

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G003007

ROSANA ARELLANO,
EMPLOYEE

CLAIMANT

KITT-BENTONVILLE, LLC,
EMPLOYER

RESPONDENT

DELOS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 30, 2011

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

Claimant represented by the HONORABLE AARON L. MARTIN,
Attorney at Law, Fayetteville, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's
opinion filed May 16, 2011. The administrative law judge
found that the claimant failed to prove a lumbar MRI was
reasonably necessary. After reviewing the entire record *de*
novo, the Full Commission reverses the administrative law
judge's opinion. The Full Commission finds that the

claimant proved an MRI as recommended by Dr. Morse was reasonably necessary.

I. HISTORY

The parties stipulated that Rosana Arellano, age 35, sustained a compensable injury to her back on April 6, 2010. Ms. Arellano testified, "I was mopping the bathroom and I fell down, sitting down; I fell down on my behind. It hurt so much; it was a strong one." The claimant received emergency treatment on April 6, 2010: "Patient is a 34 y.o. female presenting with back pain....This is a new problem. The current episode started 3 to 5 hours ago." The diagnosis was "sprain of sacrum." An x-ray of the claimant's lumbar spine was done on April 6, 2010, with the impression, "Negative lumbar spine."

Dr. Latifat Ogon began treating the claimant at Community Clinic on April 12, 2010. Dr. Ogon assessed "1. Back pain. 2. Joint pain - pelvis." Dr. Ogon treated the claimant conservatively and provided follow-up visits. An x-ray of the claimant's lumbar spine was done on April 19, 2010, with the impression, "No acute lumbar spine abnormality identified." An x-ray of the claimant's hips on April 19, 2010 showed "Normal AP view of the pelvis and views of each hip."

Dr. Gary L. Moffitt reported on May 4, 2010:

Ms. Arellano is seen today for an injury that occurred while she was at work on the 6th of April. At that time she was mopping a floor, slipped and fell and landed onto her buttocks. She was seen in the emergency room and was x-rayed, but no fracture was found to be present. She states she has had two x-rays and has been advised that she does not have a fracture....

X-ray was repeated of the lower back and she is found to have a slightly anteriorly displaced fracture of the distal portion of the coccyx.

Diagnosis is fracture of the coccyx. It is from the 6th of April. It appears that it should heal. I don't think any major change in treatment is indicated. She is encouraged to limit the use of narcotics as much as possible. I feel that she needs to be active....

Dr. Moffitt reported on May 18, 2010, "Ms. Arellano is seen today for recheck for a fracture of her coccyx. She states that she is still in a lot of pain. The pain is mostly in the coccygeal area. There is some going down the posterolateral aspect of both legs to her knees....I would recommend a round of physical therapy." The claimant treated with a physical therapist beginning May 25, 2010 and was discharged from physical therapy on June 7, 2010, "pending further orders."

Dr. Moffitt noted on July 6, 2010, "Ms. Arellano is seen today for recheck for a fractured coccyx. She has been through therapy and has been doing home exercises. She says

she is about the same....She is walking essentially normally. She complains of tenderness to light touch throughout the entire coccygeal area, but there is no skeletal defect. She has normal reflexes and full range of motion of her hips. Her condition is improved. She is released to work at full duties. She has no permanent impairment."

The claimant consulted with Dr. Michael W. Morse on August 19, 2010:

Rosana Arellano is a 34-year-old Latin female who I have been asked to see for an on-the-job injury, 4/06/10....She slipped and fell on her buttocks. She subsequently had an evaluation by Dr. Gary Moffitt who felt she might have a coccyx fracture. She went to physical therapy for two weeks. She received some pain medication....She states that she has back pain radiating into the right buttock and down the right leg to her foot....

Straight-leg-raise is positive on the right. She has limited range of motion of her lumbar spine. She has mild tenderness to palpation of the piriformis muscle, coccyx, SI joints, and right ischial tuberosity.

I reviewed x-rays of her coccyx; they are normal. She apparently has had x-rays of her lumbar spine. She has not had a CT or a MRI.

Dr. Morse's impression was "Possible lumbar radiculopathy. At this time, she needs a MRI of the lumbar spine to see if there is any significant pathology such as a disc herniation or compression fracture. I want to give her

160 mg of Depo-Medrol in the right buttock. I will see her back after her scan and make further plans at that time.”

A pre-hearing order was filed on January 25, 2011. The claimant contended that she was entitled to additional medical treatment, and that the MRI recommended by Dr. Morse was reasonably necessary. The respondents contended that the additional medical treatment recommended by Dr. Morse was not related to the claimant's compensable injury.

A hearing was held on March 21, 2011. The claimant testified that she was suffering from pain in her back and legs. The claimant testified that she had difficulty sitting, standing, or walking for lengthy periods of time. An administrative law judge filed an opinion on May 16, 2011. The administrative law judge found that the claimant failed to prove a lumbar MRI was reasonably necessary.

The claimant appeals 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) (Repl. 2002). 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). However, the claimant is not required to provide objective medical evidence of her continued need for medical 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). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005).

An administrative law judge found in the present matter, "6. The claimant has failed to prove by the greater weight of the credible evidence that a lumbar MRI is reasonably necessary to ensure an accurate diagnosis of the nature and extent of her compensable injury. Pursuant to Ark. Code Ann. §11-9-508, the respondents would not be liable for the expense of such a service." The Full Commission does not affirm this finding.

The parties stipulated that the claimant sustained a compensable injury to her back on April 6, 2010. The claimant testified that she slipped and fell onto her buttocks. The claimant received emergency medical treatment on April 6, 2010 and was diagnosed with a sprain of the sacrum. X-rays of the claimant's lumbar spine on April 6,

2010 and April 19, 2010 were essentially interpreted as normal. An x-ray of the claimant's hips and pelvis on April 19, 2010 was normal. Nevertheless, Dr. Moffitt noted on May 4, 2010 that a repeat x-ray showed "a slightly anteriorly displaced fracture of the distal portion of the coccyx." Dr. Moffitt's diagnosis was "fracture of the coccyx." Dr. Moffitt's May 4, 2010 report indicated that the claimant's fractured coccyx was related to the April 6, 2010 compensable injury. The claimant was provided physical therapy.

The Full Commission recognizes that Dr. Moffitt released the claimant from further treatment on July 6, 2010. However, Dr. Morse examined the claimant on August 19, 2010 and diagnosed a possible lumbar radiculopathy. Dr. Morse opined that the claimant needed an MRI of the lumbar spine "to see if there is any significant pathology such as a disc herniation or compression fracture." It is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, we find that Dr. Morse's opinion that the claimant needed an MRI of the lumbar spine is entitled to significant evidentiary weight.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved an MRI of the lumbar spine, as recommended by Dr. Morse on August 19, 2010, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a) (Repl. 2002). The administrative law judge's decision is reversed. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's finding that the claimant is entitled to additional medical treatment in the form of an MRI as recommended by Dr. Morse. Based upon my *de novo* review of the record, I find that the claimant has failed to meet her burden of proof.

My review of the evidence demonstrates that the claimant has had multiple lumbar X-rays. None of these X-rays show the presence of a compression fracture, a transverse process fracture, a pedicle fracture, or any other type of fracture involving the claimant's lumbar vertebra. Dr. Moffitt apparently observed what could possibly be a fracture of the claimant's coccyx. Dr. Morse opined that the X-rays of the claimant's lumbar area were normal.

The claimant has also had numerous physical examinations. All of these exams have failed to yield any objective findings that would substantiate the claimant's continued subjective complaints. Significantly, these examinations do not indicate the presence of a compression fracture, disc herniation, or lumbar radiculopathy.

The initial records from the hospital emergency room and Dr. Ogon's notes are void of any reference to any abnormalities or any complaints indicative of radiculopathy. There is no mention of any abnormalities or complaints involving the claimant's lower extremities or bowel or bladder dysfunction. These records demonstrate that the claimant denied any pain, numbness, or tingling of the lower extremities or bowel/bladder dysfunction. The claimant's

lower extremity reflexes and muscle strength have all been within normal limits.

The first indication in the medical records of any complaints involving the claimant's lower extremities appear in Dr. Ogon's report dated April 26, 2010, when the claimant mentioned right hip pain. The claimant denied weakness in the lower extremities or bowel/bladder dysfunction. There is also no mention of any numbness or tingling.

The first mention in the medical records of difficulties involving the claimant's legs does not appear until the May 8, 2010 report of Dr. Moffitt. The claimant complained of postlateral pain going down both legs to her knees with a little bit of numbness. At that time, however, the claimant's reflexes were normal and her straight leg raising tests were also normal. After that date, the claimant continued to complain of bilateral posterior thigh and calf pain, which are all subjective findings.

Dr. Morse's examination of the claimant indicated that the claimant's gait and station were normal. The claimant's lower extremities showed normal responses to pin prick, temperature, vibration, and the claimant's deep tendon reflexes were also within normal limits. The only finding supportive of the possible presence of radiculopathy

was a positive straight leg raising on the right, which is a clearly subjective finding.

Simply put, in my opinion, there are no objective findings to support the claimant's subjective complaints. As such, I cannot find that the claimant is entitled to additional medical treatment in the form of a lumbar MRI. Accordingly, I dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER