

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004171

JOSHUA SHELTON,
EMPLOYEE

CLAIMANT

NUCOR YAMATO STEEL CO.,
EMPLOYER

RESPONDENT

ARCH INSURANCE COMPANY, CARRIER/
SEDGWICK CLAIMS MANAGEMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 7, 2024

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 MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed August 22, 2023. The administrative law judge found that the claimant sustained a compensable back injury. The administrative law judge awarded medical treatment and temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable back injury. We find that the medical treatment of record, including the recommendation of a spinal cord stimulator, was reasonably necessary in accordance with Ark. Code Ann.

§11-9-508(a)(Repl. 2012). The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits.

I. HISTORY

The testimony of Joshua Wade Shelton, now age 52, indicated that he became employed with the respondents, Nucor Yamato Steel Company, in about 2002. The parties initially stipulated that Mr. Shelton “sustained a compensable injury to his back” on June 25, 2020. The claimant testified that he slipped and fell while stepping over a “roll line.” The claimant testified that he reported the incident to his supervisor, and that the respondent-employer arranged for the claimant to obtain medical treatment.

According to the record, the claimant treated with Dr. Robert Riley Jones at OrthoSouth on June 26, 2020:

This is a 48 year old male who is being seen for a chief complaint of Acute Low Back Pain, involving the lumbar spine and spine. This occurs in the context of tripped and fell at work. DOI 06/25/2020. The pain has been present for 1 day. The lumbar spine and spine pain is aggravated by all movement and is constant....

Patient presents today with complaint of pain primarily in his left back and buttock. This gentleman works for Nucor and was injured on 6/25/2020 when he tripped and fell forward. He hit his right knee but that is doing relatively well right now but about 20 minutes after he fell he began to have pain in his left lower back. Pain is primarily in the back but over the last several days it has radiated down into his posterior thigh on the left. No real numbness but he does have pain he has difficulty with moving around changing positions. He had previous surgery at L5-S1 [laminectomy] of Semmes Murphy on December 20, 2018. He had [an] excellent result from this....

L-Spine inspection: **left and right paraspinal musculature tender to palpation**[.]...
X-ray [shows] decreased disc space at L5-S1 and hemilaminectomy left.

Dr. Jones planned, "I am going to put the patient on a Medrol Dosepak. He is already taking Flexeril. We have ordered an MRI of his lumbar spine with and without contrast. He is off work. Depending on what we see on the MRI we will either do [an] epidural block or have him see a spine surgeon." Dr. Jones' impression was "1. Spondylosis, lumbar." Dr. Jones also stated, "The injured worker is unable to return to work until further specified."

An MRI of the claimant's lumbar spine was taken on June 26, 2020 with the following pertinent findings:

L4/5: No dural sac compression is apparent. Mild bilateral foraminal narrowing is observed.
L5/S1: Postsurgical changes on the left are apparent. Enhancing material most consistent with epidural fibrosis involves the left S1 nerve root. Mild disc bulge and spondylosis is observed and appears chronic in nature. There is no dural sac or S1 root impingement. Mild bilateral foraminal narrowing is observed.
Impressions: 1. No disc herniation, dural sac compression or nerve root impingement.
2. Mild degenerative change at L5-S1.

The parties stipulated that the respondents "accepted this claim as compensable and paid some benefits."

The claimant was provided physical therapy visits beginning June 29, 2020.

Dr. Jones noted on or about July 24, 2020, "This is a 48 year old male who is following up for Lumbar Sprain (Sprain of ligaments of lumbar spine, initial encounter) on the lumbar spine....Patient comes in having had to see my partner Dr. Ferguson. He had spasms and Dr. Ferguson changed his medications to Toradol and Robaxin this appeared to help him. He also kept him off work for a few days and that has helped. He would like to try to go to therapy [as] many days as they will allow him and apparently the therapist is at the plant 4 days a week. He is having no real spasm this time but he still has difficulty with flexion and extension....Patient has had some mild improvement. I think we will go let him continue to be off work. We will continue his present medications and let him go to therapy 4 times a week for 1 week." Dr. Jones' impression was "1. Lumbar Sprain." Dr. Jones stated, "The injured worker is unable to return to work until further specified."

Dr. Jones noted on or about July 31, 2020, "The injured worker is unable to return to work until further specified. OFF WORK, and he was prescribed Robaxin-750 750 mg tablet (1 po hs for muscle spasms)....He is doing exercises and PT 4 days a week."

Dr. Todd E. Fountain examined the claimant at Semmes-Murphey Clinic on September 24, 2020:

The patient is a very pleasant 49-year-old gentleman previously operated on for a left L5-S1 herniated nucleus

pulposus. He did very well from that operative intervention in 2018. Unfortunately, while at work, he suffered a fall forward from a standing height, landing onto a metal crate with his right knee. He states he felt pain initially in his right knee, but that subsided, but it was a few hours later he felt a significant increase in pain in the left back. Unfortunately, that has been unrelenting since that initial injury. He has been seeing OrthoSouth who have been treating him with physical therapy and medication, but he has not made a significant response, has not been able to return back to work. This led to MRI imaging of his lumbar spine....

Fortunately, he does not have any new or recurrent disc herniations or residuals. His foramen are patent and nerve elements are free. His canal is widely patent. There is no significant compression. His x-ray imaging also reveals his alignment to be preserved with no overt motion changes on flexion-extension. He does have some facet arthropathy at the 4-5 and 5-1 facets....

Plan: Possible facetogenic pain, L4-5/L5-S1. I discussed with the patient treatment options at this time. We will have him see one of our pain specialists for evaluation of facet test block followed by ablative treatment as necessary. As I see no overt structural abnormalities, I do not think I have an operative intervention that would be amenable to him at this time. He understands. We will not change his work status; he remains off work.

Dr. Jones' impression on November 10, 2020 was "1. Lumbar Sprain" and "Sprain of ligaments of lumbar spine, initial encounter." Dr. Jones returned the claimant to full-duty work, "The patient is discharged from care. DISCHARGED MMI."

The impression of Dr. Jay McDonald on January 14, 2021 was "1. Lumbar spondylosis at L4 to S1 on the left. 2. History of disc herniation, stable, no radiculopathy." The record indicates that Dr. McDonald performed "Medial branch nerve blocks of L4-S1" on February 1, 2021. Dr.

McDonald noted on June 3, 2021, "Mr. Shelton is a 49-year-old male with a history of low back pain. He underwent a left L4 to S1 radiofrequency ablation. He says he is about 75% better. He has been able to be more active. He does have usual typical soreness after a day of being active but at this point he thinks he is on the road to recovery and he is happy about that."

Dr. Jones noted on December 22, 2021, "We have had a long discussion with the patient gone through [his] records with him. It appears that some of this is still a radiculopathy possibly secondary to scar tissue. There is nothing really for of (sic) the neurosurgeons to operate on. I do not see anything from the orthopedic standpoint to be done. I think it is reasonable to proceed with a trial of the spinal cord stimulator and see if this gives him any improvement. Even with a spinal cord stimulator I doubt that he will return to full duty."

Dr. Jones signed a Form AR-3, PHYSICIAN'S REPORT on or about December 24, 2021. Dr. Jones reported that the diagnosis was "Spondylosis without myelopathy or radiculopathy, lumbar region." Dr. Jones checked a box indicating, "The claimant has suffered no permanent impairment due to his/her work-related injury." Dr. Jones also indicated that the "maximum medical improvement date (end of healing period)" was December 22, 2021.

The claimant testified that he did not receive any workers' compensation benefits after January 10, 2022. Dr. Jones' impression on January 11, 2022 was "1. Lumbar sprain," "Sprain of ligaments of lumbar spine." Dr. Jones again returned the claimant to full-duty work, stating, "The following work restrictions were determined: - none. No functional limitations or restrictions....The patient is discharged from care. DISCHARGED MMI."

Dr. Jones reported on or about January 24, 2022:

This is a 50 year old male who is following up for Lumbar Sprain (Sprain of ligaments of lumbar spine, initial encounter). He was seen on December 22, 2021, at which time he was given the following activity guidelines: "SEDENTARY DUTY-LIMITED WALKING." Return date: 12/22/2021.... Patient comes in today more for a conference than any treatment or examination. He apparently has been told that he is at his maximum. They did not allow him to try the spinal cord stimulator. He is questioning me about possibility of getting a repeat bone scan since his original bone scan showed some increased uptake in the lower back.... We have had a long discussion today concerning the fact that we had discharged him in November 2020. He then had a another (sic) problem and really has been taken care of by Dr. McDonnell who is the one who recommended a spinal cord stimulator. In my last office visit I made a note that I thought that it might be a reasonable thing to do considering his complaints of pain. He is here on his private insurance he would like for me to repeat his bone scan to see if anything has changed. I have no problem with that. Arrangements will be made for the bone scan under his private insurance. We will have it done at the same place he had his first bone scan so they can compare adequately.

Dr. McDonald reported on February 28, 2022:

Mr. Shelton is here for followup. We had discussed the spinal cord stimulator, but apparently, all further medical care has been denied by Worker's Comp. He is looking into that currently. In the meantime, he is asking for some medication. He says the Celebrex does not really cover him very well. He says this has really affected his whole life, and he is pretty upset about it. He complains of the same pain across his back and down the left leg. It sounds like his further care is being denied by Worker's Comp because they feel that this is all related to his surgery in 2018 but not from the fall that he had at work in 2020....

Plan: 1. I would like to point out that I think that the pain that we are dealing with currently is related to his fall in 2020. Based on the timeline of his symptoms, I think he would be an excellent candidate for a spinal cord stimulator, so hopefully, we will be able to go down that route.

2. He is telling me that in the meantime, he would need some medication because he is so miserable, and we discussed that we are not a chronic pain clinic, but if he is denied to have the stimulator, then I need to refer him to a chronic pain clinic. In the meantime, I wrote Norco 7.5 q. 6 h. #60 with no refills, and he will follow up with me as needed based on how everything goes with Worker's Comp and the getting the stimulator.

ADDENDUM

He wanted me to clarify whether he was under his PCP's care or my care. I told him that even if he is released at maximum medical improvement by his PCP/orthopedic surgeon, he is still under my care, and I reinforced that the plan was to see if we can get a stimulator trial done, but if not, then we will see how he does with the medication, and if that works well for him, then I would eventually need to refer him out to a chronic pain clinic. Also, I am keeping him at sedentary duty for work.

The record indicates that Dr. McDonald referred the claimant to Dr.

Moacir Schnapp, who reported on March 28, 2022:

This is a 50-year-old white male who comes to us with a primary complaint of bilateral low back and proximal left lower extremity pain for the past two years.

This gentleman had an on-the-job injury in June 2020. Since then, he has had severe pain across his back and leg. He was treated at Semmes Murphey Clinic. The story is, however, more complicated including:

1. Lumbar laminectomy with an L5 discectomy in 2018, not work-related.
2. On-the-job injury June 2020 followed by intensive treatment with blocks, radiofrequency ablation.
3. He has been offered spinal cord stimulator but his carrier has denied it.

He describes pain as being constant, aching, and throbbing across his back but also with a moderate degree of sciatica proximal greater than distal....

He has undergone extensive workup including an MRI of the lumbar spine and this was reviewed with the patient. It shows epidural fibrosis on the left lateral canal around the left S1 nerve. An EMG and nerve conduction performed by Dr. Graham shows a left lumbar radiculopathy.

Radiofrequency ablation between L4-S1 has provided partial relief of his low back pain but still insufficiently. He comes to us for evaluation and pain management.

Since Worker's Compensation denied his spinal cord stimulator and he was told that he is not covered under Worker's Compensation anymore, so he comes today on his regular insurance.

He gets up with stiffness. He walks with a limp on the left. There is flattening of the lumbar lordosis. There is decreased range of motion of the lumbar spine for flexion, extension and rotation. No long tract signs. No atrophy or fasciculations.... Psychologically he is stable without signs of depression or anxiety....

He has a well-healed laminectomy scar.

I reviewed his records, his EMG, surgery, and MRI. Clearly, he suffers from post laminectomy syndrome and he has failed most other treatments. It is clear, in my opinion, that a spinal cord stimulator is the next option. We will obtain psychological evaluation for spinal cord stimulator.

In the meantime, we need to think outside the box and we will allow him to use Marinol as an anti-neurogenic drug and keep him on Percocet after fully advising him as to the potential for dependency, addiction, respiratory depression, etc. We spent the majority of our 50 minutes going over pain, pain

management, pathophysiology of the pain and alternatives for the future. He also understands that we are not primarily a medication management facility.

A pre-hearing order was filed on May 10, 2023. According to the pre-hearing order, the parties agreed to litigate the following issues:

1. Whether Claimant is entitled to additional reasonably necessary medical treatment previously denied by Respondents.
2. Whether Claimant is entitled to temporary total disability benefits from January 9, 2022, to a date yet to be determined.
3. Attorney's fee.

Dr. McDonald signed a prepared questionnaire on June 27, 2023 and indicated, among other things, that the claimant was "not at maximum medical improvement."

A hearing was held on July 28, 2023. At that time, the claimant contended, among other things, that he sustained "a compensable aggravation of a pre-existing condition" on or about June 25, 2020. The claimant contended that a spinal cord stimulator was reasonably necessary. The claimant contended that he was entitled to temporary total disability benefits "from the date that the respondents terminated benefits." The claimant contended that he was entitled to temporary total disability benefits "from January 11, 2022 to a date yet to be determined."

The respondents contended, among other things, that there were "no objective medical findings to corroborate the compensable injury." The

respondents contended that there was “no proof that’s objective that the claimant sustained a new injury in this case.”

An administrative law judge filed an opinion on August 22, 2023. The administrative law judge found, among other things, that the claimant sustained a compensable back injury. The administrative law judge awarded medical treatment and temporary total disability benefits. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

- (A) “Compensable injury” means:
 - (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-

102(4)(E)(i)(Repl. 2012). 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).

An administrative law judge found in the present matter, “5. Claimant did sustain a compensable back injury on June 25, 2020.” The Full Commission affirms this finding. The claimant’s testimony indicated that he became employed with the respondents in about 2002. The claimant testified that he was working for the respondents as a Torch Inspector on June 25, 2020. The claimant testified that he slipped and fell that day while stepping across a “roll line.” The claimant testified that he at first felt pain in his right knee but afterward began suffering from back pain. The claimant testified that he reported the accidental injury to his supervisor, and that the respondents arranged for him to treat with a physician. The claimant began treating with Dr. Jones on June 26, 2020, and the parties stipulated that the respondents “accepted this claim as compensable and paid some benefits.”

Dr. Jones’ diagnosis on July 24, 2020 was “Lumbar Sprain (Sprain of ligaments of lumbar spine, initial encounter) on the lumbar spine.” Dr. Jones noted that Dr. Ferguson had prescribed medications for the claimant to treat “spasms” following the accidental injury. Dr. Jones reported on or about July 31, 2020 that he had prescribed Robaxin “for muscle spasms.”

Muscle spasms can constitute objective medical findings to support compensability. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000), citing *Continental Express, Inc. v. Freeman*, 66 Ark. App. 102, 989 S.W.2d 538 (1999). In the present matter, Dr. Jones diagnosed “Lumbar Sprain” following the accidental injury, and he prescribed Robaxin “for muscle spasms.” The Full Commission finds in the present matter that the treating physician’s diagnosis of “Lumbar Sprain” accompanied by a prescribed treatment of medication for “muscle spasms” is sufficient to establish objective findings of a compensable injury. *See Bradford v. Stracener Bros. Const.*, 2021 Ark. App. 316, citing *Melius v. Chapel Ridge Nursing Ctr., LLC*, 2021 Ark. App. 61, 618 S.W.3d 410.

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on June 25, 2020. The claimant also established a compensable injury by medical evidence supported by objective findings, namely Dr. Jones’ prescription of medication for muscle spasm following the accidental injury. We find that these objective medical

findings reported by Dr. Jones were causally related to the June 25, 2020 compensable injury and were not caused by a prior injury or pre-existing condition.

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 must prove by a preponderance of the evidence that he is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). 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, “The Claimant is entitled to additional medical treatment for his back injury of June 25, 2020.” The Full Commission finds that the treatment of record on and after June 26, 2020 was reasonably necessary in connection with the compensable injury. Said reasonably necessary medical treatment includes trial of a spinal stimulator.

The claimant proved by a preponderance of the evidence that he sustained a compensable injury on June 25, 2020. Dr. Jones subsequently diagnosed “Lumbar Sprain,” and the claimant was treated conservatively.

The claimant was provided treatment to include physical therapy, but no treating physician has recommended that the claimant is a candidate for surgery. Dr. Jones noted in December 2021, "I do not see anything from the orthopedic standpoint to be done. I think it is reasonable to proceed with a trial of the spinal cord stimulator and see if this gives him any improvement." Dr. McDonald stated in February 2022, "Based on the timeline of his symptoms, I think he would be an excellent candidate for a spinal cord stimulator, so hopefully, we will be able to go down that route." Dr. Schnapp reported in March 2022, "It is clear, in my opinion, that a spinal cord stimulator is the next option. We will obtain psychological evaluation for a spinal cord stimulator." The claimant testified that he had undergone a psychological evaluation, as a result of which he was "a prime candidate for the spinal cord stimulator."

It is within the Commission's province to weigh all of 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, the Full Commission finds that, with regard to trial of a spinal cord stimulator, the opinions of treating physicians Dr. Jones, Dr. McDonald, and Dr. Schnapp are entitled to significant evidentiary weight. We therefore find that trial of a spinal cord stimulator is reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

C. Temporary Disability

Finally, 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 the injury will permit. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). If the underlying condition causing the disability has become more stable and nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* The determination of when the healing period ends is a question of fact for the Commission. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

An administrative law judge found in the present matter, “4. The Claimant is entitled to additional temporary total disability benefits from June 25, 2020, through a date to be determined.” The Full Commission does not affirm this finding. As we have discussed, the claimant proved that he sustained a compensable back injury on June 25, 2020. Dr. Jones subsequently diagnosed “Lumbar Sprain (Sprain of ligaments of lumbar spine, initial encounter)” on the lumbar spine.” The parties stipulated that

the respondents initially accepted the claim as compensable and paid benefits. The claimant was provided physical therapy and treatment in the form of “radiofrequency ablation.”

Dr. Jones signed a Form AR-3, PHYSICIAN’S REPORT on or about December 24, 2021. Dr. Jones opined, among other things that the “maximum medical improvement date (end of healing period)” was December 22, 2021. Based on Dr. Jones’ credible report, the Full Commission finds that the claimant reached the end of his healing period for the compensable lumbar sprain no later than December 22, 2021. Temporary total disability benefits cannot be awarded after a claimant’s healing period has ended. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). The claimant on appeal contends that he is entitled to temporary total disability benefits beginning January 10, 2022 to a date yet to be determined. The Full Commission finds that the claimant did not re-enter a healing period at any time after December 22, 2021; therefore, the claimant did not prove he was entitled to temporary total disability benefits beginning January 10, 2022. We recognize that Dr. McDonald signed a prepared questionnaire on June 27, 2023 which indicated that the claimant was “not at maximum medical improvement.” The Full Commission finds that the questionnaire on June 27, 2023 is entitled to minimal evidentiary weight when compared to Dr. Jones’

determination that the claimant reached maximum medical improvement and the end of his healing period no later than December 22, 2021. The Full Commission's award of a spinal cord stimulator trial does not extend the claimant's healing period. We find that a spinal cord stimulator in the present matter is geared toward management of the claimant's injury beyond the end of the healing period. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable back injury. We find that the medical treatment of record following the compensable injury, including the recommendation of a spinal cord stimulator, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits. For prevailing in part on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant met his burden of proving that he sustained a compensable back injury on June 25, 2020.

A compensable injury is an accidental injury arising out of the course of employment caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This requires that a claimant establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i) and Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective

findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). When determining physical or anatomical impairment, complaints of pain may not be considered by the physician or any other medical provider, an administrative law judge, the Workers' Compensation Commission, or the courts. Ark. Code Ann. § 11-9-102(16)(A)(ii).

Here, the ALJ opines that, under our rules, muscle spasms constitute objective medical findings. See *Kimbrell v. Arkansas Department of Health*, 66 Ark.App. 245, 989 S.W.2d 570 (1999). This, however, requires that certain elements be met, including the "observation of 'an involuntary muscular contraction' or 'increased muscular tension and shortness which cannot be released voluntarily'" to constitute an objective finding. *University of Arkansas Medical Sciences v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997).

At the claimant's initial visit with OrthoSouth in Germantown, Tennessee, Dr. Riley Jones reported that the claimant presented with acute low back pain. (Cl. Ex. 1, P. 1). There were no complaints or findings of muscle spasms at that time. (Cl. Ex. 1, Pp. 1-4). Dr. Jones referred the claimant for an MRI, and there were no radiographic findings beyond mild degenerative changes at L5-S1. (Cl. Ex. 1, P. 5). On June 29, 2020,

claimant began physical therapy at the Nucor-Yamato Health Clinic to address non-work-related lumbar spondylosis and was issued a TENS unit to address this issue at home. (Cl. Ex. 1, P. 7). On July 2, 2020, the claimant presented to physical therapy complaining of “left paraspinal muscle tension and pain,” but there is no indication that the claimant mentioned muscle spasms at that point, and there were no findings of muscle spasms. (Cl. Ex. 1, P. 9). Claimant reported “achy” pain in his central lumbar spine on July 6 and July 7, 2020, but did not begin to complain of “spasms” until July 9, 2020. (Cl. Ex. 1, Pp. 10-12). The physical therapist never observed or diagnosed these purported spasms. Although the claimant informed the physical therapist that his back spasms started immediately after getting up from his fall at work on June 25, 2020, these spasms were never observed. (Cl. Ex 1, P. 28). In fact, Dr. Jones reported on July 24, 2020 that claimant “is having no real spasm at this time.” (Cl. Ex. 1, P. 30). A thorough examination of the medical records reflects that this pattern continues through the claimant reaching maximum medical improvement (MMI) on January 11, 2022. No practitioner ever observed or felt the claimant’s purported muscle spasms, and any mention of muscle spasms in the claimant’s records are based solely upon the claimant’s own statements. The only diagnoses the claimant ever received

was lumbar spondylosis and post laminectomy syndrome resulting from a 2018, non-work-related, laminectomy. (See Resp. Ex. 1, Pp. 62-64).

“When there was no other evidence introduced to the contrary,” findings of tenderness, prescriptions for muscle spasms, and physical therapy and pain management may constitute objective findings. *Melius v. Chapel Ridge Nursing Center*, 2021 Ark. App. 61, 618 S.W.3d 410 (2021); *Fred’s, Inc. v. Jefferson*, 361 Ark. 258, 206 S.W.3d 238 (2005). These two cases rely on a lack of objective testing. In the case before the Commission, there was objective testing. The claimant had two separate normal MRIs, a normal EMG, and normal x-rays showing no objective problems that were not degenerative in nature. Coupled with the absence of any medical professional either witnessing or diagnosing the claimant’s muscle spasms, this case is distinct from *Melius* and *Fred’s*. There were no objective findings of muscle spasms or, indeed, any work-related injury resulting from the claimant’s June 25, 2020 fall.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner