

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010031

SONDRA CLARK,
EMPLOYEE

CLAIMANT

ST. EDWARD MERCY MEDICAL CENTER,
EMPLOYER

RESPONDENT

SISTERS OF MERCY HEALTH CARE SYSTEM,
SELF-INSURED

RESPONDENT

OPINION FILED MAY 11, 2005

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

Claimant represented by the HONORABLE RONALD McCANN,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE RANDY MURPHY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed

OPINION AND ORDER

The Arkansas Court of Appeals has reversed and remanded the above-styled case to the Full Commission "for proper consideration of Drs. Cappocelli's and Runnels's testimony." St. Edward Mercy Medical Center v. Clark, CA04-1067 (Ark. App. March 23, 2005). After reviewing the entire record *de novo*, including the deposition testimony cited by the Court of Appeals, the Full Commission finds that the claimant

proved she was entitled to "an LS spine series with flexion/extension views as well as a SPECT scan of the lumbar spine."

I. HISTORY

The parties stipulated that the claimant, age 45, sustained a compensable injury to her lower back on May 1, 2000. The claimant testified that while lifting a patient from a wheelchair, "she fell over on me and my back arched....I heard a popping sound in my back, and then some tingling clear down my leg."

The claimant was seen at Cooper Clinic by Dr. Mouhammed K. Sheikha on May 1, 2000:

The patient came to the clinic today after she was lifting a patient when she had sudden onset of low back pain located in the lower back and radiating to the left hip area and the left leg.

The patient denied any similar history before, and also she denied any history of a car accident or low back pain before....

X-ray of the lumbar spine shows multiple spurs but no disc herniation....

Dr. Sheika's diagnosis was "low back pain and muscle spasm."

A lumbar spine CT was taken on May 4, 2000, with the impression, "Very mild disc bulges at L4-5 and L5-S1. At L5-S1 there is very minimal asymmetry to the left."

The claimant began treating with Dr. Anthony L. Capocelli, Jr., a neurosurgeon, on May 23, 2000. Dr. Capocelli's impression was "1. Bulging/Herniated disc at L4-5, L5-S1," and he stated, "Based on my evaluation of the patient and symptomatology I feel that she has a back sprain with radiculitis localized at both the L5 and S1 levels." Dr. Capocelli treated the claimant conservatively and arranged additional diagnostic testing.

An MRI of the lumbar spine was taken on June 1, 2000:

There is a minimal right paracentral disc herniation at the T12-L1 level and possibly the L1-L2 level as well. No significant disc bulge or protrusion at the L2-L3, L3-L4, L4-L5, or L5-S1 levels. No definite evidence of nerve root impingement radiographically. No definite left lateral disc herniation appreciated.

Impression
Minimal disc herniations at the T12-L1 and L1-L2 levels....

The claimant sought emergency treatment on August 11, 2000 and reported that she had fallen.

A lumbar spine MRI was taken on August 14, 2000, with the impression, "Tiny disc protrusions paracentrally on the right T12-1 and L1-2. No other abnormality identified."

Dr. Capocelli reported on August 15, 2000, "She did have a fall during a period after her first MRI with exacerbation of her pain after which we did do a second MRI which is unchanged from the first one. The MRI shows tiny disc protrusions paracentrally at T12-L1 and L1-L2 and otherwise there is no significant abnormality....we are going to do a course of vigorous conservative management to include physical therapy, lumbar epidural steroids and continue medications. I suspect that she essentially suffered from a lumbar strain which is exacerbated with her second fall and this was due to her work injury. However, there is no surgical lesions as seen on the MRI and at this point I do not think surgery would be indicated at any level."

The claimant continued to follow up with various physicians at Cooper Clinic.

The impression from an Electromyogram Report on September 19, 2000 was "Normal EMG and nerve conduction study of the left leg."

The claimant began treating with a pain clinician, Dr. John R. Swicegood, on September 29, 2000. The record indicates that Dr. Swicegood performed at least two steroid injections.

The claimant testified that she did not work for the respondent-employer after October 2000.

The claimant was referred to Dr. Vincent B. Runnels, a neurosurgeon, who examined the claimant on February 20, 2001 and reported on March 12, 2001:

Basically, I feel this patient has degenerative disc disease and suffered a facet strain. She has disc disease both at T12-L1 and L1-2 as well as a minor degree at 4-5 but really her back is not in that bad a shape. She is somewhat deconditioned. She is overweight, is depressed and anxious.

I think she needs to get on a program of back exercises....I feel Dr. Wilson could give her good advice on these matters and weight losing efforts as I think these are important in the long haul as this person has had responsible jobs in the past. I would hate to get her down the road of chronic pain. Surgery is certainly not indicated. There is rarely any need to do a discogram in a patient like this. I think she should do very well with nonoperative measures if she will follow the plan outlined. She is to follow up with Dr. Wilson but I would be happy to see her back again in the meantime should he feel it necessary.

Dr. Runnels examined the claimant on March 15, 2001 and reported on March 28, 2001, "I still do not feel that any further tests are needed. I have gone over the back

exercises and posture correction with her in detail. She seems to understand it well. I think she may be motivated now to lose some weight. I told her, in the long haul, that is going to be one of the most important things she can do. I will see her back as needed."

The claimant continued to occasionally follow up with Dr. Runnels.

The parties stipulated that there was "no dispute over the payment of medical expenses incurred through August 3, 2001."

Dr. Runnels reported on August 15, 2001:

Ms. Clark was seen on 08-03-01 and is no better. She said she had a bad fall in Colorado, while she was out there with her son at soccer camp....

I think she has degenerative disc disease and a bulging disc, but it is not compressing on any nerve roots and she would not be benefited by surgery. In addition, she has psychological problems that would not make her a good surgical candidate for a fusion. She certainly would not be benefited by a simple discectomy....

I will see her back as-needed. She has a 5% permanent disability to the body as a whole.

Dr. D. Luke Knox, a neurosurgeon and Dr. Runnels' partner, wrote on September 5, 2001:

Ms. Sondra Clark was seen in the Neurosurgery Clinic on 08-28-01 for consultation of back and left leg pain.

As you know, she is a 41-year-old, right-handed white female who has had back and left leg pain since this past May, 2000. She apparently fell backward with a falling patient weighing around 200 lbs. Her back pain and leg pain seem to indicate an L5 radiculopathy. She has been through an extensive conservative trial consisting of epidural steroids, extensive pharmaceutical management, etc. She also underwent physical therapy with worsening discomfort. She also had worsening pain with chiropractic measures. She has also undergone an MRI scan and CT scan.

Neurologically, I thought she, indeed, had a weak extensor hallucis, slightly weak anterior tib, and a positive mild straight leg raising test. She had diminished sensation of her entire left leg. Range of motion of the back was primarily worse in extension.

I asked Sondra to redo her MRI scan of the lumbar spine and also do an LS spine series with flexion/extension views as well as get a SPECT scan of the lumbar spine. I had the opportunity to review her work-up from last year, and I agree with the previous assessments that they were relatively unrevealing.

I also asked that she try to get off of most of her medications, primarily the pain medication, and she was given a prescription to start on Neurontin to see if this might help some of her discomfort. I talked to her about various treatment options, and we will entertain those again when she returns so that we can review the results of her MRI scan and further work-up.

The claimant testified that the respondents would not pay for the additional diagnostic testing recommended by Dr. Knox.

The parties deposed Dr. Runnels on May 5, 2003. Dr. Runnels testified that the normal electromyogram report of September 19, 2000 indicated there was no nerve injury. Dr. Runnels testified that his initial examination of the claimant was "not normal, but not indicative of a nerve root compression. Indicative of some degenerative changes with facet pain." Dr. Runnels did not indicate that he disagreed with the treatment recommendations of Dr. Knox.

James E. Evans for the claimant questioned Dr. Runnels:

Q. If the myelogram and CT were done, then that would confirm or disaffirm whatever is going on in her case, wouldn't it, pretty much?

A. Yes. It would be another - and one other thing that Knox mentioned which I didn't think of, the spec scan.

Q. What is that?

A. It's a good idea and it's totally noninvasive. It's a type of really focused bone scan, inject a tracer. For instance, if I were to whack you right here with a ball-peen hammer, the next day there would be a bruise there. And if you were to inject this tracer in maybe a week or so, there would be a big black spot....It would give an objective view to her subjective complaints of back pain if it were lit up at 4-5 or T12....

Q. Dr. Knox has apparently done a lot of the same thing you said. "Let's run an MRI LC spinous spec" - which you said you hadn't done - "and from that we can tell what's going on." It's almost a year post injury and still complaining. So let's

run those and that will end it one way or other or is there just nowhere else to go?

A. Just another couple thousand dollars. It's not going to change whether we operate or not. It helps her settle the case and believe what doctors are telling her. I would have no problem with it.

The parties deposed Dr. Capocelli on June 10, 2003.

Dr. Capocelli testified that he had seen the claimant on two occasions, May 23, 2000 and August 15, 2000. Dr. Capocelli discussed his referral of pain management for the claimant and the diagnostic studies. The respondents' attorney questioned Dr. Capocelli:

Q. Dr. Reynolds (sic) diagnosed Ms. Clark with degenerative disk disease. Would that be consistent with your evaluation?

A. That would be consistent, yes.

Q. You didn't see any reason to order any additional tests as of August 15, 2000?

A. I did not.

Q. Was this diagnosis a "lumbar strain"?

A. That's correct....

Q. You felt that she had reached the end of her healing period at the time you released her?

A. At the time I released her to return to work, yes.

Q. You found no basis, objectively, for a permanent impairment?

A. At that time, I did not.

Neither attorney questioned Dr. Capocelli with regard to the treatment recommendations of Dr. Knox.

A pre-hearing order was filed on August 28, 2003. The claimant contended, among other things, that "Dr. D. Luke Knox recommended doing an MRI of the lumbar spine, an LS spine series with flexion/extension views, as well as get a SPECT scan of the lumbar spine, along with other treatment options. It is the claimant's contention that she is entitled to obtain the recommended testing and treatment." The respondents contended that the claimant "has received all benefits to which she is entitled and that her problems after leaving employment with respondent are not related to the compensable injury."

The parties agreed to litigate the following issues: "1. The claimant's entitlement to additional medical services as recommended by Dr. Knox in his report of September 5, 2001. 2. Attorney's fees."

A hearing was held on October 28, 2003. The claimant's attorney questioned the claimant:

Q. Now, there is mention in the record several times, or there is an indication in the records that you sustained some falls after this accident on May 1, 2000. Is that right?

A. My leg goes out....I can't get up from sitting in a chair....

Q. About how many times would you say that has occurred?

A. Numerous times....

Q. Do you actually fall to the ground when this happens?

A. I get up and my leg - sometimes I catch myself; I mean it depends on where I'm at. I can catch myself or I can go to the ground.

The claimant testified that she was suffering "more severe" pain in her back and hip. The claimant testified that she wished to pursue the treatment recommendations of Dr. Knox.

The administrative law judge found, in relevant part:

6. The greater weight of the credible evidence fails to prove that a third MRI study, as recommended by Dr. Luke Knox in his report of September 5, 2001, represents a "reasonably necessary" medical service, within the meaning of Ark. Code Ann. §11-9-508. Thus, liability for the expense of this test cannot be imposed on the respondents herein.

7. The greater weight of the credible evidence does prove that the plain x-ray panel and the SPECT scan, as recommended by Dr. Luke Knox in his report of September 5, 2001, do constitute "reasonably necessary" medical services within the meaning of Ark. Code Ann. §11-9-508. These medical services are reasonably necessary to accurately diagnose the nature and extent of the claimant's compensable injury and to formulate an appropriate treatment regimen. Liability for the expense of these tests, subject to the

Commission's medical fee schedule, is the liability of the respondents herein.

The administrative law judge ordered, "The respondents shall be liable for the expense of the plain x-ray panel and SPECT scan that was recommended by Dr. Luke Knox, in his report of September 5, 2001." The respondents appealed to the Full Commission, which affirmed and adopted the administrative law judge's decision. The claimant did not appeal the administrative law judge's finding that the claimant was not entitled to a third MRI study and in fact requested that the Full Commission affirm the administrative law judge's order.

The respondents appealed to the Arkansas Court of Appeals, which has reversed and remanded "for proper consideration of Drs. Cappocelli's and Runnels's testimony."

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 finds that the claimant proved she was entitled to "an LS spine series with flexion/extension views" in addition to "a SPECT scan of the lumbar spine," both procedures being recommended by Dr. Knox. The parties stipulated that the claimant sustained a compensable injury on May 1, 2000. The claimant, who the Full Commission finds was a credible witness, testified that she heard a "pop" in her back immediately after the specific incident, and that she felt a "tingling" radiating to her leg. The initial treating physician diagnosed "low back pain and muscle spasm," and Dr. Capocelli subsequently diagnosed "back sprain with radiculitis."

The Full Commission recognizes that no treating physician recommended surgery for the claimant, and that Dr. Runnels suspected some "functional overlay" on the claimant's part. Nevertheless, the record demonstrates no history of prior back problems, and the parties stipulated that the claimant sustained a compensable injury on May 1,

2000. The Commission further notes the claimant's credible testimony that her physical condition had deteriorated as a result of the compensable injury, including her leg "going out." Finally, Dr. Knox recommended "an LS spine series with flexion/extension views as well as a SPECT scan of the lumbar spine." The claimant testified that she wished to follow through with these treatment recommendations recommended by a treating neurosurgeon. The Court of Appeals has directed the Commission to consider the expert deposition testimony of Dr. Runnels and Dr. Capocelli. Dr. Capocelli was not asked at deposition about the treatment recommendations of Dr. Knox, nor did he give an opinion on same. Dr. Runnels, on the other hand, explicitly testified at deposition that he thought the additional diagnostic testing recommended by Dr. Knox was "a good idea....I would have no problem with it."

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she was entitled to "an LS spine series with flexion/extension views as well as get a SPECT scan of the lumbar spine." The Full Commission therefore affirms the opinion of the administrative law judge filed on December 10, 2003. The

Full Commission has already awarded the claimant's attorney the statutory fees for legal services in our unpublished opinion filed July 6, 2004.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant was entitled to a plain x-ray panel and a SPECT scan as recommended by Dr. Knox. Specifically, on remand from the Court of Appeals to consider the testimony of Drs. Capocelli and Runnells, the majority has once again found that these tests constituted reasonable and necessary medical treatment. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However,

injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

In my opinion, the tests recommended by Dr. Knox in his September 5, 2001, medical report do not represent reasonable and necessary medical treatment. The medical evidence demonstrates that both Drs. Capocelli and Runnells evaluated the claimant and concluded that no additional tests were necessary. Particularly, Dr. Capocelli reached his conclusion after reviewing a CT scan and two MRIs. Each of the studies determined that the claimant had no significant abnormalities and simply suffered from a lumbar

strain. His course of treatment involved physical therapy, lumbar epidural steroids and medication. Dr. Capocelli did not recommend any additional testing and also concluded that the claimant had a zero percent (0%) anatomical impairment.

Dr. Runnells also reached a similar conclusion. Dr. Runnells proposed a course of treatment that was similar to Dr. Capocelli's and found that no additional tests were needed. Although Dr. Runnells saw the claimant on two other occasions after making his initial recommendation, he did not alter his proposed course of treatment. In fact, Dr. Runnells concluded that the claimant's problems were in part due to hysterical overlay and malingering.

Dr. Knox concluded that the claimant needed these additional tests without explaining why he thought the tests were necessary. He agreed that the claimant's previous assessments were "relatively unrevealing".

In my opinion, the opinions of Drs. Capocelli and Runnells are entitled to more weight than that of Dr. Knox. Dr. Knox has failed to explain his reasoning behind the additional tests. The Commission has a duty to translate the evidence on all the issues before it into findings of fact. The Commission need not base a decision on how the medical

profession may characterize a given condition, but rather primarily on factors germane to the purposes of the Workers' Compensation Law. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996). The Commission is never limited to medical evidence in arriving at its decision. Further, The Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Commission has the duty of weighing the medical evidence as it does any other evidence, and the resolution of any conflicting medical evidence is a question of fact for the Commission to resolve. CDI Contractors v. McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993). It is well established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91

S.W.3d (2002). The Commission has the duty of weighing the medical evidence as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. Id.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's opinion.

KAREN H. MCKINNEY, Commissioner