

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503372

KATHRYN MITCHEM, EMPLOYEE	CLAIMANT
CITY OF LITTLE ROCK, A SELF INSURED EMPLOYER	RESPONDENT NO. 1
RISK MANAGMENT RESOURCES, TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED AUGUST 18, 2009

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

Claimant represented by HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed January 5, 2009.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on December 20, 2004, when claimant sustained a compensable cervical spine injury.

3. The claimant earned an average weekly wage of \$520.39, which would entitle her to a temporary total disability rate of \$347.00 and a permanent partial disability rate of \$260.00.

4. Respondents No. 1 have paid medical benefits, temporary total disability benefits, and an additional 2% permanent impairment rating assessed by claimant's treating physician.

5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant is entitled to additional reasonably necessary medical treatment for her admittedly compensable cervical injury.

The claimant worked for the City of Little Rock as a sanitation worker. She had a previous neck injury while working for the city which resulted in a fusion surgery and a 9% anatomical impairment rating to the body as a whole. The claimant recovered from the fusion surgery and continued to work for the City of Little Rock as a sanitation worker, and on December 20, 2004, the vehicle she was driving was struck by another vehicle, causing the claimant to sustain another neck injury. The second injury caused the claimant to experience pain in her neck and right arm. The claimant was eventually sent to Dr. Scott Schlesinger who had

performed the claimant's first neck surgery. Dr. Schlesinger described the claimant's symptoms on April 1, 2005:

Ms. Mitchem is a 41-year-old female who was injured at work on 12/20/04. Since the injury at work, she complains of neck pain, interscapular pain and pain down the right arm. She intermittently has numbness and tingling down the right arm. Intermittently the right arm feels like it is giving out on its functional state. Intermittently the pain will run all the way down to the lower back from the neck. She was not worked since 3/27/05. The pain is 8-9 on a scale of 1 to 10. I did surgery on her for a workmen's comp injury at the C5-6 level in 2001 and she did very well with this and was released. She comes in now for neurosurgical consultation.

On April 7, 2005, Dr. Schlesinger performed an anterior cervical fusion surgery at C4-5. On April 8, 2005 Dr. Schlesinger noted that the claimant had some postoperative numbness and pain involving her left upper extremity. Dr. Schlesinger's note of April 16, 2005 indicates that the claimant called complaining of neck pain and bilateral arm pain. On May 31, 2005 the claimant underwent a cervical epidural steroid injection at C7-T1. A second cervical epidural steroid injection was performed at C7-T1 on June 23, 2005. On July 11, 2005, Dr. Schlesinger's report indicates that the claimant is still complaining of neck pain an bilateral arm pain. On August 29, 2005, Dr. Schlesinger wrote:

I will give her a permanent partial disability rating in accordance with the American Medical Association publication Guides to the Evaluation of Permanent Impairment, 4th Edition, Table 75, page 113 of an additional 2%. Because of her persistent pain and suffering, I would give her a total rating of 11% for the first and second operations. I believe there is some degree of permanent residual of her spinal cord compression. I feel at this point she has reached maximum medical improvement and no further neurosurgical intervention is indicated. I don't anticipate any further nonsurgical interventions either for her neck.

The claimant has not had as good a result from the second surgery as from the first surgery. The claimant testified: "After the second surgery I was still hurting pretty bad, I couldn't feel a lot of my right arm, and I had a lot of numbness..." On September 27, 2005, the claimant saw Dr. Barry Ford, complaining of persistent pain in her neck radiating down the spine into the left arm. The claimant saw Dr. Ford again on November 10, 2005 with the same complaints. On January 10, 2006, the claimant was sent to Dr. Reginald Rutherford, who noted that the claimant reports chronic pain involving her neck and arms with accompanying arm numbness. The claimant again reported neck pain and arm numbness to Dr. Ford on January 27, 2006. The claimant has also reported neck and arm pain to the physicians at UAMS starting in January 2007.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). The Court of Appeals has noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's compensable injury. See Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Furthermore, this Commission has found that treatment intended to help a claimant cope with chronic pain attributable to a compensable injury may be reasonable and necessary. See Maynard v. Belden Wire & Cable Company, Full

Workers' Compensation Commission Opinion filed April 28, 1998 (E502002); See also Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission opinion filed June 20, 1991 (Claim No. 704562). Additionally, a claimant does not have to provide objective medical evidence of his continued need for treatment. Castleberry v. Elite Lamp Co., 69 Ark. App. 359, 13 S.W. 3d 211 (2000), citing Chamber Door Indus., Inc. v. Graham, 59 Ark. App. 224, 956 S.W. 2d 196 (1997).

I find the claimant is entitled to additional reasonably necessary medical treatment in the form of a referral to a pain management specialist for additional testing and treatment. First, the respondent's argument against additional reasonably necessary medical treatment for the claimant's admittedly compensable neck injury seems to be that since the claimant is being treated for multiple other medical conditions she does not need any further medical treatment for her compensable neck injury. This argument simply does not make any logical sense. The fact that the claimant is being treated for other medical conditions does not prohibit the claimant from receiving additional medical treatment for her compensable neck injury. The issues are not mutually exclusive, i.e., it is possible that the claimant needs treatment for other medical conditions AND also needs treatment for her compensable neck injury. The presence of one symptom does not negate the

presence of another symptom. The claimant has consistently complained of pain in her right arm before and after the second neck surgery, and pain in her left arm after the second neck surgery. After the second neck surgery Dr. Schlesinger performed epidural steroid injections due to the claimant's complaints of bilateral arm pain. On August 29, 2005, Dr. Schlesinger noted her persistent pain and suffering, and stated that he believes "there is probably some degree of permanent residual of her spinal cord compression." In fact, there is absolutely nothing in the medical record to indicate that the claimant's bilateral arm pain has ever resolved. She is entitled to additional reasonably necessary medical treatment, specifically treatment by a pain management specialist, as treatment of chronic pain is reasonably necessary medical treatment under the Workers' Compensation Act.

As the claimant's complaints of bilateral arm pain have been consistent since the second surgery, I also believe she is entitled to additional testing, by a pain management specialist, to determine the cause of her pain. Dr. Rutherford, who the claimant saw for a "second opinion" did not do any testing to determine the cause of claimant's pain, merely opining that the claimant has "functional overlay." I would note that the presence of "functional overlay" does not negate the presence of an underlying

condition, and is not a proper basis for the denial of additional reasonably necessary medical treatment. "Overlay" is defined in Dorland's Illustrated Medical Dictionary, Edition 28, as: an increment; a later addition superimposed upon an already existing mass, state or condition. Also from Dorland's, psychogenic overlay is defined as: the emotionally determined increment to an existing organic symptom or disability. Hence, one cannot suffer "overlay" without an underlying condition, and "overlay" is not severable from the underlying condition. Here, the underlying condition is the claimant's compensable neck injury. Dr. Rutherford does not explain what the claimant's alleged "functional overlay" is. As such, an undefined "functional overlay" is an improper basis for denying additional reasonably necessary medical treatment.

In conclusion, the claimant sustained an admittedly compensable neck injury on December 20, 2004. She underwent fusion surgery on April 7, 2005. The claimant has consistently complained of neck and bilateral arm pain since the surgery. There is nothing in the medical records indicating that the claimant's pain has ever abated. The presence of unrelated medical conditions is an improper basis for denying the claimant additional reasonably necessary medical treatment in the form of pain management, which is specifically appropriate under the Arkansas

Workers' Compensation Act. Additionally, an undefined "functional overlay" is also an improper basis for denying the claimant additional reasonably necessary medical treatment for her admittedly compensable neck injury.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner