

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H204037**

JULIE R. INGLE, EMPLOYEE

CLAIMANT

HAZEN SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOLS BOARDS ASSOCIATION,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED DECEMBER 13 , 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the 8th day of November, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Mr. Gregory R. Giles, Attorney-at-Law, of Texarkana, Arkansas.

Respondents are represented by Ms. Melissa Wood, Attorney-at-Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 8th day of November, 2022, to determine the issue of additional medical treatment after reaching MMI, as recommended by Dr. Burks and also the average weekly wage. A copy of the Prehearing Order filed September 13, 2022, was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided the parties stipulated as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer-employee relationship existed on January 8, 2021, when the claimant sustained a compensable injury to her left foot/ankle back.
3. The claimant earned an average weekly wage of \$472.00, sufficient to entitle her to a temporary total disability rate of \$315.00 and a permanent partial disability rate of \$236.00.
4. The claimant was released at maximum medical improvement as of May 19, 2022, with a zero percent (0%) permanent partial impairment assigned. The claimant continued to work for the respondent/employer.

However, at the time of the hearing, an issue had arisen as to the average weekly wage. The claimant's position is that she earned an average weekly wage of \$11.70 an hour, working eight (8) hours a day, for a total of one hundred eighty (180) days under the school contract, which purports to run from July 1, 2020, to June 30, 2021. Consequently, her average weekly wage should be calculated based on that eight-hour wage rate, which would provide an average weekly wage of \$468.00, with a temporary total disability rate of \$312.00 and a permanent partial disability rate of \$234.00

The respondent's position in regard to wages is that they have calculated the average weekly wage by the same method used by the Arkansas School Boards for a long time and the adjuster looked at the actual dates of employment for this particular year, being from August 24, 2020, through June 2, 2021, which would work out to 40.43 weeks, making the actual weekly wage \$416.72 and the temporary total disability/permanent partial disability rate \$278.00 / \$209.00, respectively.

The claimant's and respondent's contentions are set out in their respective responses to the Prehearing Questionnaire and made a part of the record without objection. The claimant contends that she is entitled to the additional medical treatment recommended by Dr. Jessie Burks, specifically surgery. The respondents contend that the recommended surgery is not reasonable and necessary for the claimant's compensable injury. Both Dr. Goodson and Dr. Ardoin have indicated that only conservative treatment is recommended. The respondent's position is that the claimant has been released after reaching maximum medical improvement and the additional medical treatment in the form surgery is not reasonable and necessary.

The sole witness to testify was the claimant, Julie Ingle, who submitted multiple exhibits with exhibit one consisting of one hundred fifty-eight (158) pages of medical records, and exhibit 2 consisting of an abstract of the table of contents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer-employee relationship existed on January 8, 2021, when the claimant sustained a compensable injury to her left foot and ankle.
3. The claimant earned an average weekly wage of \$416.72, sufficient to entitle her to a temporary total disability rate of \$278.00 and a permanent partial disability rate of \$209.00.
4. The claimant was released at maximum medical improvement as of May 19, 2022, with a zero percent (0%) permanent partial impairment assigned. The claimant continued to work for the respondent/employer
5. The claimant has failed to satisfy the required burden of proof that the additional medical, specifically the surgery recommended by Dr. Jessie Burks, is reasonable and necessary for the treatment of the compensable injury.

REVIEW OF TESTIMONY AND EVIDENCE

The claimant, Julie Ingle, was the sole witness. She testified her date of birth was July 12, 1971, had graduated the twelfth grade, and had worked for the Hazen School District for nine (9) years as a cafeteria worker. Additionally, she earned \$11.70 an hour, working forty (40) hours a week, and is paid for one hundred eighty (180) days a year. She receives a pay-check once a month throughout the year, so the checks are divided up over twelve (12) months. (Tr.pp.7-8) Her responsibilities while at work are the vegetables, which includes both fresh and canned. She thought that they fed about four hundred fifty (450) people a day and stated she was constantly on her feet. Since her injury, she has been allowed to sit down when needed. She lifts items between five (5)

and fifty (50) pounds. She was moving items from the outside freezer when she was injured. They were short-handed the day of her injury and she and a co-worker were going down the ramp outside for some breakfast items when her right leg went straight out and her left foot went behind her, and she fell and slid down on the slick wood ramp. One of her co-workers came to assist her and also slipped down. At the time of the incident, the claimant stated her left upper thigh was burning, as well as her right forearm where she caught the rail on the ramp. In addition, her foot was also burning but it wasn't as severe. She was able to finish her workday. (Tr.pp. 9-11)

She did not receive any medical treatment on the day of the fall, but went to Stuttgart to see Dr. Kleinbeck a few days later. This doctor's visit was set up by workers' compensation. After a few days, her ankle started swelling and her foot, ankle, and knee were burning. Dr. Kleinbeck x-rayed the claimant's foot and placed it in a boot. She was then sent to Dr. Goodson, an orthopedic doctor, who provided a different boot, which she wore for six (6) or eight (8) weeks, and she was sent to physical therapy for six (6) weeks. During this time, she continued to work and her employer allowed her to sit when needed. She admitted she suffered from osteoarthritis in every joint and plantar fasciitis in both feet. (Tr.pp. 12-13) Dr. Chi, a rheumatologist, was treating her arthritis pain at the time. Prior to the accident, Dr. Chi was providing shots now and then for her pain, and she was taking medicine regularly. She was also going to the Cabot Foot Clinic prior to the accident for her plantar fasciitis which was mainly in her heel and bottom of her foot and she was mainly suffering from soreness and tiredness, an achy kind of tiredness. After the accident, the injury was more or less kind of below her toe range right in the center of her foot on the top and felt like a hot nail or something stuck in which burns. Her ankle

kept swelling and she started physical therapy which did not benefit her. She admitted that she continued to see Dr. Chi and the Cabot Foot Clinic. Dr. Chi placed her on Cymbalta, but it was determined that she was allergic to the medication. He also provided foot injections. (Tr.pp.14-16) She agreed Dr. Casear Divino at the Cabot Foot Clinic provided steroid injections which numbed her pain a little, for a day or two. The claimant was not satisfied with the results. (Tr.p.17)

The claimant then saw Dr. Jesse Burks for a second opinion which was set up by workers' compensation. (Tr.p.18) He performed an MRI and suggested surgery but provided no treatment. (Tr.p.19) She admitted Dr. Burks could have been the one who prescribed the Cymbalta. She stated her pain in her foot had gotten worse. (Tr.p.20) She also admitted being sent to Dr. Ardion for one visit, after seeing Dr. Burks twice. (Tr.p.21) When she presented to Dr. Ardion, she saw him with her husband present and the workers' compensation lady. Dr. Ardion recommended "laser injections." (Tr.p. 21)

The claimant further testified she could wear normal shoes if they were stretchable with no heels. If she stepped forward and had to bend her toes, like walking on uneven ground, she experienced sharp pain. She was ready to have the surgery due to the pain becoming unbearable. (Tr.p.23)

Under cross-examination, the claimant admitted she had suffered from arthritis for about five (5) years. The arthritis affected her all over, especially if she stopped taking her medication. She admitted she was taking two (2) or three (3) medications for arthritis as prescribed by Dr. Chi and was also taking some Ibuprofen or Tylenol 3 from the AR Care Clinic. She also admitted she did not suffer a hard fall when she slipped on the ramp. (Tr.pp.24-25) The co-worker who came to assist her and slipped fell hard. She

also admitted she did not know that she was hurt right away but was initially just shaken up, and that she did not feel a pop or snap. The incident occurred at 7:30 in the morning and she worked the remainder of the day. She also admitted the only medical that she received on the day of the accident was from the school nurse. She also admitted the burning in her arm and thigh had resolved. She has continued to work since the injury and has renewed her contract for this school year, working from 2022 to 2023. She also admitted she is currently doing the same job that she was doing at the time of the accident and that she stated in her deposition that her foot was about the same. She also admitted to complaining of pain in both feet during a visit to the Cabot Foot Clinic, dated January 30, 2020. (Tr.pp.26-28) She also admitted to suffering from significant pain in the morning or after sitting and has suffered from arthritis pain for ten (10) plus years. She told Dr. Chi on October 6, 2020, she was suffering from increased pain in her knees and feet in the afternoons after work. The pain was on the dorsal part of the foot. She did not dispute that her contract ran from August 24, 2020 to June 2, 2021. (Tr.pp. 29-30)

In a review of all the documents presented and made part of the record, the documents provide that the claimant entered into a contractual agreement to work one hundred eighty (180) days as a cafeteria worker for the rate of \$11.70 an hour for a contract amount up to \$16,848.00. (Cl.Ex. 1)

The initial medical entered into the record provides that the claimant was presenting to the Cabot Foot Clinic back in January of 2020, for left heel pain which was continuous for 6 to 8 years duration with the x-rays of the left foot providing that the claimant suffered from a plantar calcaneal heel spur consistent with calcaneal enthesiopathy which is often seen with plantar fasciitis. (Cl.Ex. 1, pp. 2-4) The claimant

was also being treated by Dr. Chi at Chi Arthritis and Rheumatology Associates from March 3, 2020, through October 16, 2020, for a variety of issues with the primary one apparently being pain in her knees and feet which was preventing her from sleeping at the end of the day. X-rays were taken of her cervical and lumbar spine, as well as her hands, pelvis, knees, and feet, with an assessment of bone spurs and erosive osteoarthritis. The report of October 16, 2020, provided the claimant would continue with a regimen of hydroxychloroquine and diclofenac gel for the treatment of erosive osteoarthritis and degenerative arthritis. The report further provided that the claimant was suffering from a significant increase in pain to her feet bilaterally and would receive injections for her feet, determining at the time if we should provide injections at the heel or the dorsum of her bilateral feet. (Cl.Ex. 1, pp.5-23)

The claimant initially presented to the Stuttgart Baptist Health Clinic on January 11, 2021, for a fall that occurred three (3) to five (5) days earlier. The report provided for a sprain of the medial collateral ligament of the left knee and a contusion of the right chest wall. (Cl.Ex. 1, pp. 26-31) The claimant returned to the clinic on January 20, 2021, in regard to her left foot, with the x-ray being negative in regard to an injury of the left foot, and the report providing for a sprain of the left foot. (Cl.Ex. 1, pp. 33-42) A review of the radiographs of the left foot provided that alignment was normal, with no acute fracture identified and no significant degenerative change with no tissue swelling evident. A large heel spur was noted. (Cl.Ex. 1, p. 43)

A progress note by Dr. Goodson dated January 25, 2021, provided the range of motion of the left foot was normal, mild to moderate dorsal midfoot swelling, with the left foot and ankle being stable and normal. (Cl.Ex. 1, pp. 44-46) The claimant returned to

Dr. Chi on February 8, 2021, and the report provided that the injections in her heels were beneficial but only lasting one to one and a half months. Her gabapentin was increased and she continued with hydroxychloroquine and diclofenac gel. (Cl.Ex 1, pp. 47-50) The claimant returned to Dr. Goodson on March 3, 2021, and the report provided that x-rays showed no acute fracture of the left foot and no periosteal reaction to suggest an acute occult fracture of the midfoot. (Cl.Ex. 1, pp. 51-53) A few days later on March 8, 2021, the claimant returned to the Cabot Foot Clinic and the report provided for plantar fasciitis of the left heel with treatment by corticosteroid injections. (Cl.Ex. 1, pp. 54-56)

The claimant received an MRI of the left foot on March 8, 2021, and the report provided for no fracture or marrow signal abnormality with normal midfoot alignment with some joint marginal spurring and effusion. The imaged flexor and extensor tendons appeared normal with some mild subcutaneous edema in the dorsal midfoot/forefoot. The report further provided for no stress fracture. (Cl.Ex. 1, pp.57-58)

The claimant returned to Dr. Goodson on March 17, 2021. The report provided that the claimant was returning for MRI results and went on to state that the left foot and ankle were stable and normal. There was no evidence of an occult fracture, but there was mild subcutaneous edema within the dorsal midfoot. No symptoms were referable to the ankle and the pain was localized to the middle cuneiform as well as the adjacent second tarsometatarsal joint and base of the second metatarsal. Mild tenderness to palpitation at the site was slightly improved from the last visit. (Cl.Ex. 1, pp. 59-64)

The claimant returned to see Dr. Chi on April 14, 2021, and also on May 24, 2021. The April report provided the claimant was doing very well and the heel injections were beneficial but only lasting 1 to 1-½ months. The assessment was again of osteoarthritis,

a bone spur, with long-term drug therapy. The report also provided there was an increased amount of paresthesias in the bilateral feet and sciatica. The July report provided she returned for multiple reasons but primarily for her foot injury from work. Her biggest complaint on this visit was pain isolated to the dorsum aspect of her left foot. The report provided that, “we did discuss that this was likely due to her osteophytosis. (Cl.Ex. 1, pp. 65-72)

The claimant presented to Lonoke Physical Therapy multiple times between April 29, 2021, and June 10, 2021. The reports provided that she was presenting due to her left foot contusion and was experiencing a burning on the top of her left foot. She stated that this causes her difficulty in sitting and standing. The discharge on June 10, 2021, provided that the frequency of her pain has improved. Sitting or driving for an extended period of time was still a major problem. Getting up in the morning and placing weight on her foot normally increased her pain. (Cl.Ex. 1, pp. 73-116)

Claimant then returned to Dr. Goodson on June 16, 2021. The report provided that there was a frank discussion about no evidence of a fracture or soft tissue injury. Due to persistent symptoms, we would initiate physical therapy. Dr. Goodson further provided that he explained to the claimant that this was an injury involving a stretch or a tear of a foot ligament. Surgical intervention was reserved for cases in which the sprain resulted in joint instability, joint malalignment, a bone fragment in the joint, or a significant fracture. Care of a foot sprain was generally conservative, involving interventions like icing, directed physical therapy, NSAIDs, protected weight bearing, and bracing/casting. (Cl.Ex. 1, pp. 117-120)

On August 9, 2021, the Arkansas School Boards Association sent a letter to Dr. Goodson, asking if the major cause of the claimant's left foot pain (greater than 50%) was the result of cafeteria work. (Cl.Ex. 1, p. 121) His response was, "I believe that it is based on previous clinical and radiographic evaluation over the last 6 plus months of care since initial presentation on January 25, 2021. This is also based upon review of patient's outside clinical records prior to presentation to my clinic." (Cl.Ex. 1, p. 122)

The claimant then presented to the Bowen Hefley Clinic on December 2, 2021, and Dr. Jesse Burks, a podiatrist. He ordered an MRI of the left foot. (Cl.Ex. 1, pp. 123-127) The claimant returned to Dr. Burks on December 14, 2021, in regard to her right knee with the report providing that she had been a patient due to her left knee. The report provided for crepitus throughout the range of motion of testing. He recommended physical therapy, home exercises, and over the counter medications. (Cl.Ex. 1, pp. 128-130) The claimant again returned to Dr. Burks on December 15, 2021, this time for the left foot and for a review of the MRI. The MRI findings provided there was no evidence of an occult fracture, mild grade chondromalacia was noted in the tarsal navicular at the talonavicular joint, moderate DJD was noted at the second through the fifth TMT joints, normal flexor and tensor ligaments, moderate edema in the ventral aspect of the subcutaneous of the midfoot, and an increased T2 signal noted in the intact Lisfranc Ligament, which was consistent with a sprain. The report provided that the claimant was 5'2" and 260 pounds and encouraged exercise and a healthy lifestyle. (Cl.Ex. 1, pp. 131-133) On December 15, 2022, Dr. Burk ordered Toradol, based upon a phone call from the claimant in regard to her foot pain. The report also mentioned that tarsometatarsal arthrodesis would most likely be pursued. He provided that the claimant could return to

work immediately on December 15, 2021, with no described limitations. (Cl.Ex. 1, pp. 134-136) The claimant returned to Dr. Burks on January 19, 2022, and arthrodesis of the affected joints was discussed and the claimant was told that there was no rush for the procedure. The report provided that the arthrosis was secondary to trauma. (Cl.Ex. 1, pp. 137-139)

On January 31, 2022, Dr. Burks issued a letter to Ann Wilson, nurse manager, where he opined that the claimant's original diagnosis on February 8, 2021, was of a foot sprain and his working diagnosis had been a tarsal-metatarsal dislocation. The pathology on the MRI and x-rays revealed increased separation between the medial and intermediate cuneiforms and was injury related, and he did not find any pre-existing condition. He went on to state that he believed all of the claimant's symptoms were related to the injury of January 8, 2021, and consequently recommended a limited tarsometatarsal arthrodesis. (Cl.Ex. 1, p. 140)

At this point, Ms. Ingle, mailed a letter to Dr. Troy Ardoin of OrthoArkansas, with a number of specific questions. (Cl.Ex. 1, pp. 141-145) Dr. Ardoin issued an IME where he stated the claimant had a history of aggressive osteoarthritis and had been treated by Dr. Chi, Dr. Goodson, and Dr. Burks. He opined that the claimant had more evidence of degenerative erosive arthritis now, however the contusion likely did not predispose her to this. This was made within a reasonable degree of medical certainty given her diagnosis or erosive osteoarthritis and morbid obesity. He went on and stated that the claimant was at MMI and had no permanent impairment. (Cl.Ex. 1, pp. 146-152) Dr. Ardoin then issued a return to work note for Julie Ingle providing he had seen her in his office on May 19, 2022, and she could return to work/school full duty, with no restrictions. (Cl.Ex. 1, p. 152)

The claimant's attorney mailed a letter to Dr. Burks on September 12, 2022, where he forwarded the report and opinion of Dr. Ardoin and asked Dr. Burks why he believed that additional medical treatment was appropriate and necessary. Dr. Burks responded by letter on October 25, 2022, stating he had an opportunity to review, "Ms. Ingel's independent medical evaluation performed by Dr. Gregory Ardoin. He opined as follows:

"I continue to feel, in my professional opinion, that the nature of her injury directly contributed to the pain in her midfoot. They (sic) degenerative changes in the tarsometatarsal region of her foot are consistent with her description of the pain and also the injury."

"This is a progressive condition, that we will at some point require surgical intervention." (Cl.Ex. 1, pp. 155-156)

DISCUSSION AND ADJUDICATION OF ISSUES

In the present matter, the parties stipulated the claimant sustained a compensable injury on January 8, 2021. It is also clear and admitted by the claimant that she had been suffering extensive osteoarthritis in every joint for five (5) to ten (10) years prior to the above date, had been treated by Dr. Chi, a rheumatologist, for arthritis pain, and that she also suffered from plantar fasciitis in both feet prior to the accident and was being treated at the Cabot Foot Clinic. A few days after the accident, the claimant's ankle was swollen and she contended her feet, ankles, and knees were burning. She testified that prior to the accident, the plantar fasciitis was mainly in her heel and the bottom of her foot, but after the accident it was more or less in the center of her foot on the top. A medical report prior to the accident provided that the claimant was suffering from increased pain to both feet. After the accident, an x-ray of the left foot dated January 20, 2020, was negative

with no acute fracture identified, no tissue swelling and no degenerative change. A progress report five (5) days later provided for mild to moderate swelling in the midfoot.

The claimant continued to treat with Dr. Chi and started treatment with Dr. Goodson, an orthopedist, in regard to her left foot. An MRI on March 8, 2021, provided for no fracture and for no marrow signal abnormality, with normal midfoot alignment and with some marginal joint spurring and effusion. The imaged flexor and extensor tendons appeared normal with some mild subcutaneous edema in the dorsal midfoot area. No stress fracture was noted. On August 9, 2021, Dr. Goodson responded to a letter from the Arkansas School Board Association which asked if the major cause of the claimant's left foot pain (greater than 50%) was the result of cafeteria work. He opined that, "I believe that it is based on previous clinical and radiographic evaluation over the last 6 plus months of care since initial presentation on January 25, 2021. This is also based upon review of patient's outside clinical records prior to presentation to my clinic." He had earlier stated in the medical records that this was an injury revealing a stretch or tear of a foot ligament and surgical intervention in a matter such as this was reserved for cases in which the sprain results in joint instability, joint malalignment, bone fragments in the joint, or a significant fracture which did not appear to be present in the current situation and he recommended conservative treatment.

Claimant testified she continued to suffer pain and was allowed to go twice to Dr. Burks, a podiatrist, for a second opinion which was set up by workers' compensation. Dr. Burks ordered a second MRI, and on or about December 15, 2021, the MRI report provided no evidence of an occult fracture, but did provide for mild chondromalacia, moderate DJD, normal flexor and tensor ligaments, moderate edema in the ventral aspect

of the subcutaneous and an increased T2 signal in the intact Lisfranc Ligament which was consistent with a sprain. Dr. Burks stated that the claimant could return to work immediately.

On January 31, 2022, Dr. Burks responded to a letter from nurse manager for Julie R. Ingle and opined that the pathology on the MRI was injury related and he did not find any pre-existing condition, that all the claimant's symptoms were related to the injury of January 8, 2021, and recommended a limited tarsometatarsal arthrodesis.

The claimant was then sent to Dr. Ardein, who apparently only saw the claimant once, and issued a return to work for the nurse manager involved in this manner. He did opine in his medical opinion that within a reasonable degree of medical certainty, there was now more evidence of degenerative erosive arthritis, and the contusion did not likely pre-dispose of this.

In determining whether the claimant has sustained her required burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. §11-9-704. *Wade v. Mr. Cavanaugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden, by a preponderance of the evidence. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 635 S.W. 2d 823 (1982). 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. 263,

101 S.W.3d 252 (2003). Further, pursuant to Ark. Code Ann. §11-9-509(a), medical benefits owed under the Workers' Compensation Act are only those that are reasonable and necessary. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary for the treatment of the compensable injury. *Owens Plating Co. v. Graham*, 102 Ark. App. 299, 284 S.W. 3d 537 (2008). What constitutes reasonable and necessary treatment is a question for the Commission. *Anaya v. Newberry's 3N Mill*, 102 Ark. App. 119, 282 S.W. 3d 269 (2008). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are casually related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. *Foster v. Kann Enterprises*, 2019 Ark. App. 746, 350 S.W.2d 796 (2009). It is also noted that an employer takes an employee as it finds him or her and that employment circumstances that aggravate preexisting conditions are compensable. *Barber v. Pork Group, Inc.*, 2012 Ark. App. 138

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Powers v. City of*

Fayetteville, 97 Ark. App. 251, 248 S.W.3d 516 (2007). Where there are contradictions in the evidence, it is within the Commissions' province to reconcile conflicting evidence and to determine the true facts. *Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, 258 S.W.3d 394 (2007). The Commission has authority to accept or reject medical opinion and to determine its medical soundness and probative force. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998). However, the Commission may not arbitrarily disregard the testimony of any witness. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

Dr. Goodson saw the claimant multiple times, ordered x-rays and an MRI, and recommended conservative treatment for the claimant. Dr. Burks opinion provided that he could not find a pre-existing condition, that all the claimant's symptoms were related to the injury of January 8, 2021, and recommended surgery. It is clear from the evidence and from the admissions of the claimant that she was suffering from multiple pre-existing conditions such as arthritis and was treating with Dr. Chi, and also treating at the Cabot Foot Clinic for plantar fasciitis prior to the accident. In addition, it is noted that Dr. Ardoin opined that the claimant now had more evidence of degenerative erosive arthritis based upon the last MRI available, and that the contusion did not likely predispose this. Consequently, the opinion of Dr. Goodson is found to be controlling and given the greater weight and the surgery recommended by Dr. Burks is found to not be a reasonable and necessary for the treatment of the compensable injury.

In regard to the average weekly wage, the claimant admitted that her contract ran from August 24, 2020, through June 2, 2021, and consequently, this works out to 40.43

hours per week. The make the average weekly wage \$416.72 and the temporary total disability/permanent partial disability rates of \$278.00 / \$209.00, respectively.

Based upon the above evidence and the applicable law, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof of proof, by a preponderance of the evidence, that the medical treatment as recommended by Dr. Burks, consisting of surgery, is reasonable and necessary for the treatment of the compensable injury. Additionally, it is found that the claimant's average weekly wage is \$416.72 and the temporary total disability/permanent partial disability rates are \$278.00 / \$209.00, respectively. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge