

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G804085

LISA SOWELL,
EMPLOYEE

CLAIMANT

EVERGREEN PACKAGING, LLC,
EMPLOYER

RESPONDENT

ACE AMERICAN INSURANCE COMPANY/
GALLAGHER BASSETT SERVICES, INC.,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 22, 2023

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

Claimant represented by the HONORABLE LARRY J. STEELE, Attorney at Law, Walnut Ridge, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 10, 2023. The administrative law judge found that the Arkansas Workers' Compensation Act was constitutional. 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 permanently totally disabled. After reviewing the entire record *de novo*, the Full Commission finds that the claimant's statutory change of physician has been nullified, so that the claimant is entitled to another change of physician. We find that the claimant did not prove she was permanently

totally disabled. The claimant did not prove that the Arkansas Workers' Compensation Act was unconstitutional.

I. HISTORY

Lisa Michelle Sowell, now age 56, testified that she attended college for one year after graduating from high school. Ms. Sowell testified that she was subsequently employed with Tyson Foods for 17 years. The claimant testified that she also worked for Century Tube, in housekeeping, for approximately five years.

The claimant testified that she became employed with the respondents, then known as International Paper, on or about September 15, 2003. The claimant testified that she worked for the respondents as a "Processor," which duties required unloading railcars and cleaning. After several years of this employment, the claimant began unloading "clamp trucks" for the respondents. The claimant testified that she became a Service Operator for the respondents in 2018.

The parties stipulated that the claimant "sustained a compensable injury to her low back" on or about May 31, 2018. The claimant testified that she slipped on a set of stairs in the workplace and fell. According to the record, an MRI of the claimant's lumbar spine was taken on June 15, 2018 with the impression, "Left neural foraminal zone disc protrusions at L3-L4 and L4-L5 without neural foraminal narrowing."

Dr. Timothee Wilkin noted on July 2, 2018, "Patient here today for f/u on fall at work approx. 6/2. She had back pain, was seen at JRMCC ER, then followed up at our clinic following that. Patient reports that she has not been back to work due to too many restrictions." Dr. Wilkin assessed "Cervical pain," "Prolapse of lumbar intervertebral disc without radiculopathy," and "Low back pain." Dr. Wilkin advised the claimant to follow up with Dr. Victor Vargas, and he stated, "There is no way to connect neck pain to her fall on 6/2."

Dr. Vargas provided an Initial Evaluation on July 9, 2018:

Ms. Sowell is a 51 year old female who presents to my clinic for the first time. The patient has been referred by the Worker's Comp carrier to have an evaluation of the back pain and hip pain.

The patient claimed having an injury when she fell down stairs.

She presents with pain and numbness on the left side. She states that the symptoms have been acute traumatic and began 4 to 5 weeks ago. She indicates the injury occurred at work. She is on Worker's Comp. The accident occurred on 05/31/2018....The patient indicates that the pain is located in the lower back on the left side....

She has returned to work with limitations. The patient brought MRI report of lumbar spine that showed left neuroforaminal disc protrusion at L3-L4 and L4-L5 without neural impingement. No evidence of fractures. No actual images are available....

Dr. Vargas assessed "Low back pain. Contusion of the lower back. Possible strain of the lower back. The patient also had numbness of unknown origin. Degenerative changes at L3 L4, L4 L5 with foraminal

narrowing without evidence of neural impingement. No focal disc herniation or acute events.”

Dr. Vargas’ treatment plan on July 9, 2018 included physical therapy and medication. Dr. Vargas stated, “Patient will be on light duty with no lifting or pushing more than 5 pounds and no lifting over.” The claimant testified on direct examination:

Q. Did you ask for an accommodation from Evergreen? Did you write a letter asking them to give you a job that you could do?

A. Yes, I did.

Q. And did they give you a job?

A. No, they didn’t.

The claimant was provided physical therapy visits beginning July 13, 2018. The claimant testified on cross-examination that she did not benefit from physical therapy.

The claimant followed up with Dr. Vargas on August 6, 2018: “I have reviewed the report from physical therapy (10 15 sessions) that showed that she has improvement of the constant cramping and tightness of the lower back and mid lower back, continues complaining of low back pain and buttock pain....Patient brought MRI of the lumbar spine dated June 15, 2018 and had reviewed the images. Essentially what the radiologist described. The patient had multilevel degeneration of the disks which is mild with some mild protrusion at different levels were assessed to be more pronounced at L4 L5 with some mild foraminal narrowing but no

neurological compromise. There is also facet arthropathy L4 L5 with some mild effusion on the right side secondary to degenerative osteoarthritis of the joint. Definitely no evidence of fractures, anterolisthesis or spondylolisthesis, no focal disc herniation.”

Dr. Vargas’ treatment plan on August 6, 2018 included continued conservative modalities, additional diagnostic testing, and light work duty. Dr. Brent Sprinkle performed electrodiagnostic testing on August 23, 2018 and gave the following interpretation: “No electrodiagnostic evidence of a lumbar radiculopathy, peripheral neuropathy, or focal tibial or peroneal nerve entrapment is seen in the extremity tested today. Additional L2-3 muscles were screened and were normal due to thigh complaints, no focal lateral femoral cutaneous sensory loss was seen on physical exam.”

Dr. Brent Walker performed lumbar injections on September 18, 2018. The claimant testified regarding Dr. Walker’s treatment, “I felt good for about seven days. Then I started feeling the pain coming back after that seven days.”

Dr. Vargas reported on October 4, 2018:

The patient has been treated for 4 months with different modalities for the low back pain without specific objective finding of injury to the lumbar spine.
At this point I am considering that the patient has exhausted the conservative treatment for her lower back pain and the patient has reached maximum medical improvement and is today.

The patient will be released to work full duty but she stated that she is unable to work therefore in order to have objective findings and recommended to have functional capacity evaluation....

The patient is entitled to 0% permanent impairment in regards of her lower back pain....

The claimant participated in a Functional Capacity Evaluation on October 15, 2018: "The results of this evaluation indicate that an unreliable effort was put forth, with 14 of 50 consistency measures within expected limits....Ms. Sowell completed functional testing on this date with **unreliable** results. Overall, Ms. Sowell demonstrated the ability to perform work in at least the **SEDENTARY** classification of work[.]"

Dr. Vargas noted on October 22, 2018:

The functional capacity evaluation was requested for the purpose to understand patient's limitation for work.

The functional capacity evaluation was reported with unreliable results. The results indicated that unreliable effort was put forth with inconsistencies found on 14 out of 50 measurements. This indicates that the patient did not put consistent effort.

Consequently, the actual functional capacity of the patient is unknown and her actual abilities could be higher than the demonstrated at the tests.

Therefore, I am considering that the patient can work on full duty without restrictions.

The claimant was deposed on February 11, 2019. At that time, the claimant testified that she had previously worked as a Service Operator for the respondents for approximately four years. The claimant testified that the Service Operator position included a variety of work responsibilities,

including the “extruder wrap line” job. The claimant testified that “extruder” work was physically difficult. The claimant testified that she had not treated with a physician since Dr. Vargas’ release in October 2018. The respondents’ attorney examined the claimant:

Q. What are you going to do next as far as a job?

A. I mean, hurting like I do, I don’t think I’m going to be able to do another job. So the only thing I can do is to try to apply for my disability.

Q. So you’re planning on filing for Social Security?

A. Right, I mean yes....

Q. Would you be able to drive to work if there was a light duty job?

A. Yes, I could drive that far.

Q. Well, if you had to get up and file all day, do you think you could do that on your feet?

A. Well, see, that wouldn’t be constantly because I could file, you know, sitting down and I could stand a little bit, you know, rotate it out if I started hurting.

The record contains a Change of Physician Order dated June 7, 2019: “A change of physician is hereby approved by the Arkansas Workers’ Compensation Commission for Lisa Sowell to change from Dr. Victor Vargas to Dr. Noojan Kazemi[.]”

Stephanie Whaley, a Certified Case Manager, corresponded with the respondents’ attorney and several other individuals on July 31, 2019:

I wanted to let you know Dr. Kazemi’s office canceled Ms. Sowell’s appointment for this morning due to an out of date MRI. I was told Ms. Sowell would reschedule once the MRI had been done. I reached out to the claimant attorney on file, Laura Beth York, who informed she was no longer representing Ms. Sowell and had closed her file in March. I have not contacted Ms. Sowell as Karen Cates advised no

contact back in January. Would you like me to reach out to her to see if she would even speak with me? Thanks so much!

On August 5, 2019, the respondents' attorney corresponded with counsel for the Commission's Medical Cost Containment Division: "Eli: You set up the change of physician with Dr. Kazemi. He cancelled the appointment and said he would not see the claimant without another MRI. We are not going to authorize the another (sic) MRI as being reasonable and necessary. I don't believe we are required to pay for diagnostic studies as part of the first time visit. We did provide Dr. Kazemi with the first MRI which we paid for as part of the work up on the claimant."

On August 26, 2019, the claimant filed a **COMPLAINT** in the United States District Court for the Eastern District of Arkansas, Pine Bluff Division. The claimant contended that the respondents had discriminated against her under the Americans with Disabilities Act and the Arkansas Civil Rights Act of 1993.

An MRI was performed at Jefferson Regional Medical Center on September 18, 2019 and was compared with the MRI taken June 15, 2018. The following impression resulted: "1. No compression fractures. 2. Mild degenerative disc disease at L3-4 and L4-5. No spinal canal or neural foraminal narrowing at any level."

The claimant testified on direct examination:

Q. And what caused you to have an MRI at Jefferson Regional Medical Center in 2019, a month before the accident, auto accident?

A. It was for Social Security.

Dr. Jason Smith reported on or about September 19, 2019:

This is a 52 year old Female patient. The patient returns having had MRI scan of the lumbar and cervical spine. The cervical spine shows multilevel degenerative disc disease, but no significant central canal stenosis or foraminal narrowing. The lumbar spine actually looks fairly benign. There is a left intraforaminal disc bulge at L3-4 which does correlate with her left anterior thigh pain, but it only causes minimal stenosis, and no obvious neural compression....

Unfortunately, I do not have much to offer her. I recommended that she look into joining the aquatics facility and start walking in water and doing water aerobics. This may help her. I talked with her about considering bariatric surgery. I told her I think she should check it out online, and if she is interested to discuss it with her primary care physician. She will follow up with me on an as needed basis.

Dr. Smith diagnosed "1. Cervical spondylosis" and "2. Lumbar radiculopathy, chronic."

On November 11, 2019, the claimant received emergency medical treatment after a motor vehicle accident. The discharge diagnosis was "MVC (motor vehicle collision): Strain of lumbar region." An x-ray of the claimant's lumbar spine was taken on November 11, 2019 with the impression, "1. Unremarkable radiographic evaluation of the lumbar spine."

The claimant received a series of visits at Liberty Chiropractic beginning December 13, 2019. The claimant presented to Pain Treatment

Centers of America on March 5, 2020, at which time Dr. Sameer Jain performed a lumbar medial branch block.

The claimant was deposed on May 13, 2020 pursuant to the claimant's complaint filed in the United States District Court. An attorney examined the claimant:

Q. And since you have left Evergreen, you have not worked anywhere?

A. No.

Q. Have you applied to work anywhere?

A. No.

Q. Did you ever contact any other employers to ask about jobs?

A. No.

Q. Did you – and why have you not sought other employment?

A. Because, I mean, it's – who would hire me? I can't do anything. I mean, it's – everything I do is limited, everything. And if I would go for another job, I mean, they are not going to accept me the way I am.

Q. What about a desk job, have you applied for any of those?

A. No.

Q. And why not?

A. Because of a desk job you are still going to have to be walking, standing. You are going to have to do lifting. I can't do all of that.

Q. Okay. So you can't even do a desk job. Is that what you are telling me?

A. No.

Q. No, you can't?

A. No, ma'am.

Q. Have you applied for disability?

A. Yes, ma'am.

Q. Social Security disability?

A. Yes, ma'am.

Q. And have you been accepted?

A. Not yet.

Q. When did you apply?

A. It was last year. I think it was in May of last year.

Eli Singer, Staff Attorney, Medical Cost Containment Division,
corresponded with the parties on June 25, 2020:

We received a request from the claimant's attorney, Mr. Steele, in the above-referenced claim for a copy of MCCD's notes regarding the Change of Physician request processed in the Summer of 2019 and an email from the respondent attorney, Mr. Frye, expressing that the respondents would not authorize another MRI. The COP notes are attached. The email is below.

The respondents' attorney subsequently informed Eli Singer on June 25, 2020, "I got a call from Stephanie Whaley who was the case manager that the doctor would not see the claimant without MRI. The appointment was cancelled by us but not by the clinic. I then contacted the Commission."

The parties deposed Dr. Vargas on April 2, 2021. The claimant's attorney examined Dr. Vargas in part:

Q. Do you agree that a functional capacity exam can neither prove nor disprove claims of disability, pain, nor do they necessarily present a true picture? For example, in cases of fibromyalgia, when symptoms are known to wax and wane?

A. The functional capacity evaluation is used to determine if the patient can return to work and what kind of ability the patient can do. And that's why we use the FCE, and that is a standard test to provide reliability.

A pre-hearing order was filed on August 3, 2022. The claimant contended, "Claimant, employee, Lisa Sowell contends she is permanently totally disabled due to lack of care and treatment which was denied by

Evergreen Packaging and Ace American Ins. Co./ESIS, Inc. under the Arkansas Workers' Compensation law for a work-related injury, falling down stairs at work."

The respondents contended, "The Claimant sustained a compensable back injury. She was treated by Dr. Vargas. The Claimant underwent numerous diagnostic studies with (sic) were normal. The Claimant underwent a (sic) FCE and only passed 14 of 50 test (sic) and the result were (sic) unreliable. The Claimant was then released by Dr. Vargas without restrictions and no impairment. The Claimant then requested a change of physician to Dr. Kazemi. Dr. Kazemi refused to see the Claimant without a new MRI. The Respondents refused to order a second MRI. The change of physician requirements are that the Respondents do not have to pay for additional studies as part of the first exam. Dr. Vargas also testified that the Claimant did not need another MRI. Subsequent to this, the Claimant was involved in a motor vehicle accident and injured her low back. She settled this case for \$25,000.00. The deposition of the treating physician Dr. Vargas by Claimant's counsel. Dr. Vargas testified that the claimant had degenerative changes. He testified on impairment that he found no objective finding of any injury. He also said he released the Claimant with no restrictions due to invalid FCE. The Claimant has also listed violations of the 14th Amendment to the Constitution. The contention

is outside the jurisdiction of the Commission. The Claimant has also not listed any relief sought for this violation.”

The parties agreed to litigate the following issues:

1. Whether the Arkansas Workers' Compensation Act is unconstitutional due to denial of due process and equal protection under the 14th Amendment of the United States Constitution because the Claimant was denied an updated MRI and was, thus, unable to treat with her choice of physician.
2. Whether the Claimant is entitled to additional medical treatment (including medication and physical therapy) for her compensable low back injury.
3. Whether the claimant is entitled to permanent total disability benefits.
4. Attorney's fee.

After a hearing, an administrative law judge filed an opinion on January 10, 2023. The administrative law judge found, among other things, that the Arkansas Workers' Compensation Act was constitutional. The administrative law judge found that the claimant did not prove she was entitled to additional medical treatment, and that the claimant did not prove she was permanently totally disabled. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. 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 (2002). 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, “5. That the claimant has failed to satisfy the required burden of proof to show that she is entitled to an additional medical treatment, specifically an additional MRI and physical therapy.” Based on the current record, the Full Commission finds that the claimant did not prove additional medical treatment or additional diagnostic testing was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). However, we find that the claimant proved she was entitled to another change of physician request.

The parties stipulated that the claimant “sustained a compensable injury to her low back” on or about May 31, 2018. The record does not show that the claimant sustained a compensable injury to any anatomic region other than her low back. An MRI of the claimant’s lumbar spine on June 15, 2018 indicated that there were “foraminal zone disc protrusions” at

L3-L4 and L4-L5. No examining or treating physician has opined that the claimant is a candidate for surgery as a result of her compensable injury. Dr. Wilkin assessed “Low back pain” on July 2, 2018 and referred the claimant to Dr. Vargas. Dr. Vargas began treating the claimant conservatively on July 9, 2018. Dr. Vargas specifically recommended physical therapy and medication. The claimant was provided physical therapy visits beginning July 13, 2018, but the claimant testified that she received no benefit from physical therapy. Dr. Walker performed injection treatment on September 18, 2018, but the claimant testified that she received only temporary relief from Dr. Walker’s treatment. Dr. Vargas opined on October 4, 2018 that the claimant had reached maximum medical improvement.

The Full Commission recognizes that an employee may be entitled to reasonably necessary medical treatment after the end of her healing period. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.2d 31 (2004). In the present matter, there are currently no recommendations for additional medical treatment which could be interpreted as being causally related to the May 31, 2018 compensable injury.

As we have noted, however, the record contains a Change of Physician Order dated June 7, 2019: “A change of physician is hereby approved by the Arkansas Workers’ Compensation Commission for Lisa

Sowell to change from Dr. Victor Vargas to Dr. Noozan Kazemi[.]” A case manager notified the respondents’ attorney on July 31, 2019, “I wanted to let you know Dr. Kazemi’s office canceled Ms. Sowell’s appointment for this morning due to an out of date MRI. I was told Ms. Sowell would reschedule once the MRI had been done.” The respondents’ attorney informed the Commission’s Medical Cost Containment Division on August 5, 2019 that the respondents would not authorize another MRI before the claimant saw Dr. Kazemi. The claimant was therefore not able to see or treat with Dr. Kazemi, because of Dr. Kazemi’s apparent unwillingness to examine the claimant before additional diagnostic was performed.

The employer has the right to select the initial treating physician. Ark. Code Ann. §11-9-514(a)(3)(A)(i)(Repl. 2012). An employee may request a one-time change of physician. Ark. Code Ann. §11-9-514(a)(2)(A)(Repl. 2012). When a claimant seeks a change of physician, she must petition the Commission for approval. *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000). When an employee has exercised her absolute, 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. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Nevertheless, the Full Commission is unaware of any statutory

authority or appellate precedent which requires a respondent to authorize diagnostic testing before an employee sees the new physician.

Because Dr. Kazemi refused to visit the claimant without a new MRI, the Full Commission finds in the present matter that the claimant's change of physician request was essentially nullified. We therefore find that the claimant is entitled to another statutory change of physician request. See *Wal-Mart Associates, Inc. v. Keys*, 2012 Ark. App. 559, 423 S.W.3d 683. If the claimant still desires a statutory change of physician, then we direct her to promptly contact the Commission's Medical Cost Containment Division. The respondents will be liable for at least the initial visit with the new physician but shall not be required to authorize treatment or diagnostic testing before the claimant sees the physician.

B. Permanent Total Disability

Ark. Code Ann. §11-9-519(Repl. 2012) provides, in pertinent part:

(e)(1) "Permanent total disability" means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.

(2) The burden of proof shall be on the employee to prove inability to earn any meaningful wages in the same or other employment.

An administrative law judge found in the present matter, "5. That the claimant has failed to satisfy the required burden of proof to show that she is entitled to permanent total disability benefits." The Full Commission affirms this finding. The claimant, age 56, is advancing in age but is not

elderly. The claimant attended college for one year following high school. The claimant has a varied and stable work history, being previously employed at Tyson for 17 years and Century Tube for five years. The claimant became employed with the respondents in 2003. The claimant worked in several different positions for the respondents over the years, and the claimant's testimony indicated that her employment with the respondents occasionally required manual labor.

The parties stipulated that the claimant sustained a compensable injury to her low back on May 31, 2018. The claimant slipped and fell on a set of stairs in the workplace. An MRI taken June 15, 2018 showed lumbar protrusions, but the claimant has never been a candidate for surgery. The record indicates that the claimant chose not to return to work for the respondents following the compensable injury. After several months of appropriate conservative treatment, Dr. Vargas released the claimant to full duty with 0% permanent anatomical impairment on October 4, 2018. The claimant gave "unreliable effort" during a Functional Capacity Evaluation on October 15, 2018. It was concluded, "Overall, Ms. Sowell demonstrated the ability to perform work in at least the **SEDENTARY** classification of work[.]"

The Arkansas Workers' Compensation Commission is not bound by technical rules of evidence but is directed to conduct the hearing "in a manner as will best ascertain the rights of the parties." Ark. Code Ann. §11-

9-705(a)(Repl. 2012); *Clark v. Peabody Testing Servs.*, 265 Ark. 489, 579 S.W.2d 360 (1979). The Commission should be more liberal with the admission of evidence rather than more stringent. *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001).

The Full Commission finds in the present matter that the results of the Functional Capacity Evaluation are relevant and are fully admissible into the record for adjudication. *See Bryant, supra*. It was concluded following the Functional Capacity Evaluation on October 15, 2018 that the claimant could return to at least “Sedentary” employment. Dr. Vargas reviewed the Functional Capacity Evaluation and opined on October 22, 2018, “I am considering that the patient can work on full duty without restrictions.” The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, there are no medical opinions of record contradicting Dr. Vargas’ conclusion that the claimant is able to return to full work duties. The Commission finds that Dr. Vargas’ opinion is supported by the record and is entitled to significant evidentiary weight.

In workers’ compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The Commission is not required to believe the testimony of the

claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The Full Commission also has the duty to decide the case *de novo* and we are not bound by the characterization of evidence adopted by an administrative law judge. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, with regard to her ability to return to appropriate gainful employment, the Full Commission finds that the claimant was not a credible witness. Following the Functional Capacity Evaluation in which it was concluded that the claimant could perform at least “sedentary” work, Dr. Vargas released the claimant to “full duty without restrictions.” The record shows, however, that the claimant did not attempt to return to appropriate work with the respondents or any other employer. In her deposition taken May 13, 2020, the claimant admitted that she had not applied for work with any employer. The evidence of record does not corroborate the claimant’s testimony that she was physically unable to perform even “desk work.” The claimant’s demonstrated lack of interest in returning to work is an impediment to a full assessment of the claimant’s contention that she is permanently and totally disabled. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982). The claimant

did not prove by a preponderance of the evidence that she was permanently and totally disabled as a result of her compensable injury.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove additional medical treatment was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). However, the Full Commission finds that Change of Physician Order dated June 7, 2019 has been rendered void due to Dr. Kazemi's unwillingness to examine the claimant prior to additional diagnostic testing. We therefore find that the claimant proved she is entitled to another change of physician if the claimant requests same. *See Wal-Mart Associates, Inc. v. Keys, supra*. In the event of another change of physician, the respondents must pay for at least the initial visit with the new physician. *See Wal-Mart Stores, Inc. v. Brown, supra*. The Full Commission finds that the claimant did not prove she was permanently and totally disabled as a result of her compensable injury. The claimant did not prove that the Workers' Compensation Act, specifically Act 796 of 1993, is violative of any federal Constitutional provision or applicable amendment to same. *Woods v. Tyson Poultry, Inc.*, 2018 Ark. App. 186, 547 S.W.3d 456, citing *Hopkins v. Harness Roofing, Inc.*, 2015 Ark. App. 62, 454 S.W.3d 751. *See also Strother v. Lacroix Optical*, 2013 Ark. App. 719; *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007).

IT IS SO ORDERED

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner