

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H208285**

TERESA A. WRIGHT, EMPLOYEE

CLAIMANT

**LOWES HOME CENTERS LLC,
SELF-INSURED EMPLOYER**

RESPONDENT

**SEDGWICK CLAIMS MANAGEMENT,
THIRD-PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED OCTOBER 2, 2024

Hearing before Administrative Law Judge, Steven Porch, on August 27, 2024, in Little Rock, Arkansas.

Claimant was represented by Mr. Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Randy P. Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on August 27, 2024. A prehearing telephone conference took place on April 10, 2024. A prehearing order was entered on that date and subsequently entered into evidence, with amendments by the parties, as Commission Exhibit 1.

The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employer/employee/carrier relationship existed among the parties on September 20, 2022, when Claimant sustained compensable injuries to her right shoulder, arm, elbow, neck and back.

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant is entitled to additional reasonable and necessary medical treatment, specifically a cervical anterior fusion for the C5-C6-C7.¹

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: The Claimant contends that she sustained work injuries to her right shoulder, right arm, right elbow, neck, and back on September 20, 2022. That she is entitled to medical treatment, temporary partial disability benefits due to work hours being reduced, and a controverted attorney's fee at maximum statutory rate.

Respondents' Contentions: Respondents contend that Claimant has received appropriate benefits for the compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has proven, and I find by the preponderance of the evidence that Claimant has proven that a cervical anterior fusion for her C5-C6, not her C6-C7, is reasonable and necessary medical treatment for her compensable neck injury.

¹ The issues of temporary total disability benefits and controverted attorney's fee has been reserved by the Claimant during the hearing. The Claimant also specified what medical treatment is being sought, a cervical anterior fusion for the C5-C6-C7.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, Medical Records, that consists of 51 pages, Respondents' Exhibit 1, medical records, that consist of 1383 pages², Respondents' Exhibit 2, video of Claimant, and Commission Exhibit 1, Pre-Hearing Order, that consists of 5 pages. Forms AR-C and AR-1 blue-backed and made a part of this record. The Claimant was the only witness testifying in the full hearing.

Claimant was employed as a Merchandiser/Stocker for the Respondent/Employer. On September 20, 2022, Claimant was moving a metal beam that supports top stock items from one area to another with a co-worker. While ascending a ladder, approximately 15 feet high, to hang a support beam with the co-worker, the co-worker, unbeknownst to Claimant, dropped the beam causing the full weight of the 75-to-100-pound metal beam to pull down, in a jerking manner, on the right arm, shoulder, and neck of the Claimant. Due to the tearing in Claimant's right arm and shoulder, her fingers would not let go of the beam causing continuous strain on her arm, shoulder, and neck. The Claimant needed assistance to release her fingers from the metal beam. Trans. p. 18, lines 7-25, to page 19, lines 1-5. The Claimant went to the emergency room at the Baptist Hospital in North Little Rock on September 20, 2022. During the physical examination it was

² The Respondents submitted a 1,383-page medical record which was largely irrelevant to the issue concerning the cervical spine and was also in violation of my order. The Respondents blatantly ignored the portion of my order that reads "Any medical exhibit exceeding fifty (50) pages must be abstracted." The voluminous 1,383-page record was not abstracted. Moreover, the medical records were to be "indexed by medical provider" and be "chronologically arranged" not "grouped" by medical provider with no specific identifiable page index for each treatment date. Respondents are put on notice, as a courtesy, that if this occurs again, I will not admit his client's exhibit into evidence.

noted that her cervical back had a normal range of motion and that her neck was supple, meaning no limitation of motion. Resp. Ex. 1, p. 35.

Claimant on October 19, 2022, during a follow-up visit with Ortho Arkansas did complain about pain radiating from her shoulder into her neck. Resp. Ex. 1, pp. 539-541. During the physical exam, no neck findings were recorded. *Id.* However, on January 30, 2023, an MRI scan was performed on Claimant that revealed a small disc protrusion with mild spinal canal stenosis. Cl. Ex. 1, pp. 10-11. There was also a mild uncovertebral hypertrophy and facet arthropathy with mild neural foramen stenosis. *Id.* The MRI report further revealed a central disc protrusion at the C4-C5 with mild spinal canal stenosis. *Id.* There was also a mild facet arthropathy, asymmetric to the left, but no significant neural foramen stenosis. *Id.* There was also a broad-based posterior disc protrusion at C5-C6 along with a mild ligamentum flavum thickening. *Id.* There was a circumferential disc bulge at the C6-C7 with mild spinal canal stenosis and effacement of CSF ventral to the cord. *Id.* There was also an uncovertebral hypertrophy facet arthropathy, worse on the left. *Id.* There was a moderate right and severe left neural foramen stenosis. *Id.* Based on this MRI scan the Claimant was referred to Dr. Edward Saer, a spine surgeon specialist, at Ortho Arkansas. Dr. Saer noted in his assessment/plan that Claimant has undergone some physical therapy for her shoulder, and she claims that treatment has made her neck pain worse and headaches worse. Claimant Ex. 1, p. 14. Dr. Saer further noted that her neck is not “really tender to palpation except in the midline in the cervical thoracic area.” *Id.* Dr. Saer noted the January 30, 2023, MRI and recognized the central disc bulge at C5-C6 that abuts but does not compress the cord. *Id.* He further noted the foraminal narrowing at C6-C7 on the left. *Id.* Otherwise, Claimant has mild degenerative changes that are relatively normal. *Id.* Dr. Saer diagnosed her with cervical strain/sprain and referred her for physical therapy. *Id.*

On March 28, 2023, the Claimant had a follow-up visit with Dr. Saer, after her physical therapy treatment, to discuss her neck pain. Claimant's Ex. 1, p. 16. The Claimant believed that the physical therapy helped but she is still having pain. *Id.* Dr. Saer reviewed her imaging with her and explained that the problem is not with the bulging disc in her neck, rather she has soft tissue strain or sprain that is causing her pain. *Id.* Dr. Saer ordered her more physical therapy for her neck. *Id.* On April 29, 2023, the Claimant had another follow-up with Dr. Saer where she states she was improving while undergoing physical therapy on her cervical spine and right shoulder until the therapy stopped. Claimant's Ex. 1, p. 21. Claimant stated that she feels like her shoulder is tightening up again and she is having more pain in her neck and headaches again. *Id.* Dr. Saer showed her how to do cervical isometrics, but Claimant feels that she is not able to do them one handed. *Id.* Dr. Saer stated in his note that there is not much else that he can do for her neck. *Id.*

On June 27, 2023, Claimant had another follow-up with Dr. Saer where she expressed continued discomfort with her neck. Claimant's Ex. 1, p. 26. Claimant states that some of her pain radiates over the right scapular area. *Id.* The Claimant was in a sling for a while following her surgery, but claims wearing the sling aggravated her cervical complaints. *Id.* Dr. Saer noted that cervical motion was good in all directions although she has some pain and there were no acute spasms. *Id.* Dr. Saer again referred Claimant to cervical physical therapy to try and strengthen some of her cervical muscles. *Id.*

On September 7, 2023, Claimant had another follow-up with Dr. Saer where she claims to still have pain in her neck that goes up to her head, with constant headaches. Resp. Ex. 1, p. 640. During this visit Dr. Saer noted that the Claimant is literally in tears because she is in so much pain and cannot sleep at night. *Id.* Dr. Saer ordered another MRI but noted that he does not believe the pain is likely related to a nonstructural problem. *Id.* Dr. Saer wants the Claimant to continue

working on strengthening her upper extremity. *Id.* The Claimant received another MRI on September 26, 2023, from Chenal MRI. Claimant's Ex. 1, pp. 38-39. The MRI revealed the following impression:

1. Multilevel degenerative disease.
2. Severe left foraminal stenosis at C6-7.
3. Moderate foraminal stenoses on the left at C3-4 and on the right at C6-7.
4. Mild foraminal stenoses at C3-4, C4-5, C5-6, and C6-7.
5. Broad central protrusion type disc herniation at C3-4, with contact of the left ventral cord.
6. No evidence of cord contusion, epidural hematoma, compression fracture, or ligament disruption.

Id.

On October 2, 2023, Claimant again followed-up with Dr. Saer to report that since her last visit she has been feeling the same. Claimant's Ex. 1, p. 43. Claimant requested a change of physician on November 29, 2023, and it was approved on January 9, 2024, for Claimant to start seeing Dr. Reza Shahim. The Claimant saw Dr. Reza Shahim on January 4, 2024. Claimant's Ex. 1, pp. 45-49. Dr. Shahim reviewed the previous MRI cervical spine that shows cervical spondylosis with stenosis at the C5-6 and C6-7. *Id.* Dr. Shahim noted that the Claimant does have a cervical disc injury at C5-6 and some degrees of C6-7. *Id.* Dr. Shahim recommends that Claimant go through a series of cervical injections in preparation for possible surgical intervention. *Id.* Dr. Shahim recommended a treatment option of anterior cervical fusion with potential complications explained. *Id.* The Claimant wants a C5-6 anterior fusion and if necessary, a possible C6-7 anterior fusion.

The Respondents deny this treatment as unnecessary and unreasonable. To bolster its claim, the Respondents retained two consulting experts, Dr. Owen Kelly and Dr. Shane McAlister, to review the Claimant's medical records and provide an opinion regarding the causation of the proposed surgery to the work-related injury. Dr. Shane McAlister, a board-certified radiologist,

reviewed Claimant's medical records and diagnostic imaging. Resp. Ex. 1, pp. 749-756. Dr. Kelly concluded in his opinion that an "anterior cervical fusion has been suggested by a subsequent treating physician. This physician indicated that the injury was the reason for the surgery. This directly contradicts the opinion of the initial treating spine specialist." *Id.* at 755-756. Dr. Kelly opined that the initial treating spine specialist documented clearly and precisely the reasoning why surgery would not be related. *Id.* Dr. Kelly further concluded that this initial opinion appears correct, objectively based, and is supported by the medical records. *Id.* Dr. Kelly concluded that the anterior cervical fusion procedure would not be related to the one-time isolated incident. *Id.*

Dr. Shane McAlister, Radiologist, opined that the records and diagnostic imaging submitted do not document any traumatic injury to the cervical spine from the work incident that occurred on September 20, 2022. Respondents Ex. 1, p. 528. He further opined that there was no axial loading on the spine as a mechanism for injury to the disc or vertebral bodies, and the MRI scanning is the most sensitive imaging available for evaluating acute bony or soft tissue injury, and none was found. *Id.* Dr. McAlister concluded that any further treatment of the cervical symptoms would be related to the underlying degenerative process or other etiology. *Id.*

Adjudication

A. Whether Claimant is entitled to additional reasonable and necessary medical treatment, specifically a cervical anterior fusion for the C5-C6-C7.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical

treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra; Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*. A claimant is not required to furnish objective medical evidence of his continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

But to prove his entitlement to the treatment at issue, Claimant must also prove that it is causally related to his compensable injury of September 20, 2022. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569 (2013)

Dr. Reza Shahim, in review of Claimant's MRI cervical spine, noted cervical spondylosis with stenosis at C5-6-7 central disc herniation with thecal sac compression at C5-6 and foraminal stenosis at C6-7. Claimant's Ex. 1, p. 48. I credit Dr. Reza Shahim's report and recommendations for treatment. The Claimant has not had any serious issues with her neck prior to her September 20, 2022, work related injury. Claimant, at the time of her injury, was moving a 75-to-100-pound

metal beam, that supports top stock items, from one area to another with a co-worker. Transcript p. 18, lines 2 – 24. While Claimant and co-worker were both ascending ladders to hang the support beam, the co-worker let go of the beam causing the full weight of the metal beam to pull down, in a jerk manner, on the right arm, shoulder, and the neck of the Claimant. Due to the immediate tearing of muscle in Claimant’s right arm and shoulder, her fingers would not let go of the beam causing continuous strain on her arm, shoulder, and neck while she was still on the ladder holding the metal beam. In fact, the Claimant needed help getting her fingers loose from the metal beam.

Since this incident, the Claimant has experienced continuous pain from her neck. The MRIs show, according to some of the Claimant’s providers and reviewers, only degenerative conditions. Assuming that was true, the Claimant was asymptomatic prior to her work-related incident. However, after the work-related incident, I find that is not the case now. Simply stated, there is no reasonable explanation for Claimant’s injuries, considering Dr. Shahim’s opinion, and her pain other than the September 20, 2022, work-related injury. Therefore, I find by the preponderance of the evidence that Claimant has proven her cervical injuries are causally related to her September 20, 2022, work injury.

The Claimant is now seeking a cervical anterior fusion of the C5-C6 and potentially the C6-C7. I find by the preponderance of the evidence that Claimant has proven that a cervical anterior fusion of the C5-C6, recommended by Dr. Shahim, is reasonable and necessary medical treatment for her cervical injuries and pain. I do not find that the Claimant has proven by the preponderance of the evidence that a cervical anterior fusion for the C6-C7 is reasonable and necessary medical treatment based on Dr. Shahim’s report stating that a C6-C7 fusion is a “possible” need versus an actual need. Claimant’s Ex. 1, p. 49. Nevertheless, such treatment for a C5-C6 anterior fusion is legally allowable for 1.) reducing or alleviating symptoms resulting from

the compensable injury; 2.) maintaining the level of healing achieved; or 3.) preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

The Claimant has received physical therapy and neck injections all to no avail. The Claimant has also received cervical exercises from Dr. Saer that have not given the Claimant any neck pain relief. These conventional methods of treating Claimant's neck injury have been tried, leaving surgical intervention. I do recognize that the Respondents have solicited the professional opinions of two radiologist, Dr. Owen Kelly and Dr. Shane McAlister. However, these doctors are radiologist, not spine specialist, and have not physically examined the Claimant. Dr. Shahim's more invasive recommendation, given Claimant's circumstances, is reasonable and necessary treatment solution. Moreover, Dr. Shahim, Spine Specialist, has evaluated her and her MRIs and have recommended options that could relieve Claimant's suffering. And as previously stated, I find that a cervical anterior fusion of the C5-C6, recommended by Dr. Shahim, is reasonable and necessary and connected to the work-related injury.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge