAC RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED **JUNE 20, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Harrison, Boone County, Arkansas.

Claimant represented by NEAL L. HART, Attorney, Little Rock, Arkansas.

Respondents represented by JASON M. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 26, 2023, the above captioned claim came on for a hearing in Harrison, Arkansas. An Order following that hearing was entered on November 30, 2023, in which respondents' motion for an independent medical examination (IME) was granted, and the remaining issues in this matter were held in suspense pending the results of that examination. Rather than continually referring to the previous order, the pertinent parts of it are reproduced in this order, including the summary of the testimony and the exhibits; any references to the request for an IME are deleted.

A pre-hearing conference was conducted on August 3, 2023, 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 this claim.
2. The employee/employer/carrier relationship existed on June 16, 2022.

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3. The compensation rates are \$413.00 for temporary total disability and \$310.00 for permanent partial disability.

Before testimony began at the hearing, the parties also announced two additional stipulations:

4. An accident occurred on June 16, 2022, and respondents have accepted a left leg injury.

5. Temporary total disability payments were paid through March 2, 2023, and there have been no temporary total disability payments since that date.

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

1. Compensability regarding claimant's back injury.

2. If compensable, whether claimant is entitled to medical treatment.

3. Whether claimant is entitled to temporary total disability benefits.

4. Attorney's fees.

The parties requested that the third issue be modified to read "whether claimant is entitled to additional temporary total disability benefits for a back injury, a leg injury, or both."

All other issues are reserved by the parties.

The claimant contends that "She suffered a compensable injury to her left lower extremity, low back, and other body parts after she was run over by a garbage truck at work. The low back was and is, at the very least, an aggravation of a preexisting condition, and is, therefore, respondents' continued responsibility, for medical care purposes, payment of indemnity benefits, and for any and all other benefits related thereto and allowed by the Act. The workers' compensation doctor is Justin Cutler, D.O., a Harrison orthopedic surgeon. While respondents continue to pay for Dr. Cutler's medical care, they have denied at least two of his treatment recommendations, namely a C-brace for claimant's leg and a referral to pain management for left lower extremity pain. This constitutes reasonable, necessary, and related medical care, and respondents should be required to provide it.

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Claimant continues to treat with Dr. Cutler at respondent's expense; she remains in a healing period and in an "off work" capacity secondary to her various injuries; at least one of her injuries is scheduled; and she has not returned to work. She is, therefore, entitled to an award of additional temporary total disability benefits from the date last paid (approximately May 10, 2023) through a date to be determined. Claimant's counsel is entitled to payment of a statutory attorney's fee on all controverted indemnity benefits. Claimant respectfully reserves the right to amend and/or otherwise alter the above contentions as discovery progresses. All other potential issues are expressly reserved for litigation at a later date including, but not necessarily limited to, anatomical impairment, permanent total disability, wage-loss disability, vocational rehabilitation, Section 11-9-505(a) benefits, and any other additional benefit allowed by law. This is a claim for additional compensation, and claimant renews her request for an award of any and all benefits to which she may be entitled, under the Arkansas Workers' Compensation Act."

The respondents contend that "The claimant's left lower extremity was accepted, and all appropriate benefits have been paid. The claimant's back condition is preexisting and there is no objective evidence to support a compensable injury to the lower back. The treatment suggested by Dr. Cutler is for the back and symptoms related to the back. The claimant's period of disability, if there is one, is related to her back which is not compensable."

From a review of the entire record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant 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 August

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3, 2023, and contained in a pre-hearing order filed that same date are hereby accepted as fact, as are the stipulations announced at the beginning of the hearing.

2. Claimant has met her burden of proving that she suffered a compensable injury to her left leg and back on June 16, 2022.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injuries.

4. Claimant is entitled to temporary total disability benefits beginning March 3, 2023 until a date to be determined.

5. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

As set forth above, the hearing on the motion by respondents for an IME and the claimant's case in chief were combined. The parties were advised that if I determined that an IME was reasonable and necessary, no decision would be rendered on the other issues presented. If I decided that the IME was not reasonable and necessary, then a decision on those issues would be rendered. Neither party objected to this manner of handling this matter. The Order granting the request for the IME was entered on November 30, 2023.

Following the receipt of the IME report, I sent an email inquiry to the parties and requested briefs on their respective positions in light of what the IME revealed, as well as what it did not cover. Those briefs were excellent and very much appreciated. That post-hearing exchange is blue backed to the record in this case.

HEARING TESTIMONY

Claimant was the only witness at the hearing. She gave a detailed vocational history, including describing the physical requirements of the jobs that she had worked following her high school

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graduation in 1996. She also described the requirements of the job that she was doing with respondent, Searcy County, prior to her accident on June 16, 2022. On June 16, 2022, she was performing her normal job of picking up trash. She had gotten out of the F-350 truck to shut the back doors of the cage that is built onto the truck. While she was out of the vehicle, another truck pulled behind the one that she had exited and honked its horn. The driver of the vehicle in which she was riding pulled forward, hitting her and knocking her in front of the back tire. The wheel of the tire went up on her left foot. Claimant tried to roll away from the vehicle. Claimant testified that she screamed, causing the driver of the vehicle to stop. At that time, the wheel was on her lower back and then the driver backed down her leg again. Because she was afraid that the driver might roll over her again, she got out of way of the wheels of the truck. Claimant said she could not put weight on her leg. Because of where the accident took place, claimant got into the truck and returned to the main road where a call was made to 911 and an ambulance came to her location and aid was administered. Claimant was then flown to Springfield, Missouri where she was treated and released to see her family doctor; there were no broken bones in her leg.

After seeing her family physician, Dr. Jose Abiseid, she was referred to Dr. Justin Cutler, an orthopedist in Harrison, Arkansas. Claimant's main issue at that point was still with her leg, and she was treated conservatively with medication and physical therapy. Because it is thirty-six miles from her home to the physical therapist, claimant has not been receiving physical therapy, but has been doing her exercises at home. Dr. Cutler administered an injection to her back which helped with the pain. Dr. Cutler also sent claimant for an MRI on her back. Claimant testified that Dr. Cutler wanted her to be seen by a pain management specialist and to have a C-brace to improve her walking; these have been denied by the respondent. Dr. Cutler had not released claimant to return to work as of the date of the hearing.

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Claimant saw Dr. Edward Saer after having been referred by Dr. Cutler. Dr. Saer has treated claimant for her back injuries in the past. Claimant believed that he was not interested in seeing her for her 2022 injury.

When asked to describe her current symptoms, claimant said she still has swelling. She cannot feel her leg from her knee down and has no control over it. She stated she has numbness up to her hip. She has shooting pains and muscle spasms in her back, but a large part of her leg is numb and without sensation. She uses her walker constantly. She believes her symptoms are getting worse over time. Claimant said she gets relief when she lies down and doesn't do much to aggravate her condition. The problem with her leg gives her problems sleeping. Claimant admitted that she had had problems with her left leg associated with her prior back problems, but the surgeries alleviated the leg problems. She said the problems with her leg are different now because of the numbness.

On cross-examination, claimant admitted that she had degenerative conditions in her back which were diagnosed as early as 2007. Claimant stated that she had been fused on her pelvis up to L1 (but later corrected herself to say L-4 was the top of the fusion).

When asked to relate the events of the injury, claimant said that the bed of the truck struck her and pushed her off balance, causing her to fall on her right side. Her left leg was closer to the tire, but she testified that her body was facing the front of the truck, directly in front of the tires, and then clarified that it was a dual tire truck. In order to get away from the tires, she tried to roll under the truck but was pinned and could not get away from it. Claimant testified that she had tire tread marks on her back where the driver stopped. Claimant admitted that she had no damage to her organs, nothing was broken and had no ligament tear.

While in Springfield, claimant said the emergency room personnel did not focus on her back because she told them her problems were with her left leg. She recognized the diagram of her

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complaints and agreed that she told the trauma team “Patient reports her left leg was run over by a dump truck. Patient denies any other injury. Isolated left leg injury.”

Claimant stated when she began seeing Dr. Cutler, he was treating her specifically for her left leg issues and believed that the problem with her left leg now is related to her back. The walker she was using on the day of the hearing had been prescribed to her from her surgery in 2016 or 2017. When asked about Dr. Cutler’s narrative in which he reported that she “reports accident occurring on June 16, where she ended up underneath a garbage truck. Truck ran up her left leg all the way up to her thigh. Backed off of it.” She said that narrative was wrong. She did not know why Dr. Cutler did not note that she was using a walker on July 26, 2022, because she was.

Claimant repeated that she did not like how Dr. Saer was acting during her visits with him but knew of no reason why he would not want to help her or had any animosity toward her. She disagreed with Dr. Saer’s opinion that her continued symptoms did not relate to her back injury. Because Dr. Cutler did not agree with Dr. Saer’s opinion, a third opinion regarding claimant’s back was requested by Dr. Cutler.

On redirect-examination, claimant clarified that she had a fusion from S1-L4, not L1. She was aware that Dr. Cutler reviewed the MRI of her spine and believed there was a large lateral disc herniation at L5-S1.

REVIEW OF THE EXHIBITS

Claimant submitted medical records of her treatment after the June 16, 2022, injury, while respondent submitted records that predated that injury, except for an MRI performed on July 7, 2022, and the emergency room records from Cox Health dated June 16, 2022.

Claimant began with conservative care for her leg injury with Dr. Cutler on July 19, 2022. She did mention in that initial visit that she was having numbness and tingling with some sharp shooting

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pains in her left thigh and left lower extremity. The emphasis on claimant's treatment remained with her left leg until after Dr. Cutler ordered an MRI and an EMG, which were performed on September 8, 2022. Upon seeing the results, Dr. Cutler requested an MRI on her lumbar spine.

On October 3, 2022, an MRI was performed at North Arkansas Regional Medical Center.

The impression was:

1. Indeterminate intermediate intensity signal material within the left lateral recess at L5/S1 contacting and possibly encasing the traversing left S1 nerve root. Unable to exclude scar tissue given the prior surgery. Correlate with any left S1 radicular symptoms.
2. Prior decompression and interbody/posterior fusions at L4/L5 and an L5/S1. Mild adjacent segment disease at L3/L4 with grade 1 retrolisthesis and mild bulging of the disk. No narrowing at L3/L4.

Because she had been previously treated by Dr. Saer for back issues—including performing two spinal surgeries—Dr. Cutler referred claimant to see him again. She was examined by Dr. Saer on October 25, 2022, who recorded in his assessment:

“She does not have a definite bony injury in her lumbar spine and there is no definite nerve root compression. She certainly could have an injury to the peroneal nerve or a neuropraxia to the femoral nerve or perhaps even the lumbar plexus. I do not see anything in her spine now that looks like she needs further treatment. Continuing therapy is probably her best bet.”

Claimant returned to Dr. Cutler on November 9, 2022, and expressed her dissatisfaction with Dr. Saer, reporting that Dr. Saer asked her repeatedly about an EMG when she had already told him that she had one. Dr. Cutler still believed that the EMG and MRI of the lumbar spine are consistent with new herniations from her injury. He suggested a second spine evaluation and performed an injection into claimant's left LI joint.

Instead of seeing a different neurosurgeon, the next record was another EMG ordered by Dr. Saer, this time performed at Ortho Arkansas in Little Rock on December 15, 2022. The impressions from this test were:

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1. Abnormal electrodiagnostic study.
2. There is electrodiagnostic evidence suggestive of a non-localizable left peroneal neuropathy with no focal slowing seen at the fibular head and no active denervation in any peroneal and elevated muscles tested. In addition, there were inconsistencies seen between functional and volitional activity throughout the study as patient seen doing activities such as ambulating, able to get onto exam table on own accord, rotate on table, extend and flex legs, but volitional activity was minimally seen.
3. There is no electrodiagnostic evidence of any other focal nerve entrapment, generalized peripheral neuropathy or left lumbar radiculopathy.
4. Of note, EMG is not a completely sensitive study, and does not evaluate small sensory pain fibers. Thus, lack of active denervation on today's study does not exclude an active radiculopathy. Clinical correlation is needed to determine the significance of today's electrodiagnostic examination findings.

Dr. Saer reviewed the results of the EMG on December 16, 2022, and again reassured claimant that he saw nothing for which she needed surgery.

Claimant returned to Dr. Cutler on December 28, 2022; his notes from that date through his August 16, 2023, office visit repeatedly included a recommendation that claimant be seen by another specialist. That final visit concluded with the following impression/plan:

“Patient is status post being run over by a dump truck with complete loss of function in the left lower extremity. Is being reported from workers comp that she had a previous low back injury with a nerve root impingement. This is nothing like that type of injury. This is a completely additional ordeal. Patient has no functional use of her left lower extremity. Patient requires substantial amount of assistance and cannot drive or even ambulate without significant help. Patient would greatly benefit from a C brace to help control her hip, knee, and ankle motions. This will allow her to have more independence with activities of daily living. Even where patient did have a documented previous back injury for many years ago, this is an injury that has more than aggravated those problems. In reality, this is a completely new injury causing severe nerve function dysfunction to her entire left lower extremity.”

An independent medical examination was conducted on December 28, 2023, by Dr. Chelsea Matthews, an orthopedic surgeon at UAMS Health Orthopedic and Spine Clinic in North Little Rock Arkansas. Dr. Matthews recorded the following under the physical exam section of the report:

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Musculoskeletal inspection: examination of the left lower extremity demonstrates some atrophy of the subcutaneous fat on the medial aspect of the calf. There is no evidence of this laterally. When resting she maintains the foot in an equinovarus position. There does appear to be some spasm in the tibialis anterior. I made a full to passively reduce to neutral. She exhibits no voluntary motor function in eversion or dorsiflexion. 2/5 in plantar flexion. She reports diminished sensation throughout the entirety of the lower extremity. Does not follow a distinct anatomic distribution. When standing, her foot naturally rests on the lateral aspect of the mid and forefoot. When ambulating this foot drags. The tibialis anterior tendon does appear to be firing when performing this. She is able to passively correct the foot and maintained its position on the ground, however when she lifts the foot it begins to drag underneath her again. Regards to more proximal exam, she is able to perform quad extension 2+ out of 5.

Dr. Matthews ordered an MR enterography “in order to better assess the level of nerve injury and determine if there is still pathology in this area. After the MR enterography I feel we will have the best answer as to whether her foot drop and symptoms are related to the crush injury or to her spine pathology.”

Dr. Matthews saw claimant again on January 25, 2024 and reviewed the MR enterography of claimant’s left lower extremity. After reviewing this information with claimant, Dr. Matthews recorded this plan:

There is no radiographic evidence of damage to the nerve at the area of her leg crush injury. She does report to me today the vehicle ran over her leg as high up as her thigh which was unclear to me prior to date today's visit. Nonetheless, I do not see any evidence of peroneal nerve damage or compartment damage to the leg to explain her foot contracture and spasticity. This may be explained by a double hit phenomenon to the nerve war approximately. This is outside my realm of expertise as a foot ankle orthopedic surgeon. If she would like a more clear answer, she may seek independent examination by someone who specializes in spine and hip pathology. Based on her clinical examination, I do not feel she is capable of carrying out work duties including working a truck. She would be unable to ambulate any long distance over 10 feet. She will be unable to climb ladders, stairs, squat or carry any weighted objects.

ADJUDICATION

Boiled down to its simplest elements, the issue to be decided in this case is whether claimant can prove by a preponderance of the evidence that her foot drop is a result of injuries received when a truck ran over her left leg on June 16, 2022, during the course of her employment. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) 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 establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630. The "preponderance of the evidence" standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415.

The parties stipulated that claimant met the criteria for a compensable injury as far as it related to the left leg injury. Thus, it was established there was a specific injury arising out of and in the course of employment which caused physical harm that required medical services and was supported by medical evidence, and respondents accepted the claim for the injury to the left leg. However, respondents deny that there is objective evidence of a back injury as a result of this incident, and thus have controverted this claim as it relates to a back injury.

In its posttrial brief, respondents took the position that "footdrop is not an objective finding because it can be controlled by the claimant." The Commission has cited reports from physicians that such a diagnosis is an objective finding (for example, see *Copeland v. Ark. Dept. of Corrections* 2019 AR Wrk. Comp. LEXIS 33, *White v. Lonnie Crowell Masonry, Inc.* 2017 AR Wrk. Comp. LEXIS 617 and *Webber v. Scott Equipment*, 2018 AR Wrk. Comp. LEXIS 54). Further, while a perfectly healthy person

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might be able replicate some of the conditions observed by all the physicians that have seen her, Dr. Cutler and Dr. Matthews noted objective findings following their examinations of claimant. None of these skilled physicians have suggested that claimant does not have an actual foot drop. I am therefore satisfied that the diagnosis of foot drop is an objective finding in this matter.

The testimony in this case was solely that of claimant, and I found her to be credible. “A claimant's testimony is never viewed as uncontroverted, but the Commission need not reject the claimant's testimony if it finds that testimony worthy of belief. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Respondents pointed out that claimant has changed her account of the events during the injury, first saying to her physicians that the truck only ran over her calf or thigh, but testified in deposition and at the hearing that it came up as high as her lower back. While curious, I do not find that to be as significant as respondents urge; whether the wheel that ran over her stopped at her calf, thigh or low back is of no significance to me in deciding this matter.

What is significant is that claimant was working without restrictions on June 16, 2022, and since she was struck by the truck, has not been able to work since that date. Dr. Cutler and Dr. Matthews agree on that point; Dr. Saer did not offer an opinion as to her ability to work.¹ Further, while the IME by Dr. Matthews did not directly answer the question regarding a back injury presented in this case, she told us that claimant’s problem was either related to the crush injury or to her spine pathology²-- then ruled out the leg injury as the source of claimant’s foot drop. Eliminating the one necessarily includes the other. This is consistent with what Dr. Cutler has said—claimant’s foot drop is caused by an injury to her spine that was not present before the accident. Therefore, I find claimant

¹ While Dr. Saer did not specifically opine as to claimant’s ability to return to work, his report of December 15, 2022 included an “Oswestry Disability Index” score of 70, which indicates complete disability. It is not clear if this is based on objective findings or subjective reports from claimant. (This was not included in my opinion of November 30, 2023, and is noted here rather than inserted into the previous review of the medical records.)

² See <https://www.mayoclinic.org/diseases-conditions/foot-drop/symptoms-causes/syc-20372628>, where there are three groups of causes for foot drop, but only the first of these is relevant to claimant’s condition.

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has met her burden of proof that her current condition was caused by a back injury she suffered as the result of a specific injury on June 16, 2022. As such, I find she is entitled to temporary total disability payments from March 3, 2023 to a date to be determined. Claimant is entitled to medical care as directed by Dr. Cutler, including referrals to specialists as he deems necessary to treat claimant's compensable back injury.

ORDER

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the claimant.

All issues not addressed herein are expressly reserved under the Act.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE