

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G803817

JACQUELINE D. FREEMAN, CLAIMANT
EMPLOYEE

ARKANSAS DEPARTMENT OF CORRECTIONS, RESPONDENT
EMPLOYER

PUBLIC EMPLOYEE CLAIMS DIVISION, RESPONDENT NO. 1
INSURANCE CARRIER/TPA

DEATH & PERMANENT TOTAL RESPONDENT NO. 2
DISABILITY TRUST FUND

OPINION FILED MARCH 24, 2023

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

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondents No. 1 represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed September 7, 2022. The administrative law judge found that the claimant failed to prove she was entitled to additional medical treatment, and that the claimant failed to prove she was entitled to additional temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

The record indicates that Jacqueline Freeman, now age 52, underwent a lumbar decompression, discectomy, and fusion in December 2010. The post-operative diagnosis was “Spinal stenosis, degenerative spondylolisthesis of L4 and L5 with disk herniation.” The claimant underwent additional lumbar surgery in October 2015. The post-operative diagnosis was “Recurrent stenosis at L4-5, disk herniation at L5-S1 with radiculopathy, evidence of pseudoarthrosis at L4-5.” The claimant testified that she had been assigned permanent work restrictions as a result of her surgeries in 2010 and 2015.

The record indicates that the claimant became employed with the respondents, Arkansas Department of Corrections, on October 16, 2017. The claimant testified that her job title was Administrative Specialist and that she worked in the respondent-employer’s file room. The claimant testified that she was eventually transferred to the respondent-employer’s mail room. The claimant testified that her work included transporting mail to the United States Postal Service for delivery as well as picking up mail for distribution to inmates at the Department of Corrections.

The record contains two Disciplinary Actions dated May 14, 2018. The claimant was charged with “Failure to adhere to work hours” and “Unsatisfactory work performance.” The claimant received an oral

reprimand. The claimant was also charged with “Discourteous treatment of others” and “Insolence to supervisor or persons of higher rank.” The claimant received a written remand for the latter violations.

Deputy Warden Steven Ricketts corresponded with the claimant on May 28, 2018 and informed the claimant in part, “Ms. Freeman, you are still within your probationary period and have developed a pattern of the behavior listed above. You often use the excuse of things that you are going through in your personal life as the cause of the problems here at work. Issues that you have been involved in has been discussed with you several times and have progressed to written documentation of these discussions. Following the progressive discipline procedures, I am requesting that you be seen by the Grimes Unit Employee Review Committee for determination of appropriate disciplinary action. You will be notified of a date and time to appear before the review board.”

The parties stipulated that the employee-employer-carrier relationship existed on May 29, 2018. The claimant testified on direct examination:

Q. And if you will, thinking back to May 29th of 2018, what happened – what happened to make that day memorable to you?

A. Well, what happened was Andrew was supposed to come to work. He didn't show up. I was actually off that day. I wasn't even supposed to come in. The acting supervisor was there because the other supervisor was off work on leave. The director was there. I was supposed – everybody was

supposed to get a chance to go talk to her, but I didn't get a chance to because the acting supervisor told me she need me to go do the mail. And I advised her I did not have my back brace, and I was by myself, and I needed help doin' it. So she didn't help me. So I went without a back brace and I had to go get the mail.

Q. Okay. Okay. And was that when your back started hurtin' again?

A. Yes. Yes. Yes. The mailroom is what really caused my back to really hurt me.

The parties stipulated that the claimant sustained "a compensable lumbar injury" on May 29, 2018. According to the record, Dr. Matthew P. Jackson saw the claimant on June 7, 2018:

She is a clerical worker at Grimes Unit, Arkansas Dept. of Corrections. She was working at the mail room 5/29 and had to go to the post office and pick up the mail which was over 50-60 pounds. She says she has chronic back problems and was supposed to have a restriction of 15-20 pounds lifting at work. She is also is able to sit on a donut pillow and use a knee sleeve while at work. She says she hurt her back and leg lifting the mail and they still made her do it the next day and she hurt it more. She goes to pain management with Dr. Qureshi in Little Rock and takes gabapentin and oxycodone. She had a lumbar laminectomy in 2010 and discectomy in 2015. Since her injury, she has worse pain in the right low back and both thighs. Her pain is severe and constant. She is not able to do the lifting required in the mail room due to her pain.

Dr. Jackson assessed "1. Strain of lumbar region, initial encounter. Recommend she be off work until she improves. Recheck on Monday. Hopefully she can return to her previous job without the heavy lifting. 2. Bilateral thigh pain. 3. Muscle spasm."

Dr. Jackson noted on June 11, 2018, "She is here to follow up on back injury. She complains of severe constant pain in the right low back, radiating to both legs since her injury at work. On 5/29 and 5/30 she states she lifted 50-60 pound sacks of mail multiple times, and that is when her pain started. She is unable to even sit for very long due to the severe pain."

Dr. Jackson assessed "1. Strain of lumbar region, subsequent encounter. 2. Bilateral thigh pain. 3. Muscle spasm. 4. Acute right-sided low back pain, with sciatica presence unspecified. She has severe pain on top of chronic problems. She is not better with observation. Refer for MRI and neurosurgical eval....Off work. Recheck 4 weeks."

The respondents terminated the claimant's employment effective June 12, 2018. The claimant was discharged as a result of alleged violations which included "a. Loitering, visiting, excessive personal use of the telephone" and "n. Conduct unbecoming a public employee."

An MRI of the claimant's lumbar spine was taken on June 19, 2018 with the following impression:

1. Interval right laminotomy at L4-5 when compared to 07/26/2007, with bilateral pedicle screws at L5 and right pedicle screw at L4.
2. Grade I spondylolisthesis of L4 on L5 with a broad-based pseudoprotrusion causing severe central canal stenosis.
3. Broad-based right posterolateral intraforaminal disc protrusion at L5-S1 with facet arthropathy causing severe right foraminal stenosis.

Dr. Justin Seale provided an IME on July 16, 2018:

Miss Freeman is a 47-year-old female with chronic history low back issues ongoing since a work-related injury in California in 1993.

She is here today to be evaluated after sustaining a work related lifting injury on 5/29/18. After that time she developed severe right buttock and leg pain. The pain is burning. The pain is progressive worsening. Rest does help. Bending and squatting [makes] the pain worse.

She has had numerous injections over the years. She has recently been undergoing left sided low back injections. She reports having a recent right-sided injection but details of this are unknown....

Past medical history includes substantial history of lumbar issues. She has a history of 2 prior surgeries 1 and 2010 and in 2016 by Dr. Shaheem (sic). I reviewed clinic notes back till 2016 and found no evidence of right buttock and leg pain but it had resolved until the last 2 years. I could find no evidence to contradict this in her medical history....

I spent over one hour with the patient today reviewing her CTs and MRIs. She was quite confused due to the fact that I found no objective finding of injury. She was also not aware of the continued severe stenosis at L4 5 with large calcified disc protrusion or [could not] remember it.

I discussed the fact that she had no objective findings of injury but she concurred that she had no pre-existing history of right leg pain leading up to the injury. Therefore the pain did not preexist her injury. Therefore it is within a certain degree of medical certainty that at least 51% of the patient's current symptoms are directly related to their work injury. If I was shown proof of existing right leg pain over the past 2 years, this opinion [would] change.

Concerning treatment recommendations, I recommend a right L5-S1 transforaminal injection....

Dr. Seale assessed "1. Severe stenosis, due to calcified disc protrusion, L4 5 with right lower extremity radiculopathy. 2. Right L5-S1 paracentral and foraminal disc protrusion, with right lower extremity. 3.

Aggravation of the above pre existing conditions. 4. Status post L4-5 unilateral instrumented fusion, Dr. Shaheem (sic).”

Dr. Seale noted on July 16, 2018, “Jacqueline Freeman is currently under my medical care and was seen in my office today. Please excuse Jacqueline. She may return to work. Restrictions are as follows: No bending, lifting over 20lbs, no twisting (sic), no sitting/standing greater than 20 minutes.” Dr. Seale noted in part on August 20, 2018, “Her recent injection did not help....We will get her repeat right L5-S1 transforaminal injection.”

Dr. Seale reported on November 26, 2018:

She had her third and final injection.
Briefly discuss surgery again which would be an L4 S1 fusion.
Patient does not want to have surgery at this point.
The patient is at maximum medical improvement from a surgical standpoint but may continue pain management with Dr. Qureshi.
The patient’s impairment rating will be a 0% because no objective findings of injury. The prior disc protrusion was calcified and pre existing.
I’m releasing the patient from my medical care.
I will see the patient back only as needed.
The patient states they are unable to return back to work due to their pain. My recommendation is for a functional capacity exam. If the patient has a valid functional capacity exam, then [she] may return back to work per the defined restrictions of that the valid functional capacity exam. If the functional capacity exam is invalid, the patient may return back to work full duty without restrictions.
I will continue the patient’s work restrictions of no bending, twisting or lifting over 20 pounds until the results of [her] functional capacity exam are available.

There is no need for the patient to follow up after the functional capacity exam. My instructions following a functional capacity exam are clearly stated above.

Dr. Seale noted on November 26, 2018, “Jacqueline Freeman is currently under my medical care and was seen in my office today. Please excuse Jacqueline for time missed on 11/26/18. She may return to work on 11/26/2018. Activity is restricted as follows: light duty and no bending, no lifting over 20 lbs., no twisting.”

The parties stipulated that “certain benefits have been paid through at least November 26, 2018,” and that the respondents “have controverted additional benefits beyond November 26, 2018.”

The claimant participated in a Functional Capacity Evaluation on November 28, 2018: “The results of this evaluation indicate that an unreliable effort was put forth, with 29 of 50 consistency measures within expected limits....Ms. Freeman completed functional testing on this date with **unreliable** results. Overall, Ms. Freeman demonstrated the ability to perform work in at least the **LIGHT** classification of work[.]”

Dr. Seale reported on January 28, 2019:

I was able to review the patient’s functional capacity exam from 11/20/18. The patient’s effort was unreliable. The patient had 29 of 50 consistency measures within expected limits. The data provided indicates that the patient did not put forth a consistent effort. [Due] to this unreliable effort, patient’s current functional status remains unknown. Please refer to the functional capacity exam for details.

Therefore, I recommend the patient return back to work full duty without restrictions and is at maximum medical improvement as of the date of his functional capacity exam completion, 11/28/18.

The patient's MRI findings do not show acute findings or objective findings of injury. This is why her impairment rating was 0%. The patient's objective findings do correlate with her symptoms and subsequent need for surgery. However, the patient's unreliable functional capacity exam makes me hesitate on offering further surgery. My current recommendation would be for any surgical intervention to be outside Worker's Comp. on her regular insurance to remove any possible secondary gain issues.

Patient is at maximum medical improvement from a Worker's Comp. standpoint.

The record contains a Change of Physician Order dated February 14, 2019: "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Jacqueline Freeman to change from Dr. J. Justin Seale to Dr. Kenneth Rosenzweig."

The claimant began treating with Dr. Kenneth M. Rosenzweig on February 27, 2019:

Ms. Freeman is a 48-year-old. Her original injury was on the job in 1993 in California. She has had two back surgeries by Dr. Shahim dating back to 2010 and 2015. She aggravated her back and injured it in May of 2018 while lifting a heavy box at the post office. She was evaluated by Dr. Justin Seale. She has had transforaminal epidurals with Dr. Qureshi which she reports did not help much. She is having ongoing right low back pain and right buttock and hip pain with burning and pins and needles into her legs. She had an FCE in November of 2018....

Dr. Seale had suggested in November of 2018 that she have a third and final injection. They discussed further surgery. The patient did not want to have more surgery. He recommended continued pain management with Dr. Qureshi.

He offered a 0% impairment due to no objective findings of the injury. The prior disc protrusion was calcified and therefore preexisting. The patient was released from his care and was to return as needed. He required that the patient have a valid functional capacity exam. Otherwise, she was released to work at full duty with restrictions....

Dr. Rosenzweig's impression was "1. Postlaminectomy syndrome. 2. Spondylolisthesis. 3. Spinal stenosis and foraminal stenosis....I would like to get all of the information available to clarify her current state. It is my understanding she transferred her care." Dr. Rosenzweig also assigned work restrictions on February 27, 2019.

Dr. Rosenzweig's impression on March 28, 2019 was "Chronic back pain in a worker's compensation claimant with secondary concerns of failed back surgeries x 2." Dr. Rosenzweig recommended, "1. Patient is interested in further surgery for her ongoing pain complaints. 2. A consultation with Dr. Tim Burson in the Baptist system will be scheduled regarding diagnosis, prognosis, and treatment options from a surgical standpoint." The claimant testified that the respondent-carrier would not authorize a referral to Dr. Burson.

On July 12, 2019, Dr. Rosenzweig answered "Yes" to the following query: "In your opinion is the patient's work injury the major cause (at least 51%) of the current need for treatment and current restrictions?"

Meanwhile, the claimant underwent a Left Carpal Tunnel Release on July 18, 2019. The post-operative diagnosis was "Left Carpal Tunnel."

The claimant followed up with Dr. Rosenzweig on July 24, 2019:

Ms. Freeman is a 48-year-old worker's compensation claimant who injured her back lifting heavy bulk mail. She has ongoing back pain and leg pain. She has had multiple surgeries on her back five years apart. She is having radicular symptoms related to previous surgery with respect to adhesive scar tissues and radiculitis. She has not been able to work since her injury. She is requesting a return to work slip regarding when she will be able to return back to work. She has not demonstrated any substantial improvement since her last visit. She is having considerable pain in her right leg and she has not restored her spinal range of motion. She presents today with two other women while she sits on the table. She recapitulated how she hurt her back the last time which was in a work activity where she was required to lift heavy packages from the mail office and cases and cartons. She provided pictures of what she was doing. This appears to be standard mail carriers with letters and small packages. She states her hurt her back at the time she was lifting these parcels. She reported that worker's compensation has denied any further treatment. She has not returned back to work....

In review of her diagnostics, she has degenerative disk disease at L4-L5 and L5-S1 and a grade I listhesis at L4-L5. She has canal stenosis and eccentric disk protrusion at L5-S1 with foraminal stenosis.

Dr. Rosenzweig's impression was "1. Persistent radiculitis of the right lower extremity. 2. Postlaminectomy syndrome....A caudal epidural steroid injection will be scheduled to help defervesce pain and inflammation regarding the low back and right leg."

Dr. Rosenzweig performed a "Caudal epidural steroid injection on the right" on October 1, 2019. The post-operative diagnosis was "Post-laminectomy syndrome with radiculitis." Dr. Rosenzweig performed a "High epidural steroid injection L2-L3 level to the right" on October 15, 2019. The

post-operative diagnosis was “1. Post laminectomy syndrome. 2. Disk herniation. 3. Radiculitis, right greater than left.”

Dr. Rosenzweig’s impression on October 30, 2019 was “Postlaminectomy syndrome with referred pain down her legs with mixed response to epidural steroids with one above her fusion and one below from a caudal approach.” Dr. Rosenzweig planned, “1. An updated MRI will be considered. 2. Surgical consultation will be considered. 3. A third epidural to complete her series will be considered.”

Dr. Rosenzweig reported on November 21, 2019:

Ms. Freeman is a 48-year-old worker’s compensation claimant who injured her back lifting heavy bulk mail. She has two dates of injury on May 29, 2018 and June 2, 2018. She has had two previous back surgeries. She has had back to back high and low epidural steroids from a high approach and initially from a caudal approach. She had undergone an FCE which she reports her hurt and is making her hurt worse. An updated MRI reveals a broad based pseudo protrusion with an acquired canal stenosis but no significant changes, a prior laminectomy on the right, pedicle screw intact, and moderate right and mild left facet arthropathy with ligamentum flavum buckling but no stenosis....

PLAN/RECOMMENDATIONS:

1. A repeat epidural steroid injection versus adjacent level facet block will be considered regarding her right low back pain. The L5-S1 facets remain open with respect to previous spinal fusion. The adjacent level may be the main issue of her pain. It may be reasonable to repeat a caudal epidural for her foraminal stenosis versus facet blocks at the adjacent level below her surgery.
2. I am in agreement that she has chronic pain and is best served with a chronic pain physician.

3. She may also require further evaluation regarding surgical management with respect to decompression and advancement of her fusion to the sacrum.

Dr. Rosenzweig gave the following impression: “Postlaminectomy syndrome with referred pain down her legs with mixed response to epidural steroids.”

The claimant followed up with Dr. Jackson on April 23, 2020: “She has chronic back pain and takes chronic opioid therapy. Of course her treatment has been disrupted by the COVID pandemic....This is a chronic problem. The current episode started more than 1 year ago.” Dr. Jackson assessed “1. Myofascial pain. 2. Chronic pain disorder.” Dr. Jackson performed trigger point injections.

Dr. Rosenzweig performed a “Caudal epidural steroid injection #3” on July 30, 2020. The post-operative diagnosis was “1. Disk herniation. 2. Post-laminectomy syndrome. 3. Posterior spinal fusion. 4. Right-sided radiculitis.”

Dr. Rosenzweig planned and recommended the following on August 21, 2020: “1. Supportive care will be continued with her pain physician. 2. An evaluation with a spine surgeon will be considered regarding treatment options. 3. Epidural steroids do not appear to be an answer regarding long term management from a caudal approach to improve delivery and access. She is reporting insufficient pain relief.”

Dr. Rosenzweig corresponded with the claimant's attorney on December 15, 2021:

This is a letter to confirm that Ms. Freeman had been on contract pain management prior to my initial visit with her from a work related injury in 2018. Dr. Donald Pate has been and continues to be her prescribing physician. She has had medications prescribed prior to Dr. Pate's care under the care of Dr. Qureshi. I have not participated in her medical management regarding chronic pain. The pain medication is a result of an earlier lumbar surgery and chronic pain and not a result of her work related claim from 2018.

Ms. Freeman continues to have symptoms. It appears that she was able to return to work after her previous surgery but was limited in what activities she could do. She claimed a new injury with aggravation of her underlying injury as previously outlined in the medical records.

The purpose of this letter is to confirm that Ms. Freeman was under the care of Dr. Donald Pate for medical management prior to my visit with her regarding an injury while at work in 2018. I have not participated in her pain management. To my knowledge, I have not violated her pain contract.

A pre-hearing order was filed on March 23, 2022. The parties agreed to litigate the following issues:

- (1) Whether the Claimant is entitled to additional reasonably necessary medical care and related expenses beyond November 26, 2018, in relation to [her] compensable lumbar injury of May 29, 2018, as well as additional temporary total disability benefits for as yet unspecified dates, and attorney's fees in relation to controverted indemnity benefits.

A hearing was held on June 10, 2022. At that time, the parties' colloquy indicated that the respondents paid temporary total disability benefits through November 30, 2018. The claimant contended that she

was entitled to additional temporary total disability benefits beginning December 1, 2018 until a date yet to be determined. The claimant testified that she had not returned to work with any employer.

An administrative law judge filed an opinion on September 7, 2022. The administrative law judge found that the claimant failed to prove she was entitled to additional medical treatment, and that the claimant failed to prove she was entitled to additional temporary total disability benefits. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). “Healing period” means “that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12)(Repl. 2012). The healing period continues until the employee is as far restored as the permanent character of her injury will permit, and if the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). Whether or not an employee’s healing period has ended is a question of fact for the Commission. *Id.*

An administrative law judge found in the present matter that the claimant “failed to prove that she is entitled to additional temporary total disability benefits from December 1, 2018, through a date yet to be determined.” The Full Commission affirms this finding.

As we have discussed, the claimant previously underwent low back surgeries in 2010 and 2015. The claimant testified that she had been assigned permanent work restrictions following surgery. The claimant became employed with the respondents, Arkansas Department of Corrections, in October 2017. The claimant testified that she worked in the respondent-employer’s file room and mail room. The claimant testified that she injured her low back on or about May 29, 2018 as a result of heavy lifting related to her mail room duties. The parties stipulated that the claimant sustained “a compensable lumbar injury” on May 29, 2018. Dr. Jackson treated the claimant beginning June 7, 2018 and assessed “1. Strain of lumbar region, initial encounter.” Dr. Jackson took the claimant off work. Dr. Jackson again assessed “1. Strain of lumbar region” on June 11, 2018. The respondents terminated the claimant’s employment effective June 12, 2018. The record indicates that the claimant’s termination was related to alleged misconduct and was not the result of the May 29, 2018 compensable injury.

Dr. Seale provided an Independent Medical Evaluation (IME) on July 16, 2018. Dr. Seale recommended injection treatment, and he released the claimant to return to light-duty work. The claimant participated in a Functional Capacity Evaluation on November 28, 2018. It was averred as a result of the FCE that the claimant gave “an unreliable effort,” and the evaluators released the claimant to return to light work. The respondents paid temporary total disability benefits through November 30, 2018.

The claimant contends in her brief on appeal that she is “Entitled to Temporary Disability Benefits Because she is Still within her Healing Period.” The Full Commission finds that the claimant reached the end of her healing period no later than November 28, 2018. The evidence demonstrates that the claimant sustained a compensable lumbar strain on May 29, 2018 as assessed by Dr. Jackson. The claimant was treated conservatively for her compensable lumbar strain and was provided temporary total disability benefits. The claimant was released to light work following the November 28, 2018 Functional Capacity Evaluation. The respondents paid temporary total disability benefits through November 30, 2018. Dr. Seale reported on January 28, 2019, “I recommend the patient return back to work full duty without restrictions and *is at maximum medical improvement as of the date of [her] functional capacity exam completion, 11-28-18* [emphasis supplied].” The Commission has the authority to

accept or reject medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). In the present matter, the Full Commission finds that Dr. Seale's opinion is corroborated by the record and is entitled to significant evidentiary weight. The Full Commission finds that the claimant reached the end of the healing period for her compensable lumbar strain no later than November 28, 2018. The evidence demonstrates that the claimant was as far restored as the "permanent character" of her lumbar strain would permit no later than November 28, 2018.

Temporary total disability benefits cannot be awarded after an employee's healing period has ended. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). The Full Commission therefore finds that the claimant did not prove she was entitled to additional temporary total disability benefits after November 28, 2018. Nor did the claimant re-enter a healing period at any time beyond November 28, 2018. Dr. Rosenzweig's impression of "1. Postlaminectomy syndrome" beginning February 27, 2019 does not indicate that the claimant re-entered a healing period for the compensable lumbar strain occurring May 29, 2018.

The Full Commission affirms the administrative law judge's finding in the present matter that the claimant failed to prove she was entitled to additional temporary total disability benefits.

B. Medical Treatment

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. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (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).

An administrative law judge found in the present matter, "(2) The Claimant has failed to prove, by a preponderance of the evidence, that she is entitled to additional reasonably necessary medical care in relation to her compensable injury of May 29, 2018[.]" The Full Commission finds that the claimant did not prove additional medical treatment was reasonably necessary in connection with the compensable injury.

The parties stipulated that the claimant sustained “a compensable lumbar injury” on May 29, 2018. Dr. Jackson assessed “Strain of lumbar region” on June 7, 2018. Dr. Jackson and Dr. Seale treated the claimant conservatively. The record indicates that the claimant received at least three lumbar injections from which she reported minimal benefit. Dr. Seale opined on January 28, 2019, “Patient is at maximum medical improvement from a Worker’s Comp. standpoint.”

The Full Commission has determined *supra* that the claimant reached the end of her healing period no later than November 28, 2018. The Full Commission recognizes that an employee may receive additional medical treatment after the end of her healing period, if said treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). In the present matter, however, the Full Commission finds that additional medical treatment beyond November 28, 2018 was not geared toward management of the compensable injury. The evidence does not demonstrate that treatment provided the claimant after November 28, 2018 was reasonably necessary in connection with the compensable lumbar strain occurring May 29, 2018.

The record contains a Change of Physician Order dated February 14, 2019, approving a change of physician from Dr. Seale to Dr.

Rosenzweig. When a claimant has exercised her statutory right to a one-time change of physician, the respondents must pay for the initial visit to the new physician in order to fulfill their obligation to provide reasonably necessary medical treatment in accordance with Ark. Code Ann. §11-9-508. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In the present matter, therefore, if they have not done so, the respondents must pay for the claimant's initial visit with Dr. Rosenzweig which took place on February 27, 2019.

Nevertheless, the record does not show that treatment or recommendations provided by Dr. Rosenzweig after February 27, 2019 were reasonably necessary in connection with the May 29, 2018 compensable injury. Dr. Rosenzweig's diagnoses of postlaminectomy syndrome, spinal stenosis, and chronic back pain were not causally related to the compensable injury suffered by the claimant on May 29, 2018. Dr. Rosenzweig answered a query on July 12, 2019 and indicated that the claimant's work injury was "the major cause" of the claimant's need for treatment. It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. In the present matter, the Full Commission finds that Dr. Rosenzweig's causation opinion is entitled to minimal evidentiary weight. The record does not show that treatment provided by Dr. Rosenzweig was causally related to the May 29, 2018

compensable injury, which injury resolved no later than November 28, 2018 according to Dr. Seale. The Full Commission finds that Dr. Seale's opinion is corroborated by the record and is entitled to more evidentiary weight than Dr. Rosenzweig's opinion. The record does not show that "Postlaminectomy syndrome" as diagnosed by Dr. Rosenzweig was causally related to the compensable lumbar strain.

After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant did not prove she was entitled to additional temporary total disability benefits. The Full Commission finds that the claimant did not prove she was entitled to additional temporary total disability benefits after the end of the claimant's healing period on November 28, 2018. If they have not done so, the respondents must pay for the claimant's initial visit with Dr. Rosenzweig which took place on February 27, 2019. *Wal-Mart Stores, Inc. v. Brown, supra*. However, the claimant did not prove that any of Dr. Rosenzweig's treatment recommendations following February 27, 2019 were reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant therefore did not prove she was entitled to additional medical treatment after February 27, 2019. This claim is respectfully denied and dismissed.

IT IS SO ORDERED

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part with but must respectfully dissent in part from the majority opinion. I concur with the majority's finding that the claimant did not prove she was entitled to additional temporary total disability benefits after the end of her healing period on November 28, 2018. However, I must dissent from the majority opinion finding that the claimant failed to prove she was entitled to additional medical treatment.

An 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 bears the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). 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).

I find that the surgical intervention recommended by Dr. Seale is reasonably necessary. During the claimant's August 20, 2018, visit, Dr. Justin Seale recommended that the claimant undergo a L4-S1 fusion. Dr. Seale noted, "I do believe the surgical intervention may be the only way to give her long-term relief of the pain". However, the claimant did not want surgery at that time. I find nothing within the record that would negate the necessity of this surgery.

The claimant exercised her right to a one-time change of physician and began receiving treatment from Dr. Kenneth Rosenzweig. Once the claimant began treating with Dr. Rosenzweig, he opined that the claimant's work injury was the major cause of the current need for treatment and current restrictions. The claimant expressed a desire to Dr. Rosenzweig to pursue surgical intervention. However, when Dr. Rosenzweig attempted to refer the claimant to Dr. Tim Burson for a surgical consult, the respondents refused to authorize the referral. In his November 21, 2019, and August 21, 2020, medical records, Dr. Rosenzweig continued to recommend that the claimant be evaluated by a spine surgeon regarding further treatment options.

Additionally, the need for surgery was causally connected to the claimant's work injury. Dr. Seale opined that the pain in the claimant's right leg did not pre-exist her injury. "Therefore it is within a certain [sic] degree of medical certainty that at least 51% of the patient's current symptoms are directly related to [her] work injury."

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Seale and Dr. Rosenzweig, as well as all the treatment provided by Dr. Rosenzweig.

For the foregoing reasons, I concur in part and dissent in part from the majority opinion.

M. SCOTT WILLHITE, Commissioner