

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G807060

TINA MELIUS,  
EMPLOYEE

CLAIMANT

CHAPEL RIDGE NURSING CENTER,  
EMPLOYER

RESPONDENT

AMTRUST NORTH AMERICA,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 21, 2024

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

Claimant represented by the HONORABLE MATTHEW J. KETCHAM,  
Attorney at Law, Fort Smith, Arkansas.

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

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed February 27, 2024. The administrative law judge found that the claimant failed to prove she sustained a compensable back injury. The administrative law judge found that the claimant failed to prove she was entitled to additional medical treatment provided in connection with "her compensable piriformis and right thigh injuries." After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

Tina Louise Melius, now age 54, testified that she had been employed with the respondents as an LPN, Nurse Manager. The parties stipulated that the employee-employer-carrier relationship existed on July 11, 2018. The claimant testified on direct examination:

Q. Were you working in your capacity as a Nurse Manager on 7/11 of '18?

A. Yes.

Q. What happened that day?

A. I was coming out of my office....I was told to go to a room and help EMS because they were coming through the door....We entered the room....I lowered the bed down and I just pushed it with my hand and when I went to step, it was – it's like you could almost hear it, but feel it at the same time, a popping in my buttocks on my right side. And when I went to step, my calf drew up and the pain shot down my buttocks to behind my knee. So I stood there for a second and I rubbed my bottom and then I reached down and felt my calf which was rock hard....

Q. When you mentioned what you have described as a pop sensation and sound, where exactly was that?

A. In my right glute.

The claimant testified that she informed a supervisor that a work-related incident had occurred, and that the employer directed her to seek medical treatment.

According to the record, the claimant treated at Mercy Clinic on July 11, 2018: "Tina had just lifting (sic) a patient to the gurney from the bed and when she went to walk away afterwards she had a sharp pain in her right glute." Dr. Keith Holder reported on July 11, 2018, "This is the first examination for this right hip strain. She was provided a mild muscle

relaxer for night use.” The diagnosis was “1. Strain of muscle, fascia and tendon of right hip, initial encounter.” The claimant was treated conservatively, and her Work Status was “Restricted Duty.” The claimant testified that she returned to work at light duty.

Dr. Holder diagnosed the following on August 23, 2018: “1. Strain of muscle, fascia and tendon of right hip, subsequent encounter. 2. Intervertebral disc disorders with radiculopathy, lumbar region.” Dr. Holder continued the Work Status “Restricted Duty.” Dr. Holder instructed the claimant, “Finish therapy. Go for the MRI of the back and right thigh.”

Dr. Holder reported on October 2, 2018, “This is the sixth examination for this right hip strain. She was provided a mild muscle relaxer for night use and one for daytime. I have recommended finishing therapy for the last visit, I have requested [an] MRI of the lumbar and right thigh that was denied. I will now try to refer her for a steroid injection of the ischial bursae at pain management. She will follow up in three weeks.”

The claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on October 16, 2018. The ACCIDENT INFORMATION section of the Form AR-C indicated that the Date of Accident was July 11, 2018 and indicated, “Was helping lift a patient to move to another facility when felt twinge in buttocks. Buttocks and thigh.”

Dr. Roy Sampson noted on November 1, 2018, "She injured herself at her job and has been dealing with hip and back pain from that....She says she had an injury at work and her back and hip have been bothering her severely. She is having trouble getting an MRI of her hip because of workman's comp. Her pain is located in her right hip, back, and hands."

The claimant consulted with Dr. Brian Goodman on November 13, 2018: "Ms. Melius is a 48 y.o. female who presents to the pain clinic with back pain which has been gradually worsening over time. Possible accident or event leading to this pain: July nursing incident, lifting patient, felt a pop, then had spasms in the R buttocks and hamstring." Dr. Goodman's assessment was "1. Muscle strain – likely gluteal. 2. Possible piriformis syndrome." Dr. Goodman planned conservative treatment. The claimant testified that she received pain relief from an injection provided by Dr. Goodman.

The claimant followed up with Dr. Holder on November 30, 2018: "Tina's primary problem is pain located in the right gluteal area....She has had an injection by Dr. Goodman into the trigger point. She returns to him in two weeks. Mild decrease in the pain after the steroid shot." Dr. Holder diagnosed "1. Strain of muscle, fascia and tendon of right hip, subsequent encounter....Tina's recommended work status is Restricted Duty."

A pre-hearing order was filed on February 19, 2019. According to the pre-hearing order, the claimant contended, "1. The claimant was injured on July 11, 2018 while assisting with lifting a patient from the bed to the wheelchair. 2. The claimant reserves the right to amend and supplement her contentions after additional discovery has been completed. The claimant reserves all other issues."

The parties stipulated that the respondents "have controverted the claim in its entirety." The respondents contended that "the claimant is alleging an injury on July 11, 2018, at which time she was helping to lift a patient, and felt pain in the right buttocks and hip. The respondents sent the claimant to Dr. Holder for an evaluation. Dr. Holder found no swelling and released the claimant to light duty, which the respondents accommodated. Dr. Holder opined that the claimant had *piriformis* syndrome, and recommended physical therapy. On October 2, 2018, Dr. Holder ordered an injection in the bursa, which did not provide the claimant with any lasting relief. On November 13, 2018, the claimant was evaluated by Dr. Brian Goodman on a referral from Dr. Holder. Dr. Goodman opined that the claimant had a right gluteal muscle strain, and recommended trigger point injections. It is the respondent's contention that the claimant's current *piriformis* problems are not due to her work related incident, and that there are no objective findings to support a compensable injury."

The parties agreed to litigate the following issues:

1. Whether claimant suffered a compensable injury to her buttocks and thigh on July 11, 2018.
2. Whether claimant is entitled to medical treatment.
3. Whether claimant is entitled to temporary partial disability benefits.
4. Attorney fees.

Dr. Goodman corresponded with a case manager on March 15,

2019:

This is a letter of response to your questions regarding Tina.

1. Diagnosis provided at my visit: muscle strain.
2. Current medical status and prognosis: I don't know, I saw her one time, 4 months ago. No follow up.
3. Objective findings and treatment plan: Right buttocks tenderness to palpation. Treatment plan was to follow up for trigger point injection and reevaluation.
4. Further improvement or MMI? Unknown at this time.
5. Future treatment recommended: Unsure until I see her again, if she ever comes back for a follow up.

A hearing was held on April 16, 2019. The claimant testified on

direct examination:

Q. Are you claiming today that you suffered a back injury?

A. No. No.

Q. Okay.

A. It is just soreness or stiffness. I walk it out.

Q. All right. Where does the pain radiate from?

A. From my buttocks down to behind my knee.

Q. Okay. What is your understanding as to what the problem is?

A. Piriformis syndrome.

Q. What is piriformis, do you know?

A. The piriformis is a muscle that runs like east to west under the glutes and the sciatic nerve runs through there and it's twisting and pinching the sciatic nerve.

An administrative law judge filed an opinion on June 25, 2019. The administrative law judge found, among other things, that the claimant “has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right buttock and thigh on July 11, 2018.” The claimant filed a notice of appeal to the Full Commission.

Dr. Thomas E. Cheyne noted on July 18, 2019:

Ms. Melius is a 48-year-old who presents with chronic right hip pain over the last year. She states she injured it at work one year ago on 7/11/18 whenever she was lifting a patient to a bed and was trying to reach forward and felt pain in her buttock area. She had a few physical therapy treatments. She had one injection at the pain clinic but then Workers' Compensation insurance denied any further injections.... She is nontender in the low back.... X-rays of the lumbar spine are within normal limits for her age as is an AP pelvis.

Dr. Cheyne's impression was “Chronic right hip pain, probable hamstring injury. PLAN: I would recommend getting an MRI of the right hip and pelvis. We will have her continue her naproxen. We will send her to physical therapy, continue her work restrictions as a nurse, and we will see her back after the MRI.” An MRI of the claimant's hip was taken on July 26, 2019 with the impression, “Essentially normal MRI of the bony pelvis and hips.”

Dr. Cheyne reported on July 31, 2019:

Ms. Melius returns for follow up of her chronic right hip pain. She had her MRI scan of her hip which was essentially normal other than an incidental finding of a left ovarian cyst. She has

a history of ovarian polycystic disease so she is well aware of that finding and is seeing her gynecologist in that regard. I continue to believe that this is not a lower back issue. I also do not believe that this is a right hip joint issue but more likely muscle or tendon injury. Other than physical therapy and anti-inflammatories which have so far not helped, I would recommend getting her in to see Dr. Jones just for a second opinion evaluation and get his ideas about the possible source of her pain. We will schedule that appointment as soon as time is available.

Dr. Greg Jones noted on August 21, 2019:

Ms. Melius is a 49-year-old from Alma who presents at Dr. Bishop's request regarding right hip pain and back pain that has been going on since she had a patient lifting incident on 7/11/18. She apparently has been denied as workman's comp. She felt a pop and has had pain in the posterior aspect of her hip, states that she has had a "knot." She has been treating with physical therapy for "piriformis syndrome." She has been told by the therapist on multiple occasions that they can feel the lump. Physical therapy seems to have helped her get some motion back and she is not as tight as she was but she comes in for complaints of her continued hip pain. On exam, she has mild to moderate greater trochanteric bursitis. The radicular pain symptoms are down the right leg and she has mild straight leg raise. I think that she has hurt her back. This isn't a piriformis lesion. Certainly that can contribute to sciatic inflammation, but I think we need to find out at this point, a year after the index injury, if there is something more serious in terms of her back that could be addressed. She was at Chapel Ridge Health & Rehab when this occurred. Dr. Bishop is her primary medical physician. They have an MRI of the hip. I have reviewed it carefully. There is no evidence of tendon avulsion, femoral acetabular arthritis, avascular necrosis, or other intrinsic femoral acetabular issues in terms of the source of her present discomfort. On external rotation, the hip did not reproduce her pain and while palpably she is tender posteriorly along the tract of the sciatic nerve, I do not feel an actual muscle avulsion where the "lump" that the therapist has been so prominent about.



We will see her back when the lumbar MRI is completed and proceed with conservative care further. Previous lumbar spine x-rays from July 18<sup>th</sup> were reviewed. These are from 2019. She has straightening and loss of the lumbar lordosis. There is no obvious listhesis or scoliotic pattern. There is spur-type lipping anteriorly at 4-5 and at T11-12. Disc space heights are fairly well maintained but subchondral endplate sclerosis is noted. On the foraminal outlet view there appears to be facet arthropathy, interference at 4-5 and at 5-1. No fractures and no destruction lesion evident. No new x-rays are made on today's spine films. We will see her when the MRI is completed. No additional x-rays need to be made at that time. Previous hip x-rays were reviewed and although she has some calcific density at the abductor insertion on the right hip, prominent trochanter changes, these are not consistent with femoral acetabular arthritis. No leg length inequality and these again are hip x-rays made in July and no new films are made.

An MRI of the claimant's lumbar spine was taken on August 28, 2019

with the following impression:

1. Central/left paracentral disc protrusion L4-5 level, along with hypertrophy the facets and ligamentum flavum causing at least moderate central stenosis with probable mass effect left L5 nerve root lateral recess.
2. Broad-based central protrusion L5-S1 level mild central stenosis. There may be some mild mass effect left S1 nerve root lateral recess.

The claimant followed up with Dr. Jones on September 4, 2019:

Ms. Melius is a nurse at local Chapel Ridge Health & Rehab. She has been on limited duty pushing a cart. She has not been engaged in lifting activities. She comes back for followup of her MRI. She has lumbar stenosis, facet hypertrophy and degenerative disc changes at L4-5 and L5-S1 with disc protrusion. Her symptoms have improved considerably with the physiotherapy. I do not think she has a herniated disc that requires surgery. We have talked about the implications of this level of back trouble. At age 49 in

terms of her body habitus, her lifting, etc., I recommended that she not be lifting patients. Physical therapy will be changed to include spinal flexibility and strengthening. I think the piriformis syndrome is not the answer but rather the stenotic phenomenon, and given that she is this much better with therapy, surgery is a last resort. Lumbar epidural steroids may be of benefit.

She has asked that I opine as to its onset. Certainly, the story she provided historically that she felt a pop, had swelling and presented immediately, this represents an exacerbation of an underlying degenerative disc phenomenon and at least by the historical information stated, she is thankfully better and I do not think will require any surgical intervention at this juncture, but it has lifelong implications which we discussed at length. We will change physical therapy. I asked her to do that twice daily. Her injury was in July 2018 so she is making it pretty decent. I think she should remain with a limited duty status in terms of avoidance of patient lifting and we will leave her followup here open ended.

The claimant agreed on cross-examination that she did not treat with Dr. Jones after September 4, 2019. The claimant testified that she worked for the respondent-employer through September 19, 2019. The claimant testified, "I could no longer do the patient-lifting portion of my job." The claimant testified that she became employed with a nursing home on September 20, 2019.

Meanwhile, a majority of the Full Commission affirmed and adopted the administrative law judge's June 25, 2019 decision in an opinion filed December 19, 2019. In an opinion delivered February 10, 2021, the Arkansas Court of Appeals reversed and remanded for further proceedings. *Melius v. Chapel Ridge Nursing Center*, 2021 Ark. App. 61, 618 S.W.3d

410. The Court determined: “[W]e reinstate Melius’s case and remand for further determinations of whether she suffered a compensable injury to her buttock and thigh on July 11, 2018, whether she is entitled to medical treatment, and whether she is entitled to temporary partial-disability benefits.”

The Full Commission filed an opinion on September 28, 2021 and remanded to the administrative law judge “for proceedings consistent with this order and the mandate from the Court of Appeals.” The parties thereafter stipulated that the claimant “sustained a compensable piriformis injury to the buttock and thigh” on July 11, 2018.

Dr. Cheyne noted on November 23, 2021:

Ms. Melius is seen back for the first time since I last saw her in July 2019 with right buttock pain. She eventually saw Dr. Jones who thought that this was likely related to her back. She had an MRI scan done and had a left paracentral disk protrusion at L4-5 and a central disk protrusion at L5-S1. She got better to a point with physical therapy and anti-inflammatory medications. She also got some relief from a gluteal injection which was done by Dr. Goodman; however, she has persistent pain. I have looked at her MRI scan and still believe that this is likely related to her back, although it is certainly possible since she got relief from the injection by Dr. Goodman. We will get her back in to see him for another injection or 2. If gluteal injections do not work, then we will consider LESIs.

A pre-hearing order was filed on July 21, 2022. The claimant contended, “1. The above listed proposed stipulations. 2. The Claimant was injured on July 11, 2018, while assisting EMS personnel who were

moving a patient from a bed to a gurney. The Claimant was grabbed by the patient while lowering the patient onto the gurney which caused the claimant to come up onto her right tiptoes. The Claimant felt a pop in her glute and a muscle spasm in her thigh and calf. On July 11, 2018, the Claimant was instructed to see Dr. Keith Holder at Mercy Clinic Occupational Medicine with complaints of sharp pain in the right glute. Dr. Holder diagnosed the claimant with strain of muscle, fascia and tendon of right hip. Dr. Holder also restricted the Claimant to light duty with a follow-up in seven (7) to ten (10) days as well as hip exercises and a cane to ambulate with. On July 19, 2018, the Claimant returned to Dr. Holder for a follow-up where she stated that the pain is worse at night as well as with sitting. Dr. Holder kept the Claimant restricted to light duty and referred her to therapy. The Claimant continued to follow-up with Dr. Holder who continued to refer the Claimant for therapy as well as her restriction to light duty. On August 13, 2018, the Claimant attended physical therapy for strain of muscle, fascia and tendon of right hip where it was noted that she has decreased range of motion and strength as well as gait and postural deficits. The Claimant was approved for six (6) visits. On August 23, 2018, the Claimant was seen by Dr. Holder where he recommended the Claimant to finish therapy and that he would request an MRI of the Claimant's lumbar spine and right thigh which was denied."

The claimant contended, "On October 2, 2018, the Claimant once again seen (sic) by Dr. Holder where he referred the Claimant for steroid injection by pain management. Dr. Holder kept the Claimant on light duty. On November 23, 2018, the Claimant was seen by Dr. Brian Goodman for pain management where it (sic) he recommended the Claimant getting stretching exercises and to follow-up in one (1) month. The Claimant returned once more to Dr. Holder for a follow-up. However, any further treatment was denied by Respondents. While the Claimant was going through the workers' compensation process, she continued to seek treatment using her own private health insurance. On July 18, 2019, the Claimant present (sic) to Dr. Thomas Cheyne for continued right hip pain. Dr. Cheyne's diagnosed (sic) was chronic right hip pain, probable hamstring tendon injury. He recommended an MRI of right hip and pelvis as well as referred the Claimant for physical therapy. The Claimant had an MRI completed which was normal. However, Dr. Cheyne referred the Claimant for a second opinion to try to locate the source of the pain. In the meantime, the Claimant continued to attend physical therapy for a right hamstring injury."

The claimant contended, "On August 12, 2019, the Claimant was seen by Dr. Greg Jones for a second opinion. Dr. Jones notes the Claimant's radicular pain symptoms down the right leg. Dr. Jones states

that he believes that the Claimant has suffered a low back injury and has requested a lumbar MRI. The Claimant returns to Dr. Jones post-MRI on September 4, 2019, and it was found that the Claimant has lumbar stenosis, facet hypertrophy and degenerative disc changes at L4-5 and L5-S1 disc protrusion. Dr. Jones changed the Claimant's physical therapy to focus on the Claimant's lumbar spine but that she is to continue on light duty work restrictions. The Claimant continued with physical therapy treatment. On November 23, 2021, the Claimant returned to Dr. Cheyne for continued pain where Dr. Cheyne opined his opinion that they (sic) right glute pain comes from the Claimant's low back and referred the Claimant for additional trigger point injections. 3. Claimant reserves the right to supplement and amend her contentions after additional discovery has been completed."

The parties stipulated, "The respondents have agreed to pay for all medical treatment from July 11, 2018, to April 16, 2019, regarding the compensable piriformis injury to the buttock and thigh." The respondents contended, "Respondents contend that the Claimant did have a piriformis injury that the Court of Appeals said was in the right buttocks. The Claimant apparently is now having problems in the low back, which was not litigated at the prior hearing and is not subject to this remand. Respondents have paid the medical bills that were subject of the initial hearing related to

the piriformis syndrome. A copy of the payment history is attached. The Claimant has not outlined what medical are outstanding nor have any medical bills been submitted. Claimant is also contending that she is entitled to temporary total disability benefits. However, the Claimant did not lose any time from work, but did make a claim for temporary partial disability. It is possible that issue will need to be litigated, though it is unclear what benefits and time frame the Claimant is asking for benefits. The Claimant has not provided any off work slips. In addition, she voluntarily quit working for the Respondent-Employer and went to work for another facility. Therefore, Respondents are unaware of any missed time. Next, the Claimant went from 2019 to 2021 with no medical treatment. It is Respondents position that the healing period has long since ended. Claimant has also requested permanent partial disability and wage loss. Respondents are unaware of any impairment rating being assigned for the piriformis syndrome.”

The parties agreed to litigate the following issues:

1. Whether Claimant is entitled to temporary partial disability benefits.
2. Whether Claimant’s attorney is entitled to an attorney fee.

After a hearing, an administrative law judge filed an opinion on October 18, 2022. The administrative law judge found, “2. That the claimant has proven by a preponderance of the evidence that she is entitled

to temporary partial disability benefits from July 12, 2018, until she began her new position with the respondents sometime between September of 2018 and December of 2018.” The parties have stipulated, “All prior opinions are *res judicata* and the law of this case.”

A pre-hearing order was filed on October 31, 2023. According to the pre-hearing order, the claimant contended: “1. The above-listed proposed stipulations. 2. The Claimant was injured on July 11, 2018 while assisting EMS personnel who were moving a patient from a bed to a gurney. The Claimant was grabbed by the patient while lowering the patient onto the gurney which caused the claimant to come up onto her right tiptoes. The Claimant felt a pop in her glute and a muscle spasm in her thigh and calf. On July 11, 2018, the Claimant was instructed to see Dr. Keith Holder at Mercy Clinic Occupational Medicine with complaints of sharp pain in right glute. Dr. Holder diagnosed the claimant with strain of muscle, fascia and tendon of right hip. Dr. Holder also restricted the Claimant to light duty with a follow-up in seven (7) to ten (10) days as well as hip exercises and a cane to ambulate with. On July 19, 2018, the Claimant returned to Dr. Holder for a follow-up where she stated that the pain is worse at night as well as with sitting. Dr. Holder kept the Claimant restricted to light duty and referred her for therapy. The Claimant continued to follow-up with Dr. Holder who continued to refer the Claimant for therapy as well as her restriction to light



duty. On August 13, 2018, the Claimant attended physical therapy for strain of muscle, fascia and tendon of right hip where it is noted she has decreased range of motion and strength as well as gait and postural deficits. The Claimant was approved for six (6) visits. On August 23, 2018, the Claimant was seen by Dr. Holder where he recommended the Claimant to finish therapy and that he would request an MRI of the Claimant's lumbar spine and right thigh which was denied. On October 2, 2018, the Claimant once again seen (sic) by Dr. Holder where he referred the Claimant for steroid injection by pain management. Dr. Holder kept the Claimant on light duty. On November 13, 2018, the Claimant was seen by Dr. Brian Goodman for pain management where it (sic) he recommended the Claimant getting trigger point injection in the right gluteal muscle as well as stretching exercises and to follow-up in one (1) month. The Claimant returned once more to Dr. Holder for a follow-up. However, any further treatment was denied by the Respondents. While the Claimant was going through the workers' compensation process, she continued to seek treatment using her own private health insurance. On July 18, 2019, the Claimant present (sic) to Dr. Thomas Cheyne for continued right hip pain. Dr. Cheyne's diagnosed (sic) was chronic right hip pain, probable hamstring injury. He recommended an MRI of right hip and pelvis as well as referred the Claimant for physical therapy. The Claimant had an MRI completed

which was normal. However, Dr. Cheyne referred the Claimant for a second opinion to try to locate the source of the pain. In the meantime, the Claimant continued to attend physical therapy for a right hamstring injury. On August 21, 2019, the Claimant was seen by Dr. Greg Jones for a second opinion. Dr. Jones notes the Claimant's radicular pain symptoms down the right leg. Dr. Jones states that he believes that the Claimant has suffered a low back injury and has requested a lumbar MRI. The Claimant returns to Dr. Jones post-MRI on September 4, 2019 and it was found that the Claimant has lumbar stenosis, facet hypertrophy and degenerative disc changes at L4-5 and L5-S1 disc protrusion. Dr. Jones changes the Claimant's physical therapy to focus on the Claimant's lumbar spine but that she is to continue on light duty work restrictions. The Claimant continued with physical therapy treatment. On November 23, 2021, the Claimant returned to Dr. Cheyne for continued pain where Dr. Cheyne opined his opinion that they (sic) right glute pain comes from the Claimant's low back and referred the Claimant for additional trigger point injections. 3. Claimant reserves the right to supplement and amend her contentions after additional discover (sic) has been completed."

The respondents contended, "Respondents contend that the claimant did have a piriformis injury that the Court of Appeals said was in the right buttocks but not the low back. The Claimant is apparently now

having problems in the low back. The Claimant testified at the previous hearing that her low back was not injured in July 11, 2018. The Court of appeals found the Claimant sustained a piriformis injury and a claim for the low back was not filed until the statute of limitations had run on this case. The Claimant is also contending that she is entitled to temporary total disability benefits. The Commission found that the Claimant was entitled to Temporary Partial Disability until sometime between September of 2018 and December of 2018 when she began a new position with the Respondents. The Claimant has not provided any off work slips. In addition, she voluntarily quit working for the Respondent-employer and went to work for another facility. Therefore, Respondents are unaware of any missed time. Next, the Claimant went from 2019 to 2021 with no medical treatment. It is Respondents position that the healing period has long since ended. Claimant has also requested permanent partial disability and wage loss. Respondents are unaware of any impairment rating being assigned for the piriformis syndrome.”

The parties agreed to litigate the following issues:

1. Whether Claimant is entitled to additional medical treatment for her compensable piriformis and right thigh injuries that occurred on July 11, 2018, or alternatively, whether Claimant sustained a compensable injury to her low back on or about July 11, 2018.
2. Whether Claimant is entitled to additional medical treatment for compensable low back injury.

3. Whether Claimant is entitled to temporary partial disability benefits from September 19, 2019 to a date yet to be determined.
4. Respondents raise the Statute of Limitations defense.
5. Whether Claimant's attorney is entitled to an attorney fee.

A hearing was held on November 30, 2023. The claimant testified that she was working for another employer, Mercy Neurosurgery.

An administrative law judge filed an opinion on February 27, 2024. The administrative law judge found, among other things, that the claimant did not prove she sustained a compensable back injury. 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 entitled to additional temporary partial disability benefits. The administrative law judge therefore denied the claim. The claimant appeals 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 she 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, “4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her low back on or about July 11, 2018.” The Full Commission affirms this finding. The parties stipulated that the employment relationship existed on July 11, 2018. The claimant testified that she “felt a popping in my buttocks on my right side” while lowering and pushing a resident’s bed. The claimant testified that the pain was “in my right glute.” The parties have stipulated that the claimant “sustained a compensable piriformis injury to the buttock and thigh” on July 11, 2018.

The claimant did not prove by a preponderance of the evidence that she also sustained a compensable injury to her low back on July 11, 2018.

Dr. Holder reported on July 11, 2018 that the claimant had sustained a “right hip strain.” Dr. Holder diagnosed “Strain of muscle, fascia and tendon of right hip[.]” Dr. Holder did not opine that the claimant had sustained a back injury. The claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on October 16, 2018. The claimant reported on the Form AR-C that she had injured her buttocks and thigh. The claimant did not report that she had also injured her back on July 11, 2018. As the Full Commission has noted, the claimant expressly testified on April 16, 2019 that she had not suffered a back injury. The claimant testified that she was suffering from “piriformis syndrome.” Dr. Cheyne reported on July 18, 2019 that the claimant was “nontender in the low back.” We also note Dr. Cheyne’s report on July 31, 2019, “I continue to believe that this is not a lower back issue.”

The Full Commission recognizes Dr. Jones’ opinion stated August 21, 2019, “I think she has hurt her back.” 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, we assign minimal weight to Dr. Jones’ opinion that the claimant injured her back. Neither the medical evidence of record nor the claimant’s testimony indicates that the claimant injured her back on July 11, 2018. Moreover, the claimant reported on the Form AR-C

dated October 16, 2018 that she had injured only her buttocks and thigh on July 11, 2018. The claimant did not report a back injury.

In accordance with the applicable elements of Ark. Code Ann. §11-9-102(4)(Repl. 2012), the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a “compensable injury” to her back on July 11, 2018. The claimant did not prove that she sustained an accidental injury causing internal or external physical harm to her back. The claimant did not prove that she sustained an injury to her back which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that she sustained an injury to her back which was caused by a specific incident or was identifiable by time and place of occurrence on July 11, 2018. In addition, the claimant did not establish a compensable injury to her back by medical evidence supported by objective findings. We find that none of the abnormalities shown in the claimant’s lumbar spine beginning July 18, 2019 were causally related to the “compensable piriformis injury to the buttock and thigh” which the claimant sustained on July 11, 2018, or that the claimant established a compensable injury to her lumbar spine by medical evidence supported by objective findings. See *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

B. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages, whereas temporary partial disability is that period within the healing period in which the employee suffers only a decrease in her capacity to earn the wages she was receiving at the time of the injury. *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). A healing period has not ended so long as treatment is administered for the healing and alleviation of a condition. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997).

An administrative law judge found in the present matter, "5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary partial disability benefits from September 19, 2019, to a date yet to be determined." The Full Commission affirms this finding. The parties have stipulated that the claimant "sustained a compensable piriformis injury to the buttock and thigh" on July 11, 2018. The claimant testified that she returned to light-duty work following the compensable injury. An administrative law judge found that the claimant proved she was "entitled to temporary partial disability benefits from July 12, 2018, until she began her new position with the respondents somewhere between



September of 2018 and December of 2018.” The parties have stipulated, “All prior opinions are *res judicata* and the law of this case.”

The claimant testified that she continued to work for the respondent-employer through September 19, 2019. The claimant testified that she became a full-time employee with Legacy, a nursing home, on September 20, 2019. The Full Commission finds that the claimant did not prove she was entitled to additional temporary partial disability benefits after September 19, 2019. We find that the claimant did not prove she was partially incapacitated from earning wages at any time after September 19, 2019.

#### C. Medical Treatment

Finally, the employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). 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 70 (1984).

An administrative law judge found in the present matter, “2. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable piriformis and right thigh injuries that occurred on July 11, 2018.” The Full Commission finds that the claimant did not prove additional medical treatment was reasonably necessary in connection with her compensable injuries. As we have discussed, the parties stipulated that the claimant “sustained a compensable piriformis injury to the buttock and thigh” on July 11, 2018. The claimant treated with physicians including Dr. Holder, Dr. Sampson, and Dr. Goodman following her compensable injury. There are currently no treatment recommendations of record related to the compensable piriformis injury. We therefore find that the claimant did not prove additional medical treatment was reasonably necessary.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable back injury. The claimant did not prove that she was entitled to additional temporary partial disability benefits, and the claimant did not prove that additional medical treatment was reasonably necessary in connection with her compensable piriformis injury. The administrative law judge’s opinion is affirmed, and this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.