

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G006442

ERIC MIKLES, Employee	CLAIMANT
LOGAN COUNTY, Employer	RESPONDENT
ASSOCIATION OF ARKANSAS COUNTIES WCT, Carrier	RESPONDENT

OPINION FILED MAY 8, 2024

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

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 15, 2024, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on January 31, 2024, and a pre-hearing order was filed on February 21, 2024. 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 prior Opinion of August 5, 2016 is final.

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

1. Respondents' right to have claimant seen by a physician of their choosing pursuant to A.C.A. §11-9-511(c).

The claimant is not agreeable to undergoing an independent medical evaluation by Dr. Roman.

The respondents contend they are entitled to have claimant seen by Dr. Roman for an independent medical evaluation pursuant to A.C.A. §11-9-511(c).

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 January 31, 2024 and contained in a pre-hearing order filed February 21, 2024 are hereby accepted as fact.

2. An in-person medical examination by Dr. Roman of the claimant is reasonable and necessary pursuant to A.C.A. §11-9-511(a).

FACTUAL BACKGROUND

Claimant is a 53-year-old man who suffered a compensable injury to his left shoulder and neck in July 2010. Claimant underwent surgery by Dr. Harp on his left shoulder on November 11, 2010, but he has not undergone any surgery on his neck. In an Opinion filed by the Full Commission on June 18, 2012, it was determined that claimant suffered a 4% permanent anatomical impairment for his compensable neck injury and that he did not sustain any permanent anatomical impairment for his left shoulder. It was also determined that claimant suffered wage loss disability in an amount equal to 15% to

the body as a whole.

Since that time, claimant has primarily continued to receive medical treatment from Dr. Cannon for pain management. Claimant is currently being prescribed Hydrocodone, Hysinga, and Lyrica. Due to his continued opiate regimen, respondent had claimant's medical records reviewed by Dr. Carlos Roman who authored a report dated November 8, 2023, in which he opined that claimant's opiate regimen should be addressed based on his belief that claimant is over-medicated. Since that report, claimant has continued to treatment with Dr. Cannon with refills of his pain medication.

Respondent has requested that claimant undergo an in-person examination by Dr. Roman and claimant has not agreed to such an evaluation. As a result, respondent has filed this claim contending that it is entitled to have claimant evaluated by Dr. Roman pursuant to A.C.A. §11-9-511(c).

ADJUDICATION

Respondent has requested that claimant undergo an evaluation by Dr. Roman pursuant to A.C.A. §11-9-511(c). That subsection states:

Such physician as the employee, employer, or insurance carrier may select and pay for may participate in the examination if the employee, employer, or insurance carrier so requests.

In response, claimant contends that §11-9-511(c) does not create an independent stand-alone right to have an IME performed by a physician of respondent's own choosing. Instead, claimant contends that subsection (c) does not become relevant until subsections (a) and (b) have been complied with.

Subsection (a) of §11-9-511 states:

An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the Commission may require from time to time if reasonable and necessary." (Emphasis added.)

In this case, respondent has requested that claimant undergo an in-person evaluation by Dr. Carlos Roman. Regardless of whether A.C.A. §11-9-511(c) creates an independent stand-alone right, I note that subsection (a) allows the Workers' Compensation Commission to approve a physical examination if the Commission feels that an examination is reasonable and necessary.

I find that an examination by Dr. Roman in this case is reasonable and necessary. Claimant suffered a compensable injury to his left shoulder and neck in July 2010 and underwent surgery on his left shoulder. Claimant has not undergone any surgical procedure on his neck. Since that time, claimant has undergone extensive treatment in the form of opiate medication. While Dr. Roman authored a report indicating that it was his belief that claimant was overmedicated, Dr. Roman based that opinion solely upon his review of the medical records and did not have the benefit of actually examining the claimant. Respondent is now requesting such an examination. I find that this examination is reasonable and necessary.

In reaching this decision, it should be noted that the only issue before the Commission at this time is whether claimant should undergo an in-person physical examination by Dr. Roman. Whether claimant should continue receiving the recommended pain medication from Dr. Cannon or undergo treatment by Dr. Roman to

taper his use of pain medication is not currently before the Commission.

Given the fact that claimant has only been assigned a 4% permanent anatomical impairment rating for an injury that occurred some 14 years ago and continues to receive prescriptions of opiate medications, it does not seem unreasonable to have claimant undergo an in-person evaluation by Dr. Roman.

Accordingly, for the foregoing reasons, I find that an in-person physical examination of claimant by Dr. Roman is reasonable and necessary and approve of this examination pursuant to A.C.A. §11-9-511(a).

ORDER

Pursuant to A.C.A. §11-9-511(a), claimant is to undergo an in-person physical examination by Dr. Roman. This examination will be paid for by the respondent and claimant will be provided mileage for his travel to the evaluation.

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$376.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE