

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H204217

TERRI SPARKS, Employee	CLAIMANT
NORTH ARK. COLLEGE, Employer	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, Carrier	RESPONDENT

OPINION FILED NOVEMBER 19, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Harrison, Boone County, Arkansas.

Claimant represented by FREDERICK S. SPENCER, Attorney at Law, Mountain Home Arkansas.

Respondents represented by CHARLES H. MCLEMORE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 21, 2024, the above captioned claim came on for a hearing at Harrison, Arkansas. A pre-hearing conference was conducted on February 5, 2024, and a Pre-hearing Order was filed on February 6, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 relationship of employee-employer-carrier existed between the parties on January 12, 2022.
3. The claimant sustained a compensable injury to her right foot and ankle on or about January 12, 2022.
4. The claimant's weekly compensation rates will be determined at a later date.

By agreement of the parties the issue to litigate is limited to the following:

1. Whether Claimant is entitled to additional medical treatment for her compensable right foot and ankle injury in the form of surgery as recommended by Dr. Kevin Steffen.

The claimant's contentions are as follows:

“The Claimant contends that she sustained a compensable injury to her right foot and ankle in the course and scope of her employment on January 12, 2022.

The Claimant did a Change of Physician to Dr. Kevin Steffen. She contends that she is entitled to reasonable and necessary medical treatment under his direction.

The Claimant contends that she is entitled to TTD benefits (dates to be determined).

The Claimant contends that she is entitled to an impairment rating by Dr. Steffen and related permanent partial disability benefits.”

The respondents' contentions are as follows:

“The Respondent contends that the claimant reported having an accident occurring January 12, 2022 when she stumbled on a mat and injured her right ankle. The claimant was diagnosed with a sprain following this date. Respondent accepted as compensable this sprain injury the claimant sustained. The claimant was provided reasonable and necessary medical treatment for her injury, including MRI study and treatment with Dr. Jason Pleimann. The claimant had a preexisting condition in her right ankle, and had undergone arthroscopic surgery on her right ankle by Dr. Pleimann on December 8, 2020. The claimant had arthritis following her surgery. Dr. Pleimann wrote that the claimant's need for a surgery at this time is due to her preexisting condition, not a work injury, and released the claimant at Maximum Medical Improvement on September 12, 2022 with 0% impairment rating. The claimant was paid TTD benefits until October 5, 2022, and has been overpaid TTD benefits for which Respondent is entitled to a credit. The claimant used her one-time Change of Physician to see Dr. Steffen, and has been provided a visit with her choice of physician by the Respondent.

Respondent contends that the claimant has been provided reasonable and necessary medical treatment and appropriate indemnity benefits for her compensable sprain injury, and that the claimant cannot meet her burden of proving that she is entitled to additional medical treatment reasonable and necessary for or causally related to her work injury, nor is the claimant entitled to additional indemnity benefits for her work injury. Respondent further contends that the claimant cannot establish that a compensable injury is the major cause of any permanent impairment she contends to be entitled to.

The Respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.”

The claimant in this matter is a 58-year-old female who sustained a compensable injury to her right ankle/foot on or about January 12, 2022. The sole issue before the Commission is whether the claimant is entitled to additional medical treatment for her right ankle/foot in the form of surgery as recommended by Dr. Kevin Steffen. I note that prior to the hearing in this matter the claimant underwent that surgical intervention at the hands of Dr. Steffen on September 1, 2023, at Baxter Regional Medical Center. The claimant has previously had surgical intervention on her right ankle/foot on December 8, 2020. Dr. Jason Pleimann performed an arthroscopic debridement and microfracture at that time. On direct examination the claimant described her symptoms before and after her January 12, 2022, compensable right ankle/foot injury as follows:

Q Okay. And I want you to tell the Judge what has been going on. What were the symptoms before you had the injury and what were the symptoms after you had the injury up until the present? Just give him a history of that. Tell the Judge that.

A I can say, honestly, my ankle was bothering me before the second fall. I mean I was still able to drive and do whatever I wanted to do, but after the fall, it swells – basically, I mean I don't know how to say it, three to four times the size. I would have to go

get groceries, but I have to go to Walmart and do the call-in and they bring it out to you because I couldn't walk through Walmart.

Just the pain. And still to this day, even after the surgery and the brace that I am in, I am in an AFO that is supposed to keep me non-weightbearing, and it still swells up. And it will only swell up – I don't know how to explain it. Where the boot is, and let's say this is my foot, the boot comes to here (indicating). It starts here and both sides and then comes up to about here (indicating). When it swells, it comes out the top and out the bottom (indicating). And as soon as you take it off, then the rest of the foot is swollen.

On direct examination the claimant was asked about her January 12, 2022, admittedly compensable right ankle/foot injury as follows:

Q Okay. Tell the Judge what happened so he just kind understands the degree and extent of the injury.

A Okay. When you walk into the library where I worked, there is two sets of doors. I had unlocked the first set and was walking towards the second set when I tripped and fell on the black mat.

Q Okay. And how did you fall?

A Honestly, it happened so fast, I don't know. The only reason I didn't hit the floor was because I did – I face-planted the glass door.

Q Okay. And immediately did you sense any sensations with regard to that injury and where you were hurt, if anywhere?

A Immediately, yes. I hurt immediately.

Q Where?

A My ankle.

Q Which ankle?

A My right ankle.

On that same day, the claimant was seen at Washington Regional Urgent Care with complaints of ankle pain and swelling. The claimant was simply diagnosed with ankle pain upon findings of swelling and tenderness to the right ankle. The claimant was referred to an “ortho” at that time. On February 9, 2022, the claimant was seen at Ozark Orthopedics by APRN Hannah Patterson.

Following is a portion of that medical record:

Assessment/Plan

Impression: Right ankle sprain, date of injury 1/12/2022. She has a pre-existing medial osteochondral lesion of the talus that underwent arthroscopic debridement and microfracture on 12/8/2020.

Plan: She has been in the boot weightbearing as tolerated, she still has pretty considerable swelling today on exam. She has been off work quite a bit due to the weather, but is still doing her normal work duty with the use of the boot. I told her I think she can stay in the boot for another 2 weeks, then transition back to her lace up ankle boots if she feels able before her next appointment. We have discussed that with her history of surgery on this ankle, this could take a while before it comes around fully. I want her to continue to ice, take ibuprofen as needed, and give this some relative rest. We will get her into some physical therapy to work on range of motion and strengthening. Follow-up in 3 weeks for reevaluation. I expect MMI in 6 to 8 weeks.

The claimant continued to treat with APRN Patterson until she last saw her on May 2, 2022. Following is a portion of that medical record:

Assessment/Plan

Impression: Right ankle sprain, date of injury 1/12/2022. She has a pre-existing medial osteochondral lesion of the talus that underwent arthroscopic debridement and microfracture on 12/8/2020.

Plan: Clinically her swelling looks much better today, but she says she is still having pain. She has been doing physical therapy, taking anti-inflammatories, at this point she has failed conservative measures. At this point we need to proceed forward with an MRI to further evaluate the ankle to ensure nothing else is going on

here. She will follow-up with Dr. Pleimann go over those results and determine next steps.

On May 9, 2022, the claimant underwent an MRI of the right ankle. Following is the Impressions section from that diagnostic test:

IMPRESSION:

1. Progressive cystic changes are seen in the talar dome with joint space narrowing of the tibiotalar joint. The tibiotalar joint demonstrates a moderate joint effusion and changes consistent with synovitis.
2. Reactive edema is seen involving the posterior subtalar joint, talonavicular joint, and calcaneocuboid joint.
3. Edema in the sinus Tarsi which could represent sinus Tarsi syndrome in the right clinical setting.
4. Split tear of the peroneal brevis tendon.

That same day, the claimant was seen by Dr. Jason Pleimann, an orthopedic surgeon at Ozark Orthopedics. Following is a portion of that medical record:

Assessment/Plan

Radiographs: MRI of the right ankle done here today reviewed. These demonstrate significant cystic change in the talar dome more diffusely than the area of her previous OLT. There is significant bony edema throughout the talus and calcaneus.

Impression: Right ankle sprain with history of prior arthroscopic debridement OLT, date of injury 1/12/2022. Her MRI today shows diffuse edema throughout the talus and into the calcaneus. I am not sure if this represents stress reaction or exacerbation of developing arthritis. It could also potentially be consistent with early onset avascular necrosis of the talus.

Plan: She has not been improving with measures tried previously. I am going to have her go back into her boot and go nonweightbearing on a knee scooter. She needs to be a sitting work only nonweightbearing. Return in 4 weeks with a standing three-view right ankle.

On July 18, 2022, the claimant was again seen by Dr. Pleimann who, in the medical records, acknowledges her past right ankle difficulties, which include surgical intervention and treatment he provided. Following is a portion of that medical record:

Assessment/Plan

Radiographs: Standing 3 view of the right ankle were done here today. These again show some cystic change to the talus and some mild sclerosis. No obvious collapse.

Impression: Right ankle sprain with history of prior arthroscopic debridement OLT, date of injury 1/12/2022. Her MRI today shows diffuse edema throughout the talus and into the calcaneus. I am not sure if this represents stress reaction or exacerbation of developing arthritis. It could also potentially be consistent with early onset avascular necrosis of the talus.

Plan: She has had less pain since using the knee scooter and keeping weight off of her foot. Her x-rays look stable. At the very least she is got severe arthritis, and certainly it is possible she could have avascular necrosis here. I am going to keep her nonweightbearing for another 6 weeks and repeat x-rays then. As long as there is no change we will repeat her MRI after that visit. She needs to remain in sitting work only nonweightbearing on this extremity. She tells me that she was fired from her job after she was placed on limitations. Ultimately, we may try a tall Arizona type brace after the next visit an MRI to see if it would let her weight-bear with less pain.

On September 12, 2022, the claimant underwent another right ankle MRI. Following is the Impression section of that diagnostic report:

IMPRESSION:

1. Degenerative changes of the tibiotalar joint posterior subtalar joint, talonavicular joint, and calcaneocuboid joint. Overall this is stable slightly progressed since the previous exam.
2. Moderate tibiotalar joint effusion with changes consistent with synovitis.
3. Split tear of the personal brevis tendon in the retromalleolar region.

On that same day, the claimant was again seen by Dr. Pleimann. Following is a portion of that medical record:

Assessment/Plan

Radiographs: An MRI of this ankle done here today is reviewed. It demonstrates moderately worsened tibiotalar subtalar and talonavicular arthritis with subchondral cystic change. The ankle joint looks the worst.

Impression: Right ankle sprain with history of prior arthroscopic debridement OLT, date of injury 1/12/2022. Her MRI shows diffuse edema throughout the talus and into the calcaneus consistent with developing arthritis. It could also potentially be consistent with early onset avascular necrosis of the talus.

Plan: Her pain has not improved. She still unable to bear weight. Her MRI shows progressive arthritic change primarily in the ankle and subtalar joint but to a lesser extent the talonavicular joint. We discussed various treatment options, including various fusion options, total talus replacement, ankle replacement. I think given concerns over possible vascularity of the talus I think she would do best with a tibiotalar calcaneal arthrodesis. This would still leave her talonavicular joint arthritic, but hopefully this could be managed with cortisone injections etc. She understands she had a very stiff ankle and hindfoot. She understands is a risk of nonunion, wound healing problems, infection among others. She wishes to proceed. She is going to call and let me know when in the near future would be best for her. In the interim she could return to sitting work only. She should not drive.

On September 14, 2022, the respondent authored a letter to Dr. Pleimann concerning the claimant's condition regarding her compensable right ankle/foot injury. The respondent asked Dr. Pleimann to respond to several questions. Following are the questions and Dr. Pleimann's handwritten responses:

1. What pathology identified on the enclosed MRIs are considered acute 01/12/22 injury related?

None

2. Would the reported mechanics of tripping, but not falling, have resulted in her current symptoms and pathology? Please explain and provide supporting rationale.

NA

3. Which of Ms. Sparks' current symptoms are the direct result of the 01/12/22 injury, versus progressive degenerative joint disease or from the pre-existing osteochondritis dissecans lesions and surgery? Please explain and provide supporting rationale.

The majority, if not all, of her symptoms are related to progressive [illegible].

4. Is the proposed right ankle arthrodesis indicated and medically appropriate, especially based on her weight (five feet, seven inches and 300 pounds) and reported tobacco dependency? Please explain.

Yes

5. Can you state, with a reasonable degree of medical certainty, the major cause (greater than 50%) for the proposed right ankle arthrodesis is the direct result of the 01/12/22 injury versus her pre-existing pathology? Please provide supporting rationale.

NA

6. If the ankle arthrodesis is indicated for pre-existing pathology, is there any additional treatment indicated as the result of the 01/12/22 injury?

NA

7. If the ankle arthrodesis is indicated, medically appropriate, and the direct result of the 01/12/22 injury what is the potential outcome based on her pre-existing and co-existing medical conditions?

NA

A second letter was sent as a follow-up letter to Dr. Pleimann on September 27, 2022, with two follow-up questions. Those two questions and Dr. Pleimann's handwritten responses follow:

1. Since the proposed surgery is not considered 01/12/22 injury related, has Ms. Sparks achieved MMI as the result of the 01/12/22 work injury? If so, what date was MMI achieved?

Yes. 9/12/22

2. If MMI has been achieved, is there any assignment of a permanent partial physical impairment rating as the result of the 01/12/22 work injury? If so, please document the percentage of impairment and the objective finding this is based in accordance with the enclosed Arkansas Workers' Compensation Rule 34. Please include edition, page, table, and chart number.
0% impairment rating.

The claimant requested a change of physician from the Commission on January 6, 2023. That change of physician request was granted to the claimant changing her physician from Dr. Pleimann to Dr. Kevin Steffen on January 18, 2023.

The claimant was seen by Dr. Kevin Steffen on February 7, 2023, at Foot and Ankle Specialty in Mountain Home, Arkansas. Following is a portion of that medical report:

Objective:

Moderate edema with varicosities noted bilaterally with increased edema to the right foot and ankle. There is significant pain with palpation to the right foot and ankle and with ROM of the ankle and SJP. DP and PT palpable, temperature tone turgor within normal limits, neurological sensation intact, hair growth adequate, muscular skeletal strength is +5 over 5 bilateral lower extremities. Radiographs, 3 views right foot, AP, MO and lateral and 2 views right ankle, AP and mortise, do not reveal acute changes, there are significant degenerative changes noted to the ankle and subtalar joint with cystic changes to the talus with sclerosis of the talus and STJ, there are also degenerative changes to the TN joint. MRIs and CTs from 2020 and 2022 were evaluated, CT in 2020 suggested osteochondral lesion to the talar dome, 2022 MRIs suggested significant bone marrow edema to rearfoot and ankle with degenerative changes to the ankle, STJ and TN and cystic changes to the talus.

Assessment:

Post traumatic arthritis right foot and ankle
AVN talus right
Pain

Plan:

Discussed treatment, risks and complications
Radiographs taken, evaluated and discussed with the patient

Evaluated and discussed the MRIs and CTs with the patient
Discussed treatment and diagnosis in detail with the patient including immobilization, elevation, rest, non weight bearing and surgery.

Discussed risks, complications and post operative care of surgery, which would be tibiotalar and subtalar joint fusion.

Discussed length of time required for non weight bearing and risk of non healing. Discussed that if the patient does not heal, it could possibly result in loss of limb.

Discussed that both sudden injury and chronic degenerative changes from an old injury could cause the AVN of the talus.

Rx for topical pain cream

Rx for oral supplements to aid in bone healing

Follow up in 1 month

On August 24, 2023, the claimant was again seen by Dr. Steffen. At that time, the claimant was seen for pre-op of her scheduled right ankle scope and subchondroplasty. On September 1, 2023, the claimant underwent surgical intervention at the hands of Dr. Steffen.

Following are portions of that operative note:

PREOPERATIVE DIAGNOSES:

1. Osteochondritis dissecans of the right ankle.
2. Arthritis, right ankle.

POSTOPERATIVE DIAGNOSES:

1. Osteochondritis dissecans of the right ankle.
2. Arthritis, right ankle.

PROCEDURE: Ankle arthroscopy with significant debridement as well as repair of the osteochondritis dissecans in the right talus.

SURGICAL INDICATIONS: This is a 57-year-old female patient well known to my practice with increasing pain to the right ankle. The patient has had a few different injuries in the last year or so resulting in significant pain and has had several MRIs and CT confirming significant degenerative changes to the ankle joint as well as cystic and osteochondral defects in the talus and the distal tibia.

The claimant has asked the Commission to determine whether surgical intervention performed by Dr. Steffen on September 1, 2023, was reasonable and necessary medical treatment

for her compensable right ankle/foot injury. Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

The claimant was consistently diagnosed with a right ankle sprain as a result of her January 12, 2022, fall which gave rise to her compensable right ankle/foot injury. Dr. Pleimann was well aware of the claimant's prior right ankle/foot difficulties as he was the surgeon who treated and performed surgery on the claimant in December of 2020. Dr. Pleimann, in his response to questions submitted to him by the respondent on September 14, 2022, made his opinion clear. Dr. Pleimann is of the opinion that none of the pathology in the claimant's two MRIs are related to her January 12, 2022; fall, that the injury the claimant had on January 12, 2022, would not result in her current symptoms or pathology; and that no treatment was needed at this time for the claimant's January 12, 2022, fall which was the cause of her compensable right ankle/foot injury. Given Dr. Pleimann's history with the claimant, I give much weight to his opinions about the claimant's need for treatment.

Dr. Steffen, who the claimant saw through a change of physician, stated in his February 7, 2023, medical report regarding the claimant, "Discussed that both sudden injury and chronic degenerative changes from an old injury could cause the AVN of the talus." In the claimant's September 1, 2023, operative note, Dr. Steffen stated, "This is a 57-year-old female patient well

known to my practice with increasing pain to the right ankle. The patient has had a few different injuries in the last year or so resulting in significant pain and has had several MRIs and CT confirming significant degenerative changes to the ankle joint as well as cystic and osteochondral defects in the talus and the distal tibia.” Dr. Steffen also appears to be under the belief that the claimant’s current issues are a result of degenerative changes. At least I find no indication from Dr. Steffen that the claimant’s surgical need was brought about by the claimant’s January 12, 2022, fall.

The claimant has failed to prove by a preponderance of the evidence that the surgical intervention performed by Dr. Steffen on September 1, 2023, is reasonable and necessary medical treatment for her compensable right ankle/foot injury.

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 the pre-hearing conference conducted on February 5, 2024, and contained in a Pre-hearing Order filed February 6, 2024, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable right ankle/foot injury in the form of surgery as recommended by Dr. Steffen.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**