

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE N^o H303954

MYIA M. WOODS, EMPLOYEE	CLAIMANT
CITY OF LITTLE ROCK, EMPLOYER	RESPONDENT
CADENCE INSURANCE CO./RISK MANAGEMENT SERVICES, CARRIER/TPA	RESPONDENT

OPINION FILED 25 JUNE 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 27 March 2024 in Little Rock, Arkansas.

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

Ms. Melissa Wood, of Worley, Wood & Parrish, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 27 March 2024 in Little Rock, Arkansas, after the parties participated in a prehearing telephone conference on 5 December 2023. The subsequent Prehearing Order, admitted to the record without objection as Commission's Exhibit N^o 1, was entered on the same day as the conference. The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant is entitled to Temporary Total Disability (TTD) benefits.
2. Controversion and applicable attorney's fee on benefits.

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

The claimant CONTENDS:¹

¹ As listed in her prehearing filings and the Prehearing Order, the claimant originally contended that she sustained compensable injuries on 22 March 2022 and that she is

That she is entitled to TTD benefits from her last date worked, 13 July 2023, to a date yet to be determined. She further contends that after 10 November 2023, she began receiving “salary continuation” while her long-term disability application was pending and that she is entitled to the difference in her applicable TTD amount and the amount received in salary continuation from that date going forward. See TR at 10-11.

The respondents CONTEND:

That all appropriate benefits have been paid on the 22 March 2022 injury. The claim was accepted as medical-only, and the claimant was released at maximum medical improvement (MMI) with no impairment on 15 April 2022. The claimant’s authorized providers are at Concentra, but she obtained unauthorized care from Dr. Viviana Suarez and Arkansas Spine & Pain.

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 22 March 2022 when the claimant sustained compensable injuries to her left knee and lower back.
3. The average weekly wage was \$706.73, which entitled the claimant to weekly compensation rates of \$354.00 for Temporary Total Disability (TTD) and \$266.00 for Permanent Partial Disability (PPD).

The following WITNESSES testified at the hearing:

The claimant testified on her own behalf; the respondents called Ms. Kayla Jo Dixon and Ms. Shawanda Craig.

The EVIDENCE presented consisted of the testimony along with Commission’s Exhibit No 1 (the 5 December 2023 Prehearing Order), Claimant’s Exhibit No 1 (an index page and 109 pages of medical records), Claimant’s Exhibit No 2 (an index page and additional 11

entitled to temporary total disability benefits between 12 May 2023 and 30 May 2023 and then again from 30 June 2023 to a date yet to be determined. Those contentions were amended without objection at the hearing.

pages of medical records), Claimant's Exhibit № 3 (an index page and 41 pages of additional records), Respondent's Exhibit № 1 (an index page and 29 pages of medical records), and Respondent's Exhibit № 2 (an index page and 7 additional pages of records).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their 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 she is entitled to TTD benefits for any period.
4. Absent an award of benefits, the claimant is not entitled to attorney's fees.

III. HEARING TESTIMONY & MEDICAL EVIDENCE

Claimant Myia Woods

The claimant is a forty-three-year-old female who was working for the City of Little Rock as a Recreation Programmer at the time of her stipulated compensable injuries to her left knee² and lower back. According to the claimant, her job involved coordinating community programs, like team athletics, for park facilities and doing administrative work in support of those programs. [TR at 19-20.] On the day she was injured, she slipped in a hallway and fell at the city's West Central Community Center. She testified that she was first seen at the Baptist Hospital emergency department, was off work for a week, and then followed up through Concentra Health Centers at the direction of her employer. [TR at 21-22.]

² The claimant is not seeking benefits associated with her knee injury. The unscheduled injury to her back is the only injury at issue in this litigation.

According to her testimony, the claimant was returned to work at light duty and eventually sought treatment from Dr. Viviana Suarez and Arkansas Spine and Pain. She received medication and some injection therapy at Arkansas Spine and Pain and OrthoArkansas. This later treatment was not authorized, but sought on her own.

Q: You've used your health insurance to pay for these things?

A: Yes.

Q: And, apparently, you – in your deposition you said that you were having trouble getting ahold of the insurance people, that's why you went to Dr. Suarez?

A: Yes.

Q: But again, thereafter, you've continued with Dr. Suarez and she's referred you to these various doctors, is that right?

A: Yes.

[TR at 24.]

The claimant was asked, "why is July the 13th of 2023 the last day you worked?" She testified, "Because I had to go in and have a procedure done. I had got worse to where it was – it was just getting to where I couldn't sit or hardly walk or anything; so I had to have that procedure done, and then, I was like – they had me on, like – on some strict bed-type rest, and then, they started me back with the therapy and I was going, like, two or three times a week." [TR at 24-25.] She clarified that the "procedure" was an epidural injection and confirmed that she had not returned to work since the first injection.

In November of 2023, the claimant began receiving some disability benefits under a policy offered through the city. She believed that she made the application for those benefits after someone from the city contacted her about potential eligibility for coverage. [TR at 26-27.] She testified that she is still treating with Dr. Paulus at OrthoArkansas and that she is attempting to get approval for another procedure through her group health insurance. [TR at 28.]

The claimant stated that she is currently prescribed pain medication, muscle relaxers, and steroids, and that she takes those medications on a daily basis or as otherwise

instructed. She denied any injuries or accidents since the workplace incident, but for one episode where she was in such pain related to her injuries that she described being on the floor at her home and presented to urgent care for some pain intervention. [TR at 31-32.]

She stated that she experiences low back pain, stiffness, and muscle spasms, with difficulty staying seated for long periods of time. [TR at 34-35.]

On cross examination, the claimant confirmed that the respondents instructed her to present to Concentra “the next week” after her fall.

Q: Okay. Were you working at all between that time?

A: No, I was at home. I was, actually, at home on bed rest.

[TR at 38.] She also confirmed that she no longer experiences trouble with her knee, so far as it relates to this claim. Her treatment with Concentra consisted of various physical examinations, exercises, hot and cold therapies, and medications; but she discontinued the medications prescribed by them on her own. The claimant acknowledged that she was released on light duty from Concentra’s care by Dr. Scott Carle on 15 April 2022. She returned to work and continued working with light duty restrictions until July of 2023. [TR at 39-41.]

The claimant’s testimony concluded after she confirmed her signature on the Form AR-N dated 23 March 2022. [TR at 42; Resp. Ex. No 2.]

Respondents’ Witness Kayla Jo Dixon

Ms. Dixon works for the City of Little Rock and oversees, among other things, city employee workers’ compensation cases. She recalled that the claimant stopped showing up for work in July of 2023, which led to a conference call with other administrators to discuss the claimant’s leave status. Ms. Dixon stated that she was not aware of the claimant continuing any authorized treatment at the time and that last notice she received was regarding the claimant’s release at MMI in April of 2022. [TR at 44-45.]

Ms. Dixon described difficulty getting in contact with the claimant to sort out which injury or illness with which her absenteeism was associated, as she had more than one open FMLA matter. When she eventually spoke with the claimant, who relayed that her absence was for surgery related to her workplace injury, Ms. Dixon explained that no treatment was authorized at the time and that the claimant should report to Concentra for covered treatment. She also testified that the claimant was currently receiving some salary continuation while a disability claim was pending with the city's vendor for that coverage. [TR at 46-48.]

On cross examination, Ms. Dixon stated that she was not aware of any condition the prevented the claimant from performing work. She further testified that she did not contact the claimant to suggest or discuss her filing a claim with the city's disability insurance vendor. [TR at 49-50.] The witness verified that records indicated 13 July 2023 as the claimant's last work day and that she had been receiving salary continuation since, while the claim for long-term disability was pending. [TR at 51-52.] When asked why the respondents would continue to pay employees (outside of the Workers' Compensation structure) for not working during a time where they were claiming to be disabled, Ms. Dixon acknowledged that the practice could be seen as "lenient," but that they make good faith efforts to keep employees in a paid status whenever possible. [TR at 53.]

Respondents' Witness Shawanda Craig

Ms. Craig testified that she is the city's Deputy Director for Recreation Services and that she has been in the respondent's employ for twenty-five years. The claimant reported up to her through the chain of command, with two supervisors in between. Ms. Craig stated that the claimant would have received a Form AR-N from her and verified that the record in evidence [Resp. Ex. No 2 at 1-2] was an accurate copy of that form. [TR at 58-60.]

Medical Evidence

The emergency department records from immediately after the claimant's fall indicate that a "fall occurred while walking. She landed on a hard floor. The point of impact was the left knee. The pain is present in the left knee. The pain is mild." Pain and tenderness were noted for her knee and lumbar back. The Assessment/Plan section noted knee sprain and lumbosacral strain and directed follow-up care if symptoms persisted. [Cl. Ex. № 1 at 1-4.]

The records from her first Concentra visit two days later (on 24 March 2022) similarly note a left knee injury and lumbar sprain. Medication and physical therapy were prescribed. She was returned to work that same day with the following restrictions: no standing for more than half an hour, no lifting more than 20 pounds, no squatting, and no kneeling. [Cl. Ex. № 1 at 5-10.] Her return-to-work note also restricted running and using stairs without a handrail, and it allowed for her to be off for the rest of that day. It further provided that she could return for re-evaluation the following day or at the next scheduled visit on 28 March 2022. [Cl. Ex. № 1 at 11.]

The claimant returned to Concentra's clinic on 28 March 2022 for follow up. Ongoing lumbar pain without radiculopathy was noted. She was returned to work that day with squatting and kneeling restrictions and in the "sedentary" work class. Another appointment was set for 1 April 2022. [Cl. Ex. № 1 at 12-16.] The records from that next visit reflect some improvement, with a recommendation for continued physical therapy and her restrictions revised to include "may push/pull up to 30 lbs up to or > 8 hrs/day." [Cl. Ex. № 1 at 17-21.] Her "Functional Restoration and Status of Healing" was noted as "Roughly 50% of anticipated healing," and a subsequent appointment was set for 7 April 2022.

At the 7 April 2022 appointment, she was noted as "much better" and her "Functional Restoration and Status of Healing" was "approximately 75% of the way toward meeting the physical requirements of her job." Her lumbrosacral exam noted no tenderness

and a full range of motion. Physical therapy was to continue, and she was expected to be at maximum medical improvement (MMI) at her next follow-up, which was set for 15 April 2022. [Cl. Ex. No 1 at 22-26.]

Upon her next presentation to the Concentra clinic, the notes reflect that, “[she is] here today for evaluation and release from her 22 Mar 2022 7:18 AM slip and fall injury where she injured her knee and lumbar. After nine formal sessions of PT as well as a week of Home PT, she is ready for release.” No tenderness and a normal range of motion were again noted for her lumbrosacral exam. The claimant was prescribed seven tablets of Cyclobenzaprine to take as needed at bedtime and 10 tablets of Meloxicam to take once daily. She was noted, otherwise, as ready for release. Her return-to-work note listed:

Treatment Status: Released from Care.

Work Status: The claimant can return to work with no restrictions on Apr 15, 2022. The claimant has suffered no permanent impairment due to his/her work-related injury. The maximum medical improvement date (end of healing period date is): Apr 15, 2022.

[Cl. Ex. No 1 at 27-31.]

The next treatment note provided by the claimant is from her New Patient Consult for low back pain at Arkansas Spine and Pain on 5 July 2022. That note reflects a report of “onset of pain gradually over time,” with “LBP since 1/2022.” It also states, “h/o fall at her job on 3/2022, case not open. Patient works full time, recreating programmer.” The examination of the claimant’s cervical and thoracic spine were not remarkable, but the “Inspection of the lumbar spine reveals scoliosis. Lordosis Palpation of the lumbar facet reveals tenderness on both sides at L3-S1 region.” She was assessed with scoliosis and discogenic low back pain, prescribed naproxen and physical therapy, and set to follow-up in one month. [Cl. Ex. No 1 at 32-37.]

The claimant followed up on 3 August 2022. She stated some significant improvement with the physical therapy, but some stiffness in the morning. She was encouraged to complete her scheduled physical therapy sessions and set for a follow-up after six weeks. [Cl. Ex. No 1 at 42-44.] Another four weeks of physical therapy, at three times per week, were ordered. [Cl. Ex. No 1 at 45.]

She was seen again in October and December and then again in February of 2023, when she reported “still having stiffness to LB most severe in the morning and after a prolonged sitting at work.” Physical therapy was continued for lower back spondylosis and strengthening. [Cl. Ex. No 1 at 61.]

The claimant was referred to Dr. Rodrigo Cayme at OrthoArkansas on 7 June 2023 for further evaluation and was assessed with (1) being overweight, (2) low back pain, (3) lumbosacral spondylosis without myelopathy, and (4) degeneration of lumbar intervertebral disc. An MRI was ordered for the following week. [Cl. Ex. No 1 at 71-75.] The MRI scan showed:

1. Disc Disease at L4-L5 with prominent endplate change. Diffuse mild disc bulging and facet degenerative change produces moderate compromise of both neural foramina. No significant central canal stenosis.
2. Mild disc bulging as L5-S1 producing some slight compromise of the right lateral recess, minimal to left.

[Cl. Ex. No 1 at 80.]

Following the MRI scan, she followed up with OrthoArkansas, and Bilateral L5/S1, L4/5 Facet Joint Injections were planned. The record notes that if she did not feel relief, radiofrequency ablations would follow. [Cl. Ex. No 1 at 88.] The injections were performed on 10 July 2023 [Cl. Ex. No 1 at 89-90], and at her 27 July 2023 follow-up appointment, she reported no improvement in her mobility. The claimant was then referred to Dr. Paulus for consultation on a nerve ablation procedure. [Cl. Ex. No 1 at 97.]

The claimant submitted a letter from a UAMS Neighborhood Clinic, signed by Dr. Viviana Suarez and dated 31 July 2023, that recommended she “remain out of work.” [Cl. Ex. № 1 at 98-99.] She does not provide any clinic notes associated with a visit for that letter. She also submitted a “Return to Work/School” note from OrthoArkansas, dated 7 August 2023, which references her 27 July visit and her referral to Dr. Paulus, but makes no mention of any ordered time off from work or any work restrictions. [Cl. Ex. № 1 at 100.]

A letter from Dr. Paulus states that she was seen on 22 August 2023 to discuss a nerve ablation procedure that usually takes some time to authorize through insurance. It further states that “there are no restrictions following this procedure.” [Cl. Ex. № 1 at 107.] There is no mention of any restrictions while the approval for the procedure was pending. Another letter, dated 18 September 2023, appears to advocate for her group health insurance approving coverage for the ablation procedure to address “vertebrogenic pain due to Modic changes at L4 and L5.” [Cl. Ex. № 1 at 108-109.]

The claimant also submitted some clinic records from 2024. The OrthoArkansas notes reflect that she was counseled that, “back pain is not an inherently disabling condition, and that the degenerative changes at L4-5 may certainly be painful but should not affect work safety, so I do not have specific work restrictions to recommend at this time.” [Cl. Ex. № 2 at 3.] They discussed again the nerve ablation procedure, which her primary insurance denied, but her secondary insurance approved; and she voiced interest in moving forward with that procedure. [Cl. Ex. № 2 at 10.]

IV. ADJUDICATION

The stipulated facts, as agreed during the pre-hearing conference, are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of the witness and observing his or her demeanor, determines a witness’ credibility and the

appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

As an initial matter, I find the claimant's credibility to be limited, as her testimony around significant events is contradicted by the medical records. First, she claims that after her fall and visit to the emergency department, "I was off work that whole week, and then, I guess, like, that Friday Ms. Shawanda Robinson, she called me and told me to go over to Concentra." [TR at 22.] Her medical records, however, show that she fell and was seen at the emergency department on March 22nd and was then seen at Concentra two days later, with her notes from that appointment indicating that the provider signed off on the note at 9:27 AM.³ There is no off-work note, for any amount of time, accompanying the emergency department records; but at most there was one day between her emergency department and Concentra visits. Still, she testified on cross examination that she was at home on bed rest after the fall and was directed to Concentra "the next week." [TR at 38.]

Similarly, she stated that her last day of work was 13 July 2023 "because I had to go in and have a procedure done." [TR at 24.] The medical records, however, clearly show that the procedure was performed on 10 July 2023. Given her misstatements of those clearly identifiable dates, and the certainty with which she relayed them at the hearing, I find her credibility as an accurate historian to be very limited.

A. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE IS ENTITLED TO TTD BENEFITS.

For an unscheduled injury such as the one to the claimant's lower back, temporary total disability (TTD) is a period within the healing period in which the employee suffers a total incapacity to earn any wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613

³ A review of the calendar shows that 22 March 2022 was a Tuesday and that 24 March 2022 was a Thursday. See *Buxton v. City of Nashville*, 132 Ark. 511, 201 S.W. 512 (1918) (courts may take judicial notice of the days of the week for particular dates).

S.W.2d 392 (1981). A “healing period” is “that period for healing of an injury resulting from an accident.” Ark. Code Ann. § 11-9-102(12). The healing period ends when the underlying condition has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Partker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Whether a healing period has ended is a question of fact for the Commission. *Dallas County Hospital v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

Here, the claimant seeks TTD for a period beginning more than a year after her release from authorized care for a strained muscle. There is no question that she returned to work after the fall and that she continued working after her 15 April 2022 release from care. Her healing period ended at that time. The question turns then to whether she can prove by a preponderance of the evidence that she reentered a healing period, beginning on 13 July 2023, associated with her compensable back injury and in which she was unable to earn wages. On this record she falls short of meeting that burden.

The claimant began unauthorized treatment with Arkansas Spine and Pain months after her release from care and noted, at the time, that her symptoms existed prior to her fall in March of 2022, dating the onset as January of 2022. She similarly reported an onset of symptoms predating her fall in the FMLA paperwork provided by the respondents, which were dated in June of 2023, and noted an onset of a chronic condition in January of 2022.

[Resp. Ex. № 1 at 7-9.]

There is no evidence that she sought authorized care for her workplace injury after her release and that such a request was actually denied. Conversely, Kayla Jo Dixon testified that when she eventually became aware that the claimant was not showing up for work, she directed her to Concentra for any necessary treatment related to her compensable injury. The claimant did not follow that direction. Ms. Dixon testified credibly that she was not aware of any condition that prevented the claimant from working.

The claimant does not attempt to assert that she reentered a healing period during her several visits to Arkansas Spine and Pain in the year following her release; and the records from OrthoArkansas do not clearly indicate that she re-entered a healing period in July of 2023 for a compensable injury or that she was unable to work. It is clear from the notes⁴ that she was pursuing treatment during that time under her group health coverage and not under Workers' Compensation benefits. The medical records after her release from authorized care evidence treatment for a chronic condition likely attributable to scoliosis and degenerative disc problems. As stated in the opinion letter from Dr. Ryan Fitzgerald, which I find credible,⁵ "imaging obtained in June 2023... was negative for any evidence of an acute traumatic injury... [and] revealed multiple potential degenerative pain generators independent of the [workplace fall]. [Resp. Ex. № 1 at 27.] Indeed, her later records from OrthoArkansas relate her back pain to degenerative changes and state, "back pain is not an inherently disabling condition, and that the degenerative changes at L4-5 may certainly be painful but should not affect work safety, so I do not have specific work restrictions to recommend at this time."

The lone work note from Dr. Suarez at the end of July 2023 (more than a year after her authorized care ended) vaguely states that the claimant should not work. It does not reference her compensable back injury or a treatment plan or a timeframe or relate to any other supporting documentation and is, therefore, simply not enough to meet her burden that she cannot earn any wages due to her workplace injury. The claimant failed to produce persuasive evidence making a causal connection between her time out of work for the

⁴ See the insurance information listed above her 18 August 2023 OrthoArkansas letter. [Resp. Ex. № 1 at 21.]

⁵ See *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).

unauthorized treatment (both past treatment and potential future treatment) and her compensable injury.

The thrust of the claimant's argument appears that because she might qualify for long-term disability under a plan offered by the respondents, she must also be entitled to TTD benefits under Arkansas Workers' Compensation laws at the same time. The statutes and cases relating to the availability of TTD benefits, however, do not support such a finding.

Because the claimant failed to prove by a preponderance of the evidence that she re-entered a healing period for her workplace injury that precluded her ability to work, her claim for TTD benefits must fail.

B. THE CLAIMANT IS NOT ENTITLED TO A CONTROVERTED ATTORNEY'S FEE.

Because her claim for TTD benefits fails, her claim for associated attorney's fees must also fail.

V. ORDER

Consistent with the Finding of Facts and Conclusions of Law above, this claim is denied and dismissed.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE