

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309041

MARILYN L. COTTRELL,
EMPLOYEE

CLAIMANT

3 M COMPANY,
EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 9, 2005

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
order and opinion filed January 25, 2005. The
administrative law judge found that the claimant proved "the
additional medical treatment she has pursued for her right
shoulder and neck is reasonable and necessary and related to
her compensable August 4, 2003, injury." After reviewing
the entire record *de novo*, the Full Commission affirms the
opinion of the administrative law judge.

I. HISTORY

Marilyn L. Cottrell, age 46, testified that she had worked at 3M for 19 years.

The parties stipulated that there was a compensable injury on August 4, 2003. The claimant testified:

Q. How did you get hurt on August 4th of 2003?

A. I was cleaning a tank. I dropped the air hose - which the air hose is about 2 inches round like that (gesturing) - across the belt. And I was pulling it up, and it got hung on the belt. The belt has got some staples in it to hold it together, and it was coming apart. And it jerked my arm, and my shoulder and neck started to hurt.

The claimant was referred to Dr. Barry D. Baskin, who reported on August 19, 2003:

On August 4, 2003 she was pulling on an air hose and felt like she pulled some muscles in her right axillary region. The pain initially was in the axilla but has become more generalized in the right shoulder area up into the right trapezius and she has had occasionally some pain in the right antecubital fossa....

Dr. Baskin gave the following impression: "Right shoulder pain sort of diffuse in nature after she was pulling on an air hose that was crossing a conveyor belt and had sort of a jerk to her arm. I suspect this is a soft tissue injury. I do not think that there is any evidence to

be concerned about fracture or dislocation of her shoulder. Apprehension test and drop arm tests are negative. No frank neurologic symptoms are noted."

Dr. Baskin planned conservative treatment. The claimant testified that she took about six weeks of physical therapy.

Dr. Baskin gave the following impression on September 11, 2003: "Marilyn has persistent right trapezius and levator scapula type myofascial pain. This, I think, is a strain/sprain type injury with residual muscular component that has not resolved." Dr. Baskin continued conservative treatment.

Dr. Baskin noted on September 25, 2003, "She has muscle spasm in the right trapezius. She is tender in the right axilla but I did not palpate any masses or fullness there. She has some pain with resisted abduction and external rotation. She has pain up in the trapezius and pain in the neck in the right cervical paraspinals." Dr. Baskin's impression was "Ms. Cottrell continues to have pain in the right upper extremity....We are going to scheduled (sic) an MRI scan of her cervical spine to make sure that when she

was pulling on the air hose and strained her right upper extremity that she may have strained the neck and could have a disc bulge."

An MRI of the cervical spine without contrast was taken on October 3, 2003, with the following impression: "1. Moderate-sized left posterolateral disc extrusion at C5-6 with cord effacement and mild foraminal compromise. 2. Small central disc protrusion at C4-5. 1. Left posterolateral disc bulge at C6-7. 2. No focal right-sided abnormalities to correlate with patient's right-sided symptoms."

Dr. Baskin gave the following impression on October 13, 2003: "Patient with right upper extremity pain in the right shoulder and right axilla with really negative exam. Now she has an MRI of the cervical spine that shows significant degenerative changes in the cervical spine with a disc herniation at C5-6 causing mass effect on the left side of the cervical cord and completely effacing the ventral aspect of the thecal sac. This could be causing pain referred to the side even though it is primarily left posterior lateral."

Dr. Baskin's impression on November 4, 2003 was, "Persistent right shoulder pain. Right axillary pain of uncertain etiology. History of abnormal MRI of the cervical spine with findings on the MRI not consistent with her pain production at this time....Since we still don't know the exact etiology of her pain I am going to get an MRI of her right shoulder."

An MRI of the right shoulder was taken on November 6, 2003, with the following impression:

1. Supraspinatus tendinosis with no evidence of a cuff tear. There is some thickening of the distal supraspinatus tendon with increased signal.
2. Laterally down sloped acromion with mild impingement seen on the cuff. There is also mild AC joint impingement on the cuff. Is there clinical evidence of impingement syndrome?
3. There is evidence of active arthritis at the level of the AC joint with capsular hypertrophy and marrow edema.

The claimant continued to follow up with Dr. Baskin, who noted on December 1, 2003:

Her MRI scan shows her to have an impingement syndrome with a rotator cuff tendonosis but no tear. She has degenerative disc disease in her neck. I do not think that her work related injury caused her neck problems. She has a down sloping acromion and appears to be getting some impingement with abduction of the arm....It is difficult to say how much of her problem was exacerbation of a preexisting injury or

illness....

Dr. Baskin gave the following impression: "Ms. Cottrell has a right rotator cuff tendonitis and AC joint arthritis that was no doubt preexisting. She has an impingement syndrome it appears....I am going to have her seen by Dr. Ken Martin for an evaluation."

The record does not show that the claimant was permitted to see Dr. Martin. Instead, Dr. Charles E. Pearce, Jr., an orthopaedic specialist, examined the claimant on December 11, 2003. The impression of Dr. Pearce was, "Right shoulder pain with AC joint arthrosis." Dr. Pearce recommended additional diagnostic testing and conservative treatment.

A whole-body bone scan on December 15, 2003 was normal.

The impression of Dr. Pearce on December 30, 2003 was "complaints of right shoulder but no objective data." Dr. Pearce stated, "1) I really do not see a need for any other testing. I think that all appropriate treatment modalities have been rendered....4) I feel that she has reached maximum medical improvement as of 12/29/03. 5) She has

sustained 0% permanent partial impairment as it pertains to her on-the-job injury."

The claimant's testimony indicated that the respondents controverted additional medical treatment at this time.

An MRI of the cervical spine dated 3-31-04 gave the following impression:

1. Degenerative disc disease at C5-6 with mild left foraminal narrowing secondary to an asymmetric disc bulge/osteophyte complex, mild cord impingement without significant central canal stenosis.
2. Small right paracentral disc/osteophyte complex protrusion at C4-5 without canal stenosis.
3. Mild left C6-7 foraminal narrowing secondary to asymmetric disc/osteophyte complex. No central canal stenosis.

A neurological surgeon, Dr. Eric David Akin, examined the radiographic findings and reported on June 9, 2004, "MRI of the cervical spine shows a small right paracentral disc/osteophyte complex protrusion at C4-5 and mild left C6-7 narrowing on the left. It is otherwise an unremarkable MRI." Dr. Akin diagnosed "neck strain" and stated, "I cannot explain her arm symptoms based on the MRI of the cervical spine. The neck pain seems to be primarily mechanical neck pain and I think would best be treated with

conservative measures....I see no surgical indications at this time."

Dr. Akin referred the claimant for treatment with a pain consultant, Dr. Thomas Hart. Dr. Hart examined the claimant on July 24, 2004, and Dr. Hart's report from that date indicated he planned additional diagnostic testing, and injections. Beginning August 19, 2004, Dr. Hart began a series of injections.

A pre-hearing order was filed on October 19, 2004. The claimant contended that she was entitled to continued medical treatment. The claimant contended that she was "currently seeing orthopedic surgeon, Dr. Eric Akin, and Dr. Thomas Hart for pain management." The respondents contended that the claimant had "an aggravation of a pre-existing condition to her shoulder and some medical benefits were paid for the shoulder and neck treatment. However, the claim was controverted in late December 2003, and additional treatment was found to be not reasonable and necessary."

The parties agreed that the issue to be litigated was "continued medical treatment."

A hearing was held on December 7, 2004. At that time, the respondents contended that the claimant sustained a compensable right shoulder injury, and that benefits for that injury had been paid. The respondents contended that the claimant subsequently developed either a gradual or specific injury for a cervical problem, which injury the respondents contended was not related to the initial compensable injury. The respondents contended that the claimant "later developed a left shoulder problem of which there is no objective medical evidence and of which the major cause is not the accident at work....The cervical and left shoulder we say are not compensable and not related."

The claimant testified at the hearing:

Q. Tell us what kind of treatment you have been getting up until recently?

A. I've had three procedures with Dr. Hart. He's been giving me a shot in the spinal - and I got three. I've got a procedure I'm supposed to do on the 14th, which I've got to make a \$500 deposit. If I don't make the deposit, I can't get the procedure done. So they want their deposit by this evening at 4:30.

Q. And you're now having some problems with your group insurance?

A. My group insurance will no longer pay.

Q. They don't want to pay because they think it's a workers' comp claim?

A. That's correct.

Q. The workers' comp people don't want to pay because they think it's a group insurance claim?

A. That's correct....

Q. Have you been getting better with this treatment?

A. Yes, I think the treatment has helped some, because at first I couldn't sleep on my right side at all. I'd have to sleep on my left side or either flat on my back.

Q. You're not as well as you were before this accident took place, but you're getting better?

A. I think I'm getting better....I can rest a little better at night.

The administrative law judge found, in pertinent part:

"2. The claimant has proven by a preponderance of the evidence that the additional medical treatment she has pursued for her right shoulder and neck is reasonable and necessary and related to her compensable August 4, 2003, injury. 3. Respondents remain liable for reasonable and necessary medical treatment for both the neck and right shoulder."

The respondents appeal to the Full Commission.

II. ADJUDICATION

The employer shall 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). The claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the Full Commission affirms the administrative law judge's finding that the claimant proved she was entitled to additional medical treatment for her right shoulder and neck. The parties stipulated that there was a compensable injury on August 4, 2003. The claimant credibly testified that she jerked her arm as a result of the accident, and that her shoulder and neck began hurting on August 4, 2003. The claimant subsequently began treating with Dr. Baskin, who noted that the claimant was suffering in her right shoulder down through her right arm. Dr.

Baskin suspected that the claimant has sustained "a soft tissue injury." The claimant participated in physical therapy. By September 2003, Dr. Baskin opined that the claimant had sustained "a strain/sprain type injury with residual muscular component *that has not resolved* [emphasis supplied]."

Dr. Baskin noted on September 25, 2003 that the claimant had "pain in the neck in the right cervical paraspinals." Suspecting that the claimant may have sustained a disc bulge, Dr. Baskin ordered MRI testing. An MRI taken on October 3, 2003 indeed showed several abnormalities to the claimant's cervical spine, including a left posterolateral disc bulge at C6-7. Dr. Baskin reviewed the MRI and found that the diagnostic test showed degenerative changes in the claimant's cervical spine. In workers' compensation law, the employer "takes the employee as he finds her," and employment circumstances which aggravate pre-existing conditions are compensable. Nashville Livestock Comm'n v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990). The parties stipulated in the present matter that there was a compensable injury. The record in the

present matter indicates that the compensable injury aggravated the claimant's pre-existing cervical degenerative condition. Moreover, Dr. Baskin opined that a disc herniation at C5-6, which was seen post-injury, could be causing the claimant's pain.

Dr. Baskin again noted in November 2003 that the claimant had a history of an abnormal MRI of the cervical spine. An MRI of the claimant's right shoulder was taken on November 6, 2003. This diagnostic test showed another post-injury abnormal finding, that is to say, mild AC joint impingement on the cuff. Dr. Baskin noted on December 1, 2003 that the claimant had an impingement syndrome. We recognize that Dr. Baskin also did not think on December 1, 2003 that the work-related injury was the cause of the claimant's neck problems. The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, the Commission attaches greater weight to the claimant's credible testimony that he neck began hurting as a result of the stipulated compensable injury. We again

point out Dr. Baskin's notations of post-injury abnormalities seen on MRI's of the claimant's cervical spine and right shoulder.

Further, the Full Commission also recognizes the December 2003 opinion of Dr. Pearce, who stated that the claimant did not need additional medical treatment. When compared to the credible testimony of the claimant and the medical evidence we have discussed *supra*, the Full Commission attaches minimal weight to the opinion of Dr. Pearce.

A neurological surgeon, Dr. Akin, diagnosed "neck strain" in June 2004. Dr. Akin stated that the claimant was in need of conservative medical treatment. Dr. Akin referred the claimant for treatment with Dr. Hart. The claimant testified that Dr. Hart's injection therapy had improved her condition. The Full Commission affirms the administrative law judge's determination that the claimant is entitled to additional medical treatment as provided by Dr. Hart. However, the Commission does not find that Dr. Hart is entitled to treat the claimant indefinitely. The claimant has been diagnosed as having a neck strain, with a

soft tissue injury and muscular component. It is expected that these conditions will at some point resolve. No treating specialist has opined that the claimant suffers from a surgical condition, and the Full Commission does not find that Dr. Hart is qualified to render an opinion regarding whether or not surgery is required. Nor does the Commission prospectively find that any possible referrals from Dr. Hart would be reasonably necessary in connection with the claimant's injury.

Finally, the Full Commission notes the respondents' conclusion that the administrative law judge erred "when she did not include the left shoulder claim in her opinion." Nevertheless, the claimant did not contend that she was entitled to benefits for her left shoulder. The claimant explicitly stated at the hearing that she was not asking for benefits related to her left shoulder. The Full Commission is unable to find that the administrative law judge committed any error with regard to the claimant's left shoulder.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's

finding, "The claimant has proven by a preponderance of the evidence that the additional medical treatment she has pursued for her right shoulder and neck is reasonable and necessary and related to her compensable August 4, 2003, injury." The claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority finding that the claimant has proven by a preponderance of the evidence that the additional medical treatment she has pursued for her compensable injury of August 4, 2003, is reasonable and necessary in connection with that injury.

My carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her neck and left shoulder, or that additional medical treatment she has pursued for her right shoulder and neck is reasonable and necessary to the treatment of her compensable right shoulder injury.

During the hearing of December 7, 2004, the respondents contended that the claimant sustained a compensable right shoulder injury, for which benefits have been paid. The respondents further contended that after the claimant was released for that injury with no impairment rating, she later developed either a gradual onset or specific injury to her cervical spine, for which they are not liable. In addition, the respondents contended that the claimant later developed a left shoulder problem for which there is no objective evidence to establish a causal relationship to her right shoulder, compensable injury, and for which they are not liable. On appeal, the respondents correctly point out that an issue for the hearing was

whether the claimant sustained work related injuries to her neck and her left shoulder as a result of an incident that occurred on August 4, 2003. Furthermore, the respondents contend that liability for the claimant's neck problems was never admitted, and that the claimant has failed to prove by a preponderance of the evidence that her neck injury is a compensable result of the incident that occurred in August of 2003.

Claimant's treating physician, Dr. Baskin specifically stated, "She has degenerative disc disease in her neck. I do not think that her work related injury caused her neck problems." (Emphasis added) Dr. Baskin could not accurately estimate how much of the claimant's current problem was an exacerbation of a preexisting injury or illness.

Dr. Charles E. Pearce of Arkansas Specialty Orthopaedics evaluated the claimant on December 11, 2003. In his report of that evaluation, Dr. Pearce noted that "On her pain drawing, she reports pain not only in her shoulder but also in her elbow and the entire shoulder girdle." Dr. Pearce did not mention any reported pain in the

claimant's neck at that time. The claimant's physical examination confirmed "a mildly positive impingement" in her right shoulder area with AC joint arthritis. Dr. Pearce ordered a bone scan, initiated a stretching program, and continued the claimant on modified duty. The results of the claimant's bone scan demonstrated "entirely symmetrical distribution of the radiopharmaceutical in the shoulder girdles and upper chest bilaterally." Distribution elsewhere in the claimant's spine was unremarkable. Based upon his follow-up examination of the claimant on December 30, 2003, Dr. Pearce wrote:

Ms. Cottrell returns for follow-up. A bone scan has been done to evaluate the possibility of her AC joint as being the source of her pain. The bone scan was read as being normal and with symmetric uptake.

Ms. Cottrell says that she is still having pain. She asked me about the possibility of this being a nerve. I cannot tell that she has any complaints that would indict [sic] a neurology etiology. Apparently, Dr. Baskin told her the same thing.

Dr. Pearce stated that he could find "no objective data" to account for the claimant's right shoulder

complaints. Dr. Pearce further stated, "I think that all appropriate treatment modalities have been rendered." Dr. Pearce saw no need for further testing, and he stated that, as of December 29, 2003, the claimant had reached maximum medical improvement for her right shoulder. Further, Dr. Pearce stated that the claimant had sustained no permanent impairment from her work-related injury. Dr. Pearce released the claimant to return to regular duty. Thereafter, the respondents controverted payment of benefits for the claimant's medical treatment for conditions not related to her right shoulder injury.

After she was released by Dr. Pearce, the claimant sought treatment through her family physician, Dr. Jack Somers. Dr. Somers referred the claimant for a second MRI of the cervical spine. This test, which was performed on March 31, 2004, confirmed degenerative disc disease at C5-6, with a small right paracentral disc/osteophyte complex protrusion at C4-5 and mild foraminal narrowing on the left at C5-6. Otherwise, the MRI was unremarkable. After her examination of May 3, 2004, Dr. Somers took the claimant off of work "till further notice." The following day, May 4, 2004,

Dr. Baskin prescribed the claimant two weeks of restricted work duty.

On June 9, 2004, the claimant was examined by Dr. Eric Akin at the request of Dr. Harold Betton. In his report of that visit, Dr. Akin stated:

I cannot explain her arm symptoms based upon the MRI of the cervical spine. The neck pain seems to be primarily mechanical neck pain and I think would be best treated with conservative measures.

Dr. Akin diagnosed the claimant with "neck strain," and seeing no surgical indications at that time, he referred her to a pain specialist. Based upon his examination of the claimant on July 24, 2004, pain specialist, Dr. Thomas Hart, opined that the claimant's predominantly right sided pain could possibly be due to bilateral involvement, considering that the majority of her lesions were located on the left side of her cervical spine. The medical record shows that Dr. Hart subsequently administered three cervical epidural steroid injections over the next several weeks. By the time of her last documented injection, which was September 25, 2003, the claimant was

showing noted improvement, with the majority of her pain reportedly originating from her neck.

As previously stated, the respondents do not deny liability for reasonable and necessary medical treatment related to the claimant's right shoulder injury. The respondents contend, however, and the record confirms, that they have provided all medical treatment which was reasonably necessary to the treatment of the claimant's right shoulder injury. The claimant received comprehensive conservative treatment under the direction of Dr. Baskin for her compensable right shoulder injury until such time as she was released by Dr. Pearce. On December 30, 2003, Dr. Pearce wrote that he could find "no objective data" to account for the claimant's continuing right shoulder complaints, and he added that "all appropriate treatment modalities have been rendered." Therefore, Dr. Pearce released the claimant to return to unrestricted work duty, he stated that she was at MMI in regards to her right shoulder, and he assigned her with a 0% permanent impairment rating. Thereafter, the claimant continued to seek medical treatment with her family physician, Dr. Somers. Per the request of Dr. Somers, a

subsequent MRI of the claimant's cervical spine taken in March of 2004 confirmed those findings from the claimant's previous MRI performed in October of 2003. Likewise, in June of 2004, Dr. Akin stated that he could not explain the claimant's arm symptoms based upon the most recent MRI of her cervical spine, thus indicating that the two were probably not related.

Based upon the above and foregoing, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her neck as a result of the incident that occurred in August of 2003. The weight of the medical evidence indicates that the claimant's neck condition pre-existed the incident of August 2004 that caused injury to her right shoulder, and that in the course of treatment for her right shoulder injury, the claimant received treatment for her neck in the form of diagnostic testing. However, in providing such services, the respondents in no way acquiesced to the compensability of the claimant's alleged neck injury. Rather, the respondents merely provided treatment for the claimant's pre-existing neck condition to the extent that it was necessary to

accomplish treatment of her compensable right shoulder injury. As previously stated, MRIs of the claimant's cervical spine failed to establish a causal relationship between the claimant's compensable right shoulder injury and her arthritic neck condition. Furthermore, Dr. Baskin could not attribute the claimant's neck problems to her work related injury, and he could not ascertain to what extent, if any, that the claimant's current problem was an exacerbation of a preexisting injury or illness. Likewise, the record is devoid of objective medical evidence that establishes a causal connection between the claimant's left shoulder complaints and her compensable injury of August, 2003. During her hearing, the claimant admitted that she had written a letter seeking to amend her original claim in order to obtain additional medical benefits for her neck and left shoulder. This letter, which was introduced by respondents' attorney during the hearing for the purpose of rebuttal, was proffered to the Full Commission for consideration on appeal. The claimant testified in regard to this letter as follows:

Q. Do you remember when you wrote a letter and you said that you wanted to file a claim for additional benefits?

A. Yes, for my left shoulder because I was hurting all in back here (indicating).

Q. Do you remember that you said you wanted to request additional treatment for your left shoulder and neck?

A. Right; Uh-huh.

Q. Do you remember saying, "I have to do a lot of lifting, pulling, and pushing during this time. I have fallen two times. The injuries to my neck and shoulder have been the result of eighteen years of pulling and pushing"?

A. Uh-huh. Yes, at 3 M; yes.

By her own admission, the claimant believes that her left shoulder and neck problems are the result of years of "pulling and pushing," as opposed to a specific incident that occurred on August 4, 2003. Based upon the above and foregoing, I find that the claimant has failed to establish the compensability of her alleged neck and left shoulder injuries. Consequently, I find that the claimant has failed to prove that she is entitled to any "additional" medical treatment as is provided for in Ark. Code Ann. §11-9-508(a).

Therefore, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner