

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214101

SHARON ANN STONE,
EMPLOYEE

CLAIMANT

DOLLAR GENERAL STORE,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED AUGUST 10, 2004

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE RICHARD A. REID, Attorney
at Law, Blytheville, Arkansas.

Respondents represented by HONORABLE BETTY J. DEMORY,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed October 1, 2003. The administrative law judge found that all of the claimant's "cervical problems" and surgery provided by Dr. Barrett-Tuck were reasonably necessary in connection with the claimant's compensable injury. The administrative law judge found that the claimant proved she was entitled to temporary total disability compensation from March 1, 2002 until a date to be determined. After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant failed to prove that Dr. Barrett-Tuck's surgery

was reasonably necessary. We also find that the claimant failed to prove she was entitled to temporary total disability compensation after May 14, 2002.

I. HISTORY

The parties stipulated that the claimant, age 47, sustained a compensable injury on February 28, 2002. The claimant testified that upon closing the store at 8 p.m., "I opened the door, turned around and put my key in the door and locked the door, and when I turned back around to go to my car, somebody had grabbed me around the neck....He choked me so bad I went down to my knees. He picked me up by my neck, and he started dragging me. We paused - I couldn't figure out why we paused, but he dragged me and we paused, and then he would drag me some more and we would pause, you know, stop, and then he drug me beside of the building." The claimant testified that after the assailants demanded money, "they started choking me again, and they choked me until I passed out, I guess, because when I woke up, I was laying on the ground, and I looked up and I seen them going across the field."

The claimant was treated at Baptist Memorial Hospital, Blytheville, Ark., on March 1, 2002. The emergency department nursing notes indicated that the claimant had

been struck on the head and had been choked. The emergency physician's impression was contusion to the head and face, and neck strain.

An APN at Manila Clinic reported on March 4, 2002, "She complains that she has problems with some anxiety and also had problems with some chest congestion. She states the anxiety has been going on since last Thursday when she was attacked and robbed when she was leaving the store that she works for on Thursday afternoon. She states that she went to the Blytheville ER and they said that she just had some contusions and abrasions." The claimant was assessed with anxiety, acute bronchitis, and right otitis media.

The claimant reported at Manila Clinic on March 8, 2002 that she had "c/o neck pain since attacked & robbed @ Dollar store, has slowly gotten worst (sic) with pain in neck & numbness in both arms."

On April 10, 2002, the claimant reported for the first time that she had been robbed "and dragged by the neck in late February 2002."

A CT of the cervical spine without contrast was taken on April 11, 2002:

C3-C4 shows a tiny central disc protrusion.

C4-C5 shows a slight disc bulge with minimal osteophytosis only.

C5-C6 shows a small left paracentral to posterolateral HNP with osteophytes with no severe nerve root or canal stenosis.

C6-C7 shows a left paracentral HNP with no frank stenosis.

C7-T1 shows no findings....

CONCLUSION:

1. Small disc herniations, primarily on the left, at C5-C6 and C6-C7.
2. At least one or more nodules suspected bilaterally in the enlarged thyroid gland. Ultrasound recommended.

The claimant began treating with Dr. Trent Lamb on April 17, 2002.

An MRI of the cervical spine without contrast was taken on April 24, 2002, with the following result:

C3-C4 small focal posterior central HNP which is mildly indenting the anterior thecal sac. Spinal cord as well as nerve roots appear to exit this disc space level without compromise.

C4-C5 posterior central small focal HNP which is mildly indenting the anterior thecal sac. Spinal cord as well as nerve roots exit this disc space level without compromise.

C5-C6 left posterior paracentral broad-based small HNP which is mildly indenting the anterior thecal sac. Spinal cord as well as nerve roots appear to exit this disc space level without compromise....

The claimant presented to a neurological surgeon, Dr. James C. Metcalf, Jr., on May 14, 2002. The claimant told

Dr. Metcalf that she had been "pulled around the store by her neck." Dr. Metcalf's impression was "1. Cervical degenerative disc disease. 2. Neck pain." Dr. Metcalf stated, "At this point, I certainly do not see anything of a surgical nature on this lady's studies. I see nothing that would explain the complaint of upper extremity weakness that she is exhibiting. At this point, I think it would be prudent for her to continue taking her Vioxx and also would be a good candidate for a program of physical therapy. I will be happy to see her back on an as needed basis."

The parties stipulated that the respondents paid for "the initial medical expenses to Dr. Lamb, as well as Dr. James Metcalf in the amount of \$1,681.33; and that the respondent had controverted all benefits beyond those previously paid." The respondents indicate that they controverted additional benefits after May 14, 2002.

Dr. Lamb referred the claimant to Dr. Rebecca Barrett-Tuck, who provided a neurosurgical consultation on June 17, 2002:

This is a pleasant 45-year-old lady who relates that on February 28th she was locking up at the Dollar Store where she worked when she was accosted by two men, one of them grabbed her by the neck and drug her around behind the building....She experienced an onset of neck pain shortly thereafter. It has been persistent and

severe since then....Physical therapy apparently worsened her pain....She reports that she has recently been fired by her job because of the fact that she continued to have trouble and was pursuing this pain....

CT scan of the cervical spine shows osteophytic spurring along with a disc rupture at C5-6 and a disc rupture eccentric to the left at C6-7, which is a bit larger. MRI confirms these findings.

I have recommended to Mrs. Stone ACDF at C5-6 and C6-7 with plating, although I have talked to her in great detail about the fact that her symptoms really go beyond what I would ascribe to her disc ruptures alone and I do not know how much relief she will get from the neck surgery. Certainly she might get complete relief but on the other hand, she may get little relief....

On August 6, 2002, Dr. Barrett-Tuck diagnosed "Disc herniation C5-C6 in association with mild spondylosis." Dr. Barrett-Tuck performed an "Anterior cervical discectomy and fusion of C5-C6 and C6-C7 using anterior plating." Dr. Barrett-Tuck wrote after a follow-up visit on September 16, 2002, "She still complains of neck pain both anteriorly and posteriorly." The claimant again followed up with Dr. Barrett-Tuck on November 4, 2002:

It has been about three months since her ACDF at C5-6 and C6-7. She reports she is no better with continued neck pain and that her left arm is beginning to bother her again. Her right arm also bothers her. Follow-up films on Ms. Stone show no complications. The plate is in good position as are the screws. The fusion has not obtained full density yet. I am going to schedule Ms. Stone for a myelogram and post-myelogram CT scan of the

cervical spine to try to determine why she might continue to complain of pain. Her risk factors for poor outcome unfortunately are very high. She is a smoker, in litigation, has been released from her job due to her injury.

Additional diagnostic studies showed no complications from surgery, and Dr. Barrett-Tuck referred the claimant for pain management. Dr. Calin A. Savu therefore began treating the claimant in December 2002.

The claimant visited Dr. Barrett-Tuck on February 13, 2003. Dr. Barrett-Tuck ordered additional diagnostic testing and stated, "I think we are seeing some definite symptom magnification."

Dr. Trent R. Lamb informed the claimant's attorney on March 3, 2003, "It is my medical opinion that the nature of Ms. Stones' injury certainly fit with her explanation of the events of 02-28-02. I believe that this was substantiated by the findings of both the CT scan and the MRI."

Dr. Barrett-Tuck noted on March 27, 2003:

I did have an opportunity to receive and review the follow-up cervical spine films for Ms. Stone. Her hardware looks great. The plate is in good position, screws in good position. The alignment is great. It has been six months since her ACDF at C5-6 and C6-7, however, she still is not solidly fused, particularly at C5-6. She is a heavy smoker and would not desist her smoking during the healing time. Of the lower level, it does look like she has had some bridging. This may continue, and in fact, she may eventually fuse

at C5-6 but at this point, certainly she has not progressed as well as she should have. I will be seeing Ms. Stone back at some point in the future for a right carpal tunnel release. I think we will want to go ahead and do follow-up films on her cervical spine in another 4-6 months.

Ms. Stone claimed entitlement to additional medical treatment. The claimant contended that "all of her continued medical problems were directly and causally related to the February 28, 2002, admitted injury; that respondent should be held responsible for all medical and related treatment, including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment; that she is entitled to temporary total disability benefits from the date of the injury and continuing through the present[.]" The respondents contended that the claimant's surgery was not authorized and was not reasonably necessary. The parties agreed that the primary issue was "whether the claimant's medical problems and disability after her release by Dr. Metcalf are causally related to the February 28, 2002, injury, entitling her to additional benefits."

After a hearing before the Commission, the administrative law judge found that the claimant was not entitled to medical benefits for her low back, goiter,

thyroid, or right carpal tunnel syndrome. The claimant does not appeal these findings. The administrative law judge found that surgery provided by Dr. Tuck was reasonably necessary, and that the claimant was entitled to temporary total disability from March 1, 2002 until a date to be determined. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Medical treatment

The claimant bears the burden of proving by a preponderance of the evidence that she is entitled to benefits. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.3d 543 (1999). The employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Arkansas Dep't of Cor. v. Holybee, 46 Ark. App. 232, 878 S.W.2d 790 (1996).

In the present matter, the Full Commission finds that the claimant failed to prove that the surgery provided by Dr. Barrett-Tuck was reasonably necessary in connection with the claimant's compensable injury. The parties stipulated that the claimant sustained a compensable injury on February

28, 2002. The claimant testified that she was hit, choked, dragged, and picked up by her neck on February 28, 2002. The police report in the record contains no account of the claimant being "dragged" or picked up by her neck. The claimant reported at the emergency room on March 1, 2002 that she had been struck and choked; she did not report being dragged.

An April 2002 CT showed a protrusion at C3-C4, a bulge at C4-C5, a herniation at C5-C6, and another herniation at C6-C7. The interpreting radiologist concluded that there were herniations only at C5-C6 and C6-C7. The Full Commission finds that the abnormalities shown on the CT were not the result of the claimant's compensable injury. Nor do we find that the abnormalities shown on the subsequent MRI were the result of the claimant's injury. The Full Commission notes the expert opinion of Dr. Metcalf, a neurosurgeon, who described only "cervical degenerative disc disease." Dr. Metcalf stated, "I certainly do not see anything of a surgical nature on this lady's studies." The record does not indicate that the disc herniations at C5-C6 and C6-C7, or abnormalities shown at any level of the claimant's cervical spine, were the result of the claimant being choked or allegedly "dragged" on February 28, 2002.

We also note Dr. Barrett-Tuck's report in June 2002, "CT scan of the cervical spine shows osteophytic spurring along with a disc rupture at C5-6 and a disc rupture eccentric to the left at C6-7, which is a bit larger." Dr. Barrett-Tuck did not causally link the claimant's cervical condition to the compensable injury. Dr. Barrett-Tuck predicted that the claimant may not improve after surgery, and the claimant in fact did not report any improvement. The respondents correctly assert that post-surgical improvement is a relevant consideration in determining whether proposed treatment is reasonably necessary. Winslow v. D&B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

Finally, we recognize Dr. Lamb's statement, "It is my medical opinion that the nature of Ms. Stones' (sic) injury certainly fit with her explanation of the events of 02-28-02. I believe that this was substantiated by the findings of both the CT scan and the MRI." The Commission has the authority to accept or reject medical opinion and the authority to determine its probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.2d 878 (2002). The Full Commission does not accept Dr. Lamb's opinion as probative evidence that surgery provided by Dr. Barrett-Tuck was reasonably necessary. We find that Dr. Metcalf's

opinion regarding the non-surgical nature of the claimant's condition is entitled to greater weight. Therefore, the Full Commission finds that the claimant failed to prove she was entitled to surgery provided by Dr. Barrett-Tuck.

B. Temporary disability

An injured employee is entitled to temporary total disability compensation during the time that she remains within her healing period and is totally incapacitated to earn wages. American Greetings Corp. v. Garey, 61 Ark. App. 18, 963 S.W.2d 613 (1998). In the present matter, the claimant sustained a compensable injury on February 28, 2002. A physician's impression on March 1, 2002 included "neck strain," and the claimant received prompt medical treatment. On May 14, 2002, Dr. Metcalf opined that the claimant was not in need of surgery. Dr. Metcalf recommended medication and physical therapy and indicated that he would allow the claimant to return for additional treatment, if needed. The claimant chose not to return to Dr. Metcalf. Even if the claimant remained in her healing period after May 14, 2002, which the Commission does not expressly find, the Full Commission does find that the claimant failed to prove she was incapacitated to earn wages after May 14, 2002. Therefore, the claimant failed to prove

she was entitled to temporary total disability compensation after May 14, 2002.

Based on our *de novo* review of the entire record, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant failed to prove she was entitled to the surgery provided by Dr. Barrett-Tuck. We find that the claimant failed to prove that this treatment was reasonably necessary in connection with the claimant's compensable injury. The Full Commission also finds that the claimant failed to prove she was entitled to temporary total disability compensation after May 14, 2002. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority finding that claimant failed to prove that various treatments, including surgery, were reasonably necessary in connection with the compensable injury or that

she is entitled to benefits for temporary total disability beyond May 14, 2002.

Claimant was the store manager for the employer. As she locked the doors to the store on February 28, 2002, she was physically assaulted during a robbery. It is undisputed that claimant was injured during the assault. Claimant was grabbed by the throat, choked, and dragged around the building. Respondent belittles claimant's account of the assault by highlighting the histories of the assault documented by the various medical providers. However, it is not necessary that the providers' histories contain all the "gory details" of the assault. See Siders v. Southern Mattress Co., 240 Ark. 267, 398 S.W.2d 901 (1966). The greater weight of the evidence indicates that claimant sustained injuries to her neck when grabbed by the throat during the assault.

Any reliance on the report by Dr. Metcalf to deny and dismiss this claim is unjustified and misplaced. Dr. Metcalf saw claimant only one time on May 14, 2002. His examination lasted no more than 15 minutes. I would point out, incidentally, that although Dr. Metcalf recommended treatment for claimant's cervical problems, respondent

controverted claimant's entitlement to any additional benefits accruing subsequent to this office visit.

Further, in the face of highly convincing evidence to the contrary, the majority accepts Dr. Metcalf's diagnosis of cervical degenerative disc disease. Dr. Lamb, claimant's original treating physician, recognized herniated discs at C5-C6 and C6-C7. As a result of Dr. Metcalf's report, Dr. Lamb believed a second opinion was absolutely necessary. Therefore, he made a referral to Dr. Barrett-Tuck, a neurosurgeon in Jonesboro.

The physicians interpreting the CT and the MRI scans both noted herniated discs at C5-C6 and C6-C7. Dr. Barrett-Tuck likewise opined that these two discs were herniated.

More important, however, is the information contained in Dr. Barrett-Tuck's operative note. The post-operative diagnosis remained exactly the same as the pre-operative diagnosis: disc herniation C5-C6 and C6-C7 in association with mild spondylosis. Additionally, Dr. Barrett-Tuck's description of the actual procedure documents removal of free disc fragments from each of these two areas.

Moreover, Dr. Lamb opined that "the nature of Ms. Stone's injury certainly fit (sic) with her explanation of

the events of 02-28-02." I would also point out that there is no evidence whatsoever that claimant had any cervical problems prior to the assault or that there is any other reasonable explanation for her herniated cervical discs. A causal connection can easily be implied as a result of the very close temporal relationship between the assault and claimant's cervical problems, Dr. Lamb's opinion that her problems are logically attributable to the assault, and the lack of any other reasonable nonwork-related explanation for her condition. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

In my opinion, too much weight is being placed on the improvement, or lack thereof, of an injured worker's condition as a factor in determining whether the surgery, in hindsight, was reasonably necessary. While admittedly this is a relevant factor to be considered, the lack of sufficient subjective or objective improvement in the condition is not determinative. It certainly should not be emphasized as a compelling factor in this decision. Besides, claimant did testify that her condition improved somewhat following the surgery, but all agree that more was desired. Further, at the time of the hearing, claimant was still in her healing period and had yet to solidly fuse.

Finally, concerning temporary total disability benefits, I note that in a report dated March 27, 2003, Dr. Barrett-Tuck indicated that claimant had not reached maximum medical improvement. Additionally, there is insufficient evidence that claimant has the capacity to return to work and earn any part of the wages she was receiving at the time of the assault.

Based on the above evidence, I find that claimant has met her burden of proving that her cervical treatment, especially the surgery, was reasonably necessary in connection with the compensable injury, and that she is entitled to benefits for temporary total disability to a date yet to be determined. Accordingly, the opinion of the Administrative Law Judge should be affirmed in its entirety.

SHELBY W. TURNER, Commissioner