

MAR 27 2023

STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT

JANE DAVIS )

)

VS )

W.C.C. No. 202201400

)

STATE OF RHODE ISLAND )

PROPOSED DECREE

This cause came on for trial and after trial thereon and in consideration thereof, the following findings of fact are made:

1. That the Employee has proven by a fair preponderance of the evidence that the Employer has refused to provide or pay for medical services in the nature of treatment at the Comprehensive Spine Center/Norman Prince Spine Institute.

2. That such services are reasonable and necessary to cure, rehabilitate or relieve the Employee from the effects of her work injury of January 3, 2020.

Wherefore, it is hereby ordered:

1. That the Employee's Petition to Review is granted.
2. That the Employer shall pay reasonable medical bills associated with the Employee's treatment at the Comprehensive Spine Center/Norman Prince Spine Institute.
3. That the treatment shall commence within 90 days.
4. That the Employer shall pay Attorney Stephen J. Dennis a counsel fee in the amount of \$4,000.00 for his efforts in successfully prosecuting this matter on behalf of the Employee.

5. That the Employer shall reimburse Attorney Dennis and/or the Employee for the reasonable costs incurred in the prosecution of this petition upon presentation of supporting documentation for such costs including the expert witness fee and transcript costs for the deposition of Dr. Akhtar.

Entered as the decree of this Court this                      day of

ENTERED:

PER ORDER:

\_\_\_\_\_  
Pepin Fay, J.

\_\_\_\_\_  
Nicholas DiFilippo, Administrator

I hereby certify that I mailed copies of the Decision and Proposed Decree to Stephen Dennis, Esq. and Nicole Andrescavage, Esq., on *March 23, 2023.*

*Ann M. Galen*  
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DECISION

PEPIN FAY, J. This matter comes before this Court on the Employee's Petition to Review seeking treatment with the Comprehensive Spine Center<sup>1</sup> in connection with her work injury of January 3, 2020. On March 31, 2022, the Court entered a pretrial order denying the petition. The Employee filed a timely claim for trial.

At trial, the document under review consisted of a Pretrial Order entered in WCC No. 2021-04284, dated December 10, 2021, memorializing a work injury of January 3, 2020 in the nature of a low back strain and left wrist sprain disabling the Employee from June 24, 2021 through October 3, 2021. The pretrial order documented an average weekly wage of \$1,040.00. The Employee returned to work in a full duty capacity as of October 4, 2021.

At trial, the Employee testified that she was working in the Benton Building as a mental health worker on January 3, 2020 when a patient shoved her causing her to fall onto her back and left wrist. She left work that day and treated at the Garden City Treatment Center initially. She eventually transferred her care to Dr. Muhammad Akhtar who was her primary care physician.

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<sup>1</sup> Although the petition seeks referral to the "Comprehensive Spine Center" the deposition testimony clarifies that the treatment being sought is with the Norman Prince Spine Institute which is part of the Lifespan organization. The terms will be used interchangeably within this decision.

She continued the treat with Dr. Akhtar as recently as the month before her testimony. Dr. Akhtar provided her with cortisone shots and pain medication for both her left wrist and her low back. The Employee acknowledged that her left wrist pain had resolved but that her low back and leg pain is “terrible.”

The Employee testified that she saw Dr. Czerwein on behalf of the Court on October 14, 2021. Just prior to the exam, she had returned back to work on October 4, 2021. She explained that Dr. Akhtar had given her a cortisone injection and some pain medication and with those she had returned back to work. She confirmed that she has continued to work in a full duty capacity although at a slower rate than prior to the injury. She acknowledged that Dr. Akhtar has referred her to the Comprehensive Spine Center and that she would like to go there for treatment so that she can get better and continue to work.

On cross-examination, the Employee confirmed that her left wrist is better but that she continues to get cortisone injections for her low back. With respect to prior low back problems, the Employee acknowledged that she did have low back pain prior to the work injury including treatment as recently as October of 2019, only two months prior to the work injury. However, the Employee testified that such pain was due to a fall she had sustained on stairs at work approximately five years earlier for which she had not lost time from work. She also testified that the pain she was experiencing now was worse than the pain she experienced prior to the January 3, 2020 work injury.

The Employee offered the deposition testimony of Muhammad Akhtar, MD as a full exhibit. Dr. Akhtar testified that he is a board-certified internist, hematologist, and oncologist. His qualifications as an expert witness were stipulated to by the parties. Dr. Akhtar testified that he first examined the Employee on October 25, 2007 at which time he became her primary care

physician. He acknowledged that he has treated her for low back pain as far back as early 2008 and periodically through the years. His first evaluation following the work injury was on January 30, 2020 but he did not see her primarily for the work injury since her care for the work injury was with Garden City Treatment Center at that time. She transferred her care for the work injury to Dr. Akhtar on July 29, 2020. The Employee underwent an MRI on December 30, 2020 which showed “a lot of pathology.”

Dr. Akhtar testified that he referred the Employee to the Norman Prince Spine Institute near Rhode Island Hospital. She was seen there on March 23, 2021. He testified that they recommended an epidural steroid injection at L4/5. He continued to treat her for the work injury throughout 2021. She returned to full duty employment on October 4, 2021 but continued to have low back and leg pain and ongoing treatment including a continued request for referral to the Comprehensive Spine Center.

With respect to his opinion regarding the causal relationship between the need for treatment at the Norman Prince Spine Institute and the work injury of January 3, 2020, Dr. Akhtar testified as follows:

- A. She, though she has had back pain since 2007/2008 intermittently, but the injury that she sustained at work on January 3, 2020, aggravated her back pain and has been a significant issue in her care. I really think that she will benefit from going to the spine center and possibly getting an epidural injection, one or a series of three, to see if it helps her with the pain.

Depo of Dr. Akhtar at 18.

Additionally, he testified that he believed that the injections were necessary to cure, relieve or rehabilitate her from the effects of her work injury of January 3, 2020. In support of his opinions, Dr. Akhtar noted that the Employee’s back complaints have been more consistent

and more severe since the work injury. In conclusion, Dr. Akhtar confirmed that he continues to recommend that the Employee be treated at the Norman Prince Spine Institute.

On cross-examination, Dr. Akhtar acknowledged that the Employee had fairly regular complaints of back pain between 2012 and 2019 including a worsening of pain in 2019. He further acknowledged that she has degenerative joint disease which was a longstanding issue for the Employee. He confirmed that such findings were noted as far back as a July 6, 2012 MRI. However, Dr. Akhtar continued to insist that her complaints were more persistent and more severe since the work injury. He acknowledged that his opinions in this regard are based on the Employee's subjective complaints to him.

After aggressive cross-examination regarding the Employee's pre-existing complaints versus her post work injury complaints, Dr. Akhtar testified as follows: "What I can say with certainty is that she had chronic back pain and it did get aggravated by her fall. I think she should get the treatment." Id. at 43.

Dr. Akhtar's treatment records for the period October 25, 2007 through January 24, 2022 were marked as an exhibit in connection with the deposition. Dr. Akhtar saw the Employee on approximately 75 occasions during that time period. Often the visits were for issues completely unrelated to the low back or to the work injury. The records do reveal that low back complaints became more consistent commencing in 2012 and continued on a fairly regular basis through 2019. Often the complaints were just that, complaints with no particular treatment. Occasionally, particular treatment was recommended like an MRI, an x-ray or cortisone injection. Once Dr. Akhtar took over the care of the work injury, he repeatedly suggested that the Employee be referred to the Comprehensive Spine Center for treatment including an Epidural

Steroid Injection which he suggested was beyond his ability to provide.<sup>2</sup> With that and the invoice for the transcript of the deposition of Dr. Akhtar, the Employee rested.

The Employer offered the deposition testimony of John K. Czerwein Jr., MD as a full exhibit. Dr. Czerwein testified that he is board-certified in orthopedics. His qualifications as an expert witness were stipulated to by the parties. Dr. Czerwein testified that he examined the Employee on behalf of the Court in connection with a different petition on October 14, 2021. He took a history from the Employee regarding her work injury of January 3, 2020. The Employee denied prior back problems at the time of the examination. Dr. Czerwein conducted a physical examination and noted the Employee to have multi-level lumbar spondylosis, multi-level stenosis, neurogenic claudication, lumbar spondylolisthesis, and lumbar strain/sprain. He noted that the first five diagnoses pre-existed the work injury but were aggravated by it while the lumbar strain itself was acute. Dr. Czerwein acknowledged that his opinion regarding the aggravations might change if the Employee's back was symptomatic prior to the work injury and if she was receiving treatment for the degenerative conditions.

Based on the Employee's return to work, Dr. Czerwein was of the opinion that the Employee's symptoms had ended as to her back and if the chronic complaints were to continue, he recommended additional treatment under her private insurance. With that, the Employer rested.

Rhode Island General Laws §28-33-5 provides, in pertinent part:

The employer shall . . . promptly provide for an injured employee any reasonable medical, surgical, dental, optical, or other attendance or treatment . . . as is necessary, in order to cure, rehabilitate or relieve the employee from the effects of his work injury . . . .

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<sup>2</sup> Although it appears from Dr. Akhtar's reports that the Employee did indeed have a visit at the Spine Center sometime before his June 18, 2021 visit neither party produced any records of the Norman Prince Spine Institute.

It is well settled that the Employee bears the burden of proving such allegations with competent medical evidence. Mastronardi v. Zayre Corp., 391 A.2d 112 (R.I. 1978).

Here, there is no dispute that the treatment sought is reasonable. Indeed, both Dr. Czerwein and Dr. Akhtar agreed that it was reasonable for the Employee to seek additional treatment for her degenerative low back complaints. Similarly, there is no dispute that the Employee's degenerative low back condition was aggravated by the work injury of January 3, 2020. The only real issue in dispute is the extent to which the work injury continued to play a role in the Employee's ongoing complaints and need for additional treatment including at the Norman Prince Spine Institute once she returned to work. Dr. Czerwein was of the opinion that once the Employee returned back to work the work injury itself reached a point of maximum medical improvement and any ongoing treatment would no longer be related to the work injury. Dr. Akhtar, on the other hand, was of the opinion that the need for ongoing treatment was related to the work injury itself which continued to aggravate the Employee's underlying degenerative condition.

Here, the Employee has met her burden of proving that the requested treatment with the Norman Prince Spine Institute is reasonable and necessary and causally related to the work injury. Having reviewed all of the medical evidence including the deposition testimony of Drs. Akhtar and Czerwein as well as the voluminous reports of Dr. Akhtar, this Court is persuaded by the opinions of Dr. Akhtar that the requested treatment is reasonable and is related to an aggravation of the Employee's degenerative low back condition which both Dr. Akhtar and Dr. Czerwein describe as aggravated by the work injury of January 3, 2020. Dr. Akhtar treated the Employee on multiple occasions both before and after the work injury and was adamant that the Employee's complaints remained more consistent and more severe following the work injury

than before. Dr. Czerwein, on the other hand, examined the Employee on only one occasion just a few weeks after the Employee received a cortisone injection which allowed her to return to work albeit with ongoing symptomology which the Employee herself acknowledged. In these circumstances, the Employee's Petition to Review is granted.

With respect to the Employee's Petition to Review filed in WCC No. 2022-01400, this Court makes the following findings of fact:

1. That the Employee has proven by a fair preponderance of the evidence that the Employer has refused to provide or pay for medical services in the nature of treatment at the Comprehensive Spine Center/Norman Prince Spine Institute.

2. That such services are reasonable and necessary to cure, rehabilitate or relieve the Employee from the effects of her work injury of January 3, 2020.

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