

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002516

KYMIRA GANT, EMPLOYEE	CLAIMANT
FIRST STEP, INC., EMPLOYER	RESPONDENT
ATA WORKERS' COMPENSATION SELF-INSURED TRUST, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 14, 2022

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed January 27, 2022. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations contained in the Amended Prehearing Order filed August 31, 2021, which the parties modified and affirmed on the record at the hearing, hereby are accepted as facts.
2. The claimant has failed to meet her burden of proof in demonstrating she is entitled to additional TTD or TPD benefits.

3. The claimant has failed to meet her burden of proof in demonstrating the respondents are liable for the payment of additional benefits pursuant to **Ark. Code Ann. Section 11-9-505(a)(1)**.
4. The claimant has failed to meet her burden of proof in demonstrating she is entitled to any wage loss disability benefits on these facts.
5. The claimant's attorney is not entitled to a fee on these facts.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's January 27, 2022 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.

Therefore 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.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, 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 findings regarding TTD, TPD, and §505 benefits. However, I must dissent from the majority opinion finding that the claimant is not entitled to additional medical treatment and wage-loss benefits.

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).

Dr. Bruffett determined that the claimant reached MMI on January 25, 2021. The claimant exercised her right to a one-time change of physician from Dr. Bruffett to Dr. Qureshi. Dr. Qureshi examined the claimant, reviewed her imaging and medical records and determined the following:

After physical exam and speaking with patient, I suspect she has facet joint pain remaining on the left side and that is what is causing her pain at this time. I will SCHEDULE Left LMBB #1 to rule out facet joint pain. Consider LRFA if two consecutive nerve blocks help her pain.

The claimant's treating physician opined that it was reasonable and necessary for her to undergo a left LMBB to rule out facet joint pain. Based on this opinion I find that the claimant is entitled to additional medical treatment as recommended by Dr. Qureshi.

I am not unmindful of the opinion offered by Dr. Bruffett that the procedure proposed by Dr. Qureshi was not necessary or indicated for the claimant's workers' compensation injury. Dr. Bruffett's opinion is based on the fact that the claimant's pain complaints initially indicated right side pain. However, I assess more weight to the opinion of Dr. Qureshi on this issue.

When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). A physician's special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. *Id.*

The claimant explained that she had pain on both sides of her body but that the pain on the right side was more severe. The claimant's testimony was supported by her medical records. The Hot Springs Sports Medicine records from the claimant's treatments during the months of November 2020, December 2020 and January 2021 indicate that the claimant had symptoms related to her left side as well as her right side. Specifically, it is noted throughout the records that the claimant had positive left lateral flexion tests and very restrictive lumbar left side bending movement. I note that these symptoms were present while the claimant was still treating with Dr. Bruffett but were not addressed by him.

For the aforementioned reasons, I would find that the claimant is entitled to medical treatment as recommended by Dr. Qureshi.

Wage Loss Benefits

The claimant was given a 10% permanent impairment rating for her low back injury by Dr. Bruffett. At the time of the hearing, the claimant was forty-nine years old. The claimant's education consists of completion of the 11th grade and a GED. Prior to working for the respondent-employer, the claimant worked as an attendant at a laundromat, at Arby's, as a cashier for Walmart, a convenience store, and a casino, and as a waitress. The

claimant worked for the respondent-employer as a pre-school developmental treatment instructor.

After the workplace accident the claimant underwent a hemilaminotomy and partial discectomy at L5-S1 on the right. The claimant underwent an FCE on January 13, 2021 that placed her in the sedentary work category. Following the FCE, Dr. Bruffett released the claimant at MMI and returned her to work without restrictions. Since then, the claimant has not been able to return to her previous job. Additionally, the claimant testified that she is unable to work in the light duty position she was assigned to because of her back pain. Looking at the claimant's work history, her experience is in positions that require more than sedentary work.

Based on the aforementioned, I find that the claimant's future earning capacity has been affected by her compensable injury. Therefore, I would find that the claimant is entitled to a five percent (5%) wage loss benefit.

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

M. SCOTT WILLHITE, Commissioner