BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H109939

WENDY PEACOCK, EMPLOYEE **CLAIMANT**

CONWAY REGIONAL MED. CENTER, SELF INS. EMPLOYER **RESPONDENT**

RISK MANAGEMENT RESOURCES, TPA **RESPONDENT**

OPINION FILED MAY 27, 2025

Hearing before Administrative Law Judge, Steven Porch, on April 1, 2025, in Little Rock, Arkansas.

Claimant was represented by Mr. Daniel E. Wren, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on April 1, 2025[1]. A prehearing telephone conference took place on December 10, 2024. A prehearing order was entered on that date and subsequently entered into evidence as Commission Exhibit 1. The parties' stipulations are set forth.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The self-insured employer/employee/third-party administrator relationship existed among the parties on March 1, 2021, when Claimant sustained compensable injuries to her left foot.

3. Respondents accepted the claim and paid benefits.

4. The Claimant's temporary total disability (TTD) benefits rate is $364.00 and permanent partial disability (PPD) benefits rate is $273.00, weekly.

[1] The original hearing date was February 18, 2025. However, due to inclement weather, it was cancelled and rescheduled for April 1, 2025.

The parties have identified the following issues to be adjudicated:

1. Whether Claimant is entitled to additional reasonable and necessary medical treatment and related expenses, including a three-phase bone scan, EMG, and nerve conduction study of the left lower extremity.

2. Whether Claimant sustained an injury to her back as a compensable consequence of her stipulated compensable left foot injury.[2]

3. Whether Claimant is entitled to reasonable and necessary medical treatment for her low back as a compensable consequence of the compensable left foot injury.[3]

4. Whether Claimant is entitled to temporary total disability (TTD) from August 29, 2023, to a date yet to be determined.

5. Whether Claimant is entitled to temporary partial disability (TPD) from August 29, 2023, to a date yet to be determined.[4]

6. Whether Claimant's attorney is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant contends:

She sustained an injury to her left foot on March 1, 2021, while moving a bed in labor and delivery when it rolled over the top of her left foot. She treated with Dr. Robert Martin at UAMS Ortho Clinic on Shackleford. She has undergone three different surgeries on her foot.

The first surgery was on December 14, 2021, with Dr. Adam Head. The second

[2] This issue must be established before the third issue could be addressed. Therefore, it is added as an issue to properly address Claimant's third issue.
[3] Claimant's counsel stated that Respondents did not pay any benefits for the alleged back injury. Thus, the word "additional" that is reflected on my prehearing order, for this issue, is now removed without objection from the parties.
[4] Claimant motioned to add the issue of TPD benefits to the hearing, without objection from Respondents' counsel, and I granted the motion.

surgery was on August 12, 2022, with Dr. Jesse Burks. He kept her on non-weight bearing for a period of time. She used a knee scooter due to swelling in her foot. Dr. Burks noted on October 26, 2022[5], that she may possibly have complex regional pain syndrome (CRPS) and recommended her to see Dr. Carlos Roman. Dr. Roman did an independent medical evaluation (IME) on her on May 16, 2022. He did not feel she had the criteria for CRPS. Dr. Roman referred her back to Dr. Burks for additional treatment. Dr. Burks[6] did a third surgery on February 13, 2023. She continued to have pain and was seen again by Dr. Roman who felt like she met all the criteria for reflex sympathetic dystrophy (RSD) at that time. She underwent sympathetic blocks. She was released from Dr. Martin and Dr. Roman and received impairment ratings. She underwent a functional capacity evaluation (FCE) test on October 16, 2023, which reflected that she had a combined impairment rating of five percent to the whole person.

After continued pain, she was seen by Dr. Barry Baskin for a second opinion/IME. Dr. Baskin opined that she clearly has some nerve problems in the left foot. He stated that because of the peripheral nerve issues that she has, it could easily be confused with CRPS. Dr. Baskin opined that he thinks she does have some low back pain, and that the low back pain might well have resulted from her walking with altered gait mechanics because of left foot problems, the walker boot, and knee scooter. Dr. Baskin has recommended a three-phase bone scan and EMG and nerve conduction studies of the left lower extremity, which have not been approved by workers' compensation.

[5] My review of the file shows Dr. Burks referred Claimant to Dr. Roman on April 13, 2022.
[6] My review of the file shows Dr. Martin performed 3rd and final surgery. I, also, admonish the Claimant's counsel to ensure that his contentions are accurate concerning doctors and dates.

Respondents contend:

All appropriate benefits are being paid regarding Claimant's left lower extremity injury sustained on March 1, 2021. Treatment recommended by Dr. Baskin is not reasonable and necessary associated with the same. All appropriate temporary total disability benefits have been paid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after thorough consideration of the facts, issues, the applicable law, and the evidentiary record, I hereby make the following Findings of Fact and Conclusions of Law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The stipulations set forth above are reasonable and are hereby accepted.

3. The Claimant has proven by the preponderance of the evidence that she is entitled to additional reasonable and necessary medical treatment, including a three-phase bone scan, an EMG, and a nerve conduction study of the left lower extremity.

4. The Claimant has proven by the preponderance of the evidence that she has sustained an injury to her low back as a compensable consequence of her stipulated compensable left foot injuries.

5. The Claimant has proven by the preponderance of the evidence that she is entitled to reasonable and necessary medical treatment for her compensable consequence low back injury.

6. The Claimant has not proven by the preponderance of the evidence that she is entitled to TTD from August 29, 2023, to a date yet to be determined.

7. The Claimant has not proven by the preponderance of the evidence that she is entitled to TPD from August 29, 2023, to a date yet to be determined.

8. Claimant has not proven by the preponderance of the evidence that she is entitled to a controverted attorney's fee.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, medical records, that consists of 156 pages, Respondents' Exhibit 1, medical records, that consist of 30 pages, Respondents' Exhibit 2, DFA employment application, consisting of 6 pages, and Commission Exhibit 1, Pre-Hearing Order filed December 10, 2024, that consists of 5 pages. The Claimant's and Respondents' post hearing briefs are blue-backed and made a part of the record. The Claimant was the only witness testifying at the full hearing.

Claimant was employed as a Patient Care Tech for the Respondent employer. On March 1, 2021, Claimant was moving a hospital bed when it rolled over the top of her left foot, resulting in injury. On March 3, 2021, Claimant visited Dr. Gil Johnson at College Park Family Clinic and was diagnosed with a "crush injury of soft tissue swelling of left foot…". Claimant Ex. 1, pp. 4-5. Claimant did not have a fracture in her left foot. *Id.* Nevertheless, Claimant was placed on sedentary work. Claimant Ex. 1, p. 6. Respondents accepted the left foot injury as compensable.

Claimant visited Dr. Johnson the next day, March 4, 2021, and complained that her pain was worse. Claimant Ex. 1, pp. 8-9. Dr. Johnson's progress note stated that most of her pain was on the ventral aspect at the base of the left great toe over the metatarsal area. *Id.* Dr. Johnson also noted soft tissue swelling and the potential of a deep hematoma. *Id.* The Claimant's x-ray did not show any fractures nor disruptions of the joint spaces, and her circulation was intact. *Id*. Dr. Johnson recommended crutches and left Claimant on sedentary work restrictions. *Id*. On March 8, 2021, Claimant continued to have pain and swelling in the left foot, primarily at the distal first and second metatarsal – phalangeal joint. Claimant Ex. 1, p. 10-11. Dr. Johnson ordered another x-ray

of her left foot and placed her in an OCL fiberglass splint for support. *Id*. Dr. Johnson noted that Claimant had a significant crush injury and contusion to her left foot. *Id*.

On March 10, 2021, Claimant continued to have "soft tissue swelling at the base of the left great toe over the distal metatarsal …." The second x-ray again confirmed there were no fractures. *Id*. at 11. On March 18, 2021, Claimant had a follow-up visit with Dr. Johnson and complained about continued discomfort at the base of her left second and third metatarsal/toes. Claimant Ex. 1, p. 17. Dr. Johnson noted soft tissue swelling and pain with palpation and stated that this affects her gait. *Id*. Dr. Johnson recommended that Claimant get an MRI of her left foot to look for "occult fracture or other soft tissue or ligament or tendon damage…." *Id*. Claimant remained on sedentary work restrictions. *Id*. Dr. Samuel Edwards authored the MRI report dated March 23, 2021, finding that Claimant suffered from the "Strain of the lateral head of the flexor hallucis brevis and adductor hallucis muscles with partial tear of the flexor hallucis brevis tendon at the attachment to the lateral sesamoid." Claimant Ex. 1, p. 21-22. On March 24, 2021, Dr. Johnson recommended the Claimant see an orthopedist. *Id*.

On April 7, 2021, Claimant saw Dr. James Head, Orthopedic Surgeon, at Conway Orthopaedic and Sports Medicine Center. Claimant Ex. 1, pp. 23-24. Dr. Head examined Claimant and her records and likewise concluded that she has a left lateral sesamoid fracture; and he told her to take over-the-counter pain medications, wear a rigid shoe insert, and get some rest. *Id*. On July 15, 2021, the Claimant complained about her pain worsening the longer she was on her feet. Claimant's Ex. 1, pp. 25-26. Dr. Head discussed nonsurgical versus surgical treatment, explaining that surgical treatment would likely require two months off work. *Id*. The patient declined surgery treatment due to financial constraints. *Id*. However, on November 12, 2021, Claimant had a follow-up visit with Dr. Head and this time requested surgery since she had been in pain for the past

several months. Claimant Ex. 1, pp. 29-30. Dr. Head explained that the surgery would include "a left fibular sesamoid excision with possible neuroma excision of the peroneal nerve, and possible peroneal nerve excision. *Id*. Dr. Head gave Claimant an injection of 40mg of Depo-Medrol and scheduled her surgery for December 14, 2021. *Id.*

On December 9, 2021, Claimant reported to Dr. Head that she had minimum improvement in pain, and that she could not put weight on her left foot, due to her favoring it, resulting in a trip to the emergency room. Claimant Ex. 1, pp. 33-34. She also informed Dr. Head that she recently had an inversion sprain. *Id*. Dr. Head ordered an MRI of the left ankle to evaluate for a subtalar stress fracture. *Id*. The Claimant's gait was altered due to the pain in her left foot. *Id*. Dr. Head believed this could have caused the Claimant to develop a stress fracture. *Id*. He noted that an MRI of her left ankle would be helpful prior to the surgery to ensure Claimant did not need a secondary procedure after the initial surgery. *Id*. On December 13, 2021, the Claimant saw Dr. Head for another follow-up where she reported aching and sharp pain in the outer side of her left ankle whenever she walked. Claimant Ex. 1, pp. 35-36. Dr. Head discussed Claimant's MRI of her left ankle, noting that she had a calcaneal stress fracture that was caused by the way she was walking due to the pain in her foot. *Id*. This was treated non-operatively by her not putting any weight on it for two weeks. *Id*. The Claimant eventually underwent her surgery on December 14, 2021.

On February 23, 2022, Claimant had a ten-week follow-up visit with Dr. Head. Claimant Ex. 1, pp. 43-44. The Claimant reported that she was still experiencing some pain on the lateral aspect of the hindfoot that radiated across the anterior aspect of her ankle. *Id*. Claimant described her pain as an intermittent aching pain with occasional sharp pains. Id. Dr. Head instructed Claimant to continue "Vitamin D supplementation and bone stimulator." *Id*. Dr. Head also recommended physical therapy for scar desensitization. *Id*.

On March 23, 2022, Claimant had a 3.5-month surgical follow-up, where she was given a Medrol Dosepak for pain and swelling. Claimant Ex. 1, pp. 45-46. The Claimant reported swelling when she was on her left foot for prolonged periods of time, and that she still experienced a shooting pain starting on the lateral hindfoot that radiated down the lateral side of her foot. *Id*. Dr. Head discussed surgical options if Claimant continued to fail conservative treatment. *Id*.

On April 13, 2022, the Claimant saw Dr. Jesse Burks, a podiatric doctor, at Bowen Hefley Orthopedics. Claimant Ex. 1, pp. 47-49. The Claimant rated her pain as an 8/10. *Id*. She described her pain as sharp, stabbing, throbbing, aching, and shooting. *Id*. She further stated that symptoms come and go and are made worse with sitting, stairs, moving, walking, and standing. *Id*. She reported that her problem was unchanged, and she still experienced bruising, swelling, numbness, stiffness, limping, popping, tingling, and weakness. *Id*. Dr. Burks diagnosed her with possible complex regional pain syndrome, status post list from fracture dislocation, and peroneus brevis tendon tear. *Id*. Dr. Burks recommended an evaluation for possible RSD to confirm or exclude the diagnosis. *Id.*

On May 16, 2022, Claimant met with Dr. Carlos Roman for an IME. Claimant's Ex. 1, pp. 50-52. Dr. Roman reviewed Claimant's bone scan of her left lower extremity, which showed no evidence of CRPS. *Id*. Dr. Roman noted the "flow, pooled, and delayed images demonstrated good symmetric flow." *Id*. The Claimant reported that she still had pain over the surgical incision and "left ankle on the lateral aspect with extension and flexion as well as prolonged weight-bearing." *Id*. Dr. Roman recommended compression therapy for her foot. *Id*.

On June 14, 2022, the Claimant saw Dr. Burks described having significant pain through the midfoot and over the course of her peroneal tendons. Claimant Ex. 1, pp. 53-55. Dr. Burks discussed Claimants surgical options, which included a peroneal debridement and repair, and

arthrodesis of the medial and intermediate cuneiform and the immediate cuneiform second metatarsal. *Id*. Dr. Burks advised Claimant that these treatments would include six weeks of "nonweightbearing with 3 to 4 weeks in a walking boot." *Id*. Dr. Burks gave another option of pain management under the care of Dr. Roman. *Id*. The Claimant chose the surgery recommended by Dr. Burks, and that procedure was done on August 12, 2022. Claimant Ex. 1, pp. 61-64.

On August 17, 2022, Claimant had a follow-up with Dr. Burks where she stated that she was doing well, and that her pain was well-controlled. Claimant's Ex. 1, pp. 63-66. She denied any significant discomfort in her calf or thigh. *Id*. On September 19, 2022, Dr. Burks initiated a treatment plan that involved weightbearing on her left foot with the aid of a cam walker, as tolerated. Claimant's Ex. 1, pp. 70-71. On October 26, 2022, Claimant saw Dr. Burks and complained about severe pain in her left foot and ankle. Claimant Ex. 1, pp. 75-77. Dr. Burks ordered an MRI of the left ankle. *Id*. The MRI revealed extensive stress reaction throughout the foot and ankle without fracture or signs of any full-thickness cartilage loss at the ankle, along with a peroneus longus and brevis tendinopathy with split tear of the brevis. Claimant Ex. 1, p. 78.

On November 1, 2022, the Claimant informed Dr. Burks that her condition had not changed. Claimant Ex. 1, pp. 79-81. Dr. Burks believed that Claimant had multiple signs consistent with CRPS, but he deferred to Dr. Roman. *Id*. Dr. Burks felt that on the MRI the peroneal tendon repair was fine, but she did have some fluid collection consistent with post-surgical changes. *Id*. Dr. Burks also felt that the fracture mentioned was old and clinically not symptomatic. *Id*. On November 2, 2022, Dr. Roman wrote that he likewise believed that Claimant could possibly have CRPS. Claimant Ex. 1, pp. 82-83.

Due to Claimants altered gait from having the work-related injury and multiple surgeries, the Claimant alleges that she suffers from back pain. On November 21, 2022, she saw Dr. Billy

McBay concerning left foot pain and right-sided back pain. Claimant Ex. 1, pp. 85-88. Dr. McBay diagnosed her with acute right-sided low back pain with right-sided sciatica. *Id*. Dr. McBay also diagnosed her with age-related osteoporosis without current pathological fracture. *Id*. Dr. Burks ordered an x-ray of Claimant's spine and referred her to Dr. Noha Mohamad for treatment of osteoporosis of both hips. *Id*. The x-ray report revealed only mild degenerative changes, most pronounced in the lower lumbar spine, L4, L5, and S1. *Id*. Despite this, Dr. McBay still diagnosed Claimant with acute right-sided low back pain with right-sided sciatica. Claimant's Ex. 1, pp. 91-92.

On December 14, 2022, Claimant visited Dr. Burks again complaining about severe pain in her left foot. Claimant's Ex. 1, pp. 94-96. Per the report of that appointment, Claimant could not identify one particular area that hurt, however, the area that seemed to bother her the most was around the second and third metatarsal heads. *Id*. Nevertheless, Dr. Burks diagnosed her with chronic pain in her left foot, secondary to the injury. *Id*. He gave her an injection to help localize the pain. *Id*.

On January 6, 2023, Claimant visited Dr. Robert Martin at UAMS Orthopedic Clinic for an evaluation of her left foot. Claimant's Ex. 1, pp. 97-105. Dr. Martin noted that her past surgeries had failed, and her implants were not really even in the bone. *Id*. Dr. Martin further noted that the site of the injury was not in the area where all her surgeries had been performed. *Id*. Dr. Martin wrote that he believed that Claimant would require a revision midfoot arthrodesis with removal of the failed orthopedic implants. *Id*. He believed this would provide some improvement in pain. *Id*. Dr. Martin also recommends exploration of the distal peroneal tendons in the site of previous surgery because she has significant symptoms there. *Id*. Dr. Martin added: "the nerve type symptoms from deep peroneal nerve irritation and numbness, hyperesthesias in the dorsal foot may

be permanent based on the chronicity of her problem." *Id*. The Claimant agreed to have the surgery, and it was performed on February 13, 2023. Claimant Ex. 1, pp. 106-108.

On March 14, 2023, Claimant met with Dr. Lily Guastella at Conway Regional Health System concerning back pain. Claimant's Ex. 1, pp. 112-120. Dr. Guastella ordered an MRI for her lumbar spine. *Id*. The MRI showed "Moderate facet arthropathy at L4-L5 with a right-sided facet effusion and mild surrounding soft tissue edema and enhancement, indicating **acute reactive inflammatory changes**. There are small ganglion cyst formation extending posteriorly from the facet." *Id*. (*emphasis added*) The report also concluded that Claimant had a mild bilateral neural foramen stenosis at L4-L5, and no significant spinal canal stenosis at any level. *Id*. Dr. Guastella noted that the Claimant had used a walking boot and rolling scooter, off and on, for the past two years since her work-related injury. Claimant Ex. 1, pp. 131-133. Savanah Bradbury, Physician Assistant, noted that Claimant had "degenerative arthritis at L4-L5." *Id*. Ms. Bradbury did note some fluid signal in the right facet joint, but no spondylolisthesis. *Id*. She recommended physical therapy for core low back stretching and strengthening exercises as well as gait training, along with the continued use of a boot and scooter. *Id*.

On April 27, 2023, Claimant had a 10-week follow-up visit with Dr. Martin and reported that her pain had improved overall, but that she still had significant nerve type pain such as itching and burning. Claimant Ex. 1, pp. 134-136. Since Claimant was doing well overall, Dr. Martin scheduled another visit a month out. *Id*.

On May 25, 2023, Claimant returned to Dr. Martin for a follow-up, where she continued to complain about significant tenderness with light touch and palpation of her diffuse mid and forefoot. Claimant's Ex. 1, pp. 137-139. Dr. Martin recommended that Claimant continue to be treated by Dr. Roman and that she remains on light duty. *Id*. Dr. Roman saw Claimant again on

June 12, 2023, and noted that her left foot pain had a more indicative diagnosis of CRPS by Budapest criteria. Claimant Ex. 1, pp. 140-141. Dr. Roman decided to set Claimant up for a series of lumbar sympathetic blocks on the left side, since the initial cause of the foot pain has been resolved. *Id*.

On July 20, 2023, Dr. Martin placed the patient at "maximum medical improvement, permanent work restrictions are limited ladder and stairs, no standing more than 30 minutes an hour, allowed breaks as needed." Claimant Ex. 1, pp. 143-145. Dr. Martin gave the following impairment rating of 4% to the whole person, 10% to the lower extremity, and 14% to the foot. *Id*. Dr. Roman, on August 29, 2023, placed Claimant at maximum medical improvement and decided against the lumbar sympathetic blocks because the sympathetic tone had resolved sufficiently. Claimant Exhibit Ex. 1, pp. 146-147. Dr. Roman also opined that her CRPS, left lower extremity, type 1, resolved. *Id*. Dr. Roman stated he would assist her with medication management; and he encouraged her to get back into the workforce. *Id*. On October 2, 2023, he gave her a 1% impairment rating to the first and second metatarsal joint. Claimant Ex. 1, p. 150. Based on the discrepancy of ratings by Dr. Martin and Dr. Roman, an impairment evaluation was done by Casey Garretson and Rick Byrd at Functional Testing Centers, Inc., on October 16, 2023. Their report reflects that a combined rating of 5% to the body as a whole was appropriate. *Id*.

On July 22, 2024, Dr. Barry Baskin was asked to give a second opinion on Claimant's condition. Claimant's Ex. 1, pp. 152-156. Per his report he reviewed Claimant's medical history and personally examined her. *Id*. Dr. Baskin opined that the Claimant "may" have CRPS that has gone into remission and come back again. *Id*. He stated that "Frequently peripheral nerve lesions manifest like CRPS." *Id*. Dr. Baskin's examination revealed that Claimant had "allodynia, some mild color changes in the skin over the course of the evaluation, and temperature changes." *Id.* He

stated that these symptoms could be from the effects of the nerve resections that were done in the first surgical procedure. *Id*. Ultimately, Dr. Baskin's inclination was that the Claimant has chronic nerve pain that comes from the "nerve resections more than CRPS." *Id*. He believed that a three-phase bone scan "might" give some useful information, and a nerve conduction study "could" produce valuable information concerning CRPS. *Id*. However, Dr. Baskin read Dr. Head's operative note concerning the nerve resections and admitted that they may not show up on an EMG or nerve conduction study. *Id*. Nevertheless, he believed the test would be helpful in looking for "objective findings." *Id*. He further stated that the 3-phase bone scan would be diagnostically beneficial. *Id*.

According to Dr. Baskin's report, he does believe that the Claimant has some low back pain and that the low back pain might well have resulted from her walking with an altered gait mechanics because of the left foot problems, the walker boot, and the knee scooter. *Id*. He stated that she Claimant has minimal degenerative changes in her lumbar spine and some facet arthropathy at L4-L5. *Id*. Dr. Baskin stated that this low back injury is a "little more clear-cut than the left foot." *Id.* He wrote that he does not believe that the Claimant is at maximum medical improvement for her low back, and that Claimant has a clear-cut facet arthropathy that is most likely degenerative in nature but appears to be aggravated from her gait mechanic alterations and the scooter. *Id*. Dr. Baskin added that an EMG and nerve conduction study of both lower extremities would be useful, and that Claimant would benefit from a facet block in the right L4-5 facet. *Id*.

Adjudication

A. Whether Claimant is entitled to additional reasonable and necessary medical treatment and related expenses, including a three-phase bone scan, EMG, and nerve conduction study of the left lower extremity.

Under Arkansas Code Annotated § 11-9-508(a) (Repl. 2012), which I find applies to this claim, that an employer shall provide for an injured employee "such medical . . . services . . . as may be reasonably necessary in connection with the injury received by the employee." *See Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). The claimant must prove by a preponderance of the evidence that the subject medical treatment is reasonable and necessary. *Id.*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp*., 212 Ark. 491, 206 S.W.2d 442 (1947). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). To prove her entitlement to the requested treatment, Claimant must also prove that it is causally related to her stipulated compensable left foot injuries of March 1, 2021. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601. A claimant is not required to furnish objective medical evidence of her continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id*. In so doing, 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 that it deems worthy of belief. *Id*. The

Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999).

The Claimant is seeking a three-phase bone scan, an EMG, and a nerve conduction study on her left foot based on Dr. Baskin's second opinion report. Claimant Ex. 1, pp. 152-156. Dr. Baskin in his report struggles as to whether the Claimant has neuropathic pain or CRPS. *Id*. Dr. Baskin admitted that his examination of Claimant was "a little perplexing because the peripheral nerve issues that she has could easily be confused with reflex sympathetic dystrophy or CRPS." *Id*. He further noted that frequently peripheral nerve lesions manifest like CRPS. *Id*. Dr. Baskin did find that the Claimant did have "allodynia, some mild color changes in the skin over the course of our evaluation, and temperature changes." *Id*. But he further admitted that these findings could be the "effects of the nerve resections that were done in the first surgical procedure." *Id*. Dr. Baskin did not have a diagnosis for Claimant's left foot pain; rather, he recommended a three-phase bone scan, an EMG, and a nerve conduction study on her left foot. However, based on Dr. Head's operative note stating the nerve resections were branches of the superficial peroneal and deep peroneal very distally down into the forefoot area, Dr. Baskin admitted that these surgical changes "may not show up on an EMG or nerve conduction studies…". *Id*. at 155. Despite that, Dr. Baskin thought the studies would be helpful in looking for "objective findings." *Id*.

Considering Dr. Baskin's recommendation, it cannot be ignored that a bone scan was done on April 28, 2022, showing no evidence of CRPS. Claimant Ex. 1, p. 51. There Dr. Roman noted: "The flow, pooled, and delayed images demonstrated good symmetric flow." *Id*. However, months after this bone scan was done, both Dr. Roman and Dr. Burks believed that Claimant could possibly have CRPS. Claimant Ex. 1, pp. 79-83. In fact, on June 12, 2023, over one year after Claimant's

bone scan, Dr. Roman noted that Claimant's left foot pain has a "more indicative diagnosis of CRPS by Budapest criteria." Claimant Ex. 1, pp. 140-141. I credit Dr. Roman's June 12, 2023, medical note. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

Moreover, it is true that Dr. Roman on August 29, 2023, also found that the CRPS of the left lower extremity, type 1, had resolved, and that Claimant was at maximum medical recovery. Claimant Ex. 1, pp. 146-147. I also credit this finding. But the law is clear that a claimant may be entitled to additional treatment, even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). These medical services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex*, *supra*.

Claimant continues to physically suffer because of her work-related injury; and Dr. Baskin's recommended tests would assist in diagnosing the nature and extent of the compensable injury thus creating a clearer focus on how to medically treat the Claimant's symptoms. Dr. Baskin's report also noted that Claimant's CRPS could go into remission and come back again. Claimant's Ex. 1, p. 155. The Claimant has not received any such diagnosis for CRPS before her March 1, 2021, work-related injury. Thus, the CRPS diagnosis is related and connected to the compensable work-related injury and is entitled to symptom management. These recommended tests will assist with treatment. Therefore, based on Dr. Roman's June 12, 2023, note and Dr. Baskin's recommendation, I do find that the Claimant has proven by the preponderance of the

evidence that Dr. Baskin's recommendations for a three-phase bone scan, an EMG, and nerve conduction study are reasonable and necessary medical treatment that is tied to the crush injury Claimant sustained on March 1, 2021. Such examination is clearly a "medical service," falling within the purview of § 11-9-508(a).

B. Whether Claimant sustained an injury to her back as a compensable consequence of her stipulated compensable left foot injury.

If an injury is compensable, every natural consequence of that injury is likewise compensable. *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Hubley v. Best West. Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The test is whether a causal connection between the two (2) episodes exists. *Sword*, *supra*; *Jeter v. McGinty Mech*., 62 Ark. App. 53, 968 S.W.2d 645 (1998). The existence of a causal connection is a question of fact for the Commission. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780, 2009 Ark. App. LEXIS 947. It is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (1992). A finding of causation need not be expressed in terms of a reasonable medical certainty where supplemental evidence supports the causal connection. *Koster, supra*; *Heptinstall v. Asplundh Tree Expert Co.*, 84 Ark. App. 215, 137 S.W.3d 421 (2003).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Claimant has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Claimant received an x-ray on July 20, 2020, at Conway Regional Health System. Resp. Ex. 1, p. 1. The x-ray revealed disc space narrowing at L4-5 that was compatible with degenerative changes. *Id*. The Claimant's first mention of back pain after her March 1, 2021, work-related incident was on November 21, 2022, almost nine months later, when she visited Dr. Billy McBay of Noydeen

Medical Group. Claimant Ex. 1, pp. 85-88. Dr. McBay ordered an x-ray of Claimant's lumbar spine that revealed "mild intervertebral disc height loss noted at L4-L5 and L5-S1." *Id*. The x-ray report also revealed a "Mild facet arthropathy most pronounced in the lower lumbar spine." *Id*. Dr. McBay diagnosed Claimant with acute right-sided low back pain with right-sided sciatica. *Id*. Claimant received an MRI on March 24, 2023, that revealed facet arthropathy and stenosis at L4-5, as well as "right-sided facet effusion and mild surrounding soft tissue edema and enhancement, indicating acute reactive or inflammatory changes." Claimant Ex. 1, p. 120.

Dr. Baskin wrote, in his second opinion dated July 22, 2024, that his examination of Claimant's low back reflected no muscle spasms, and normal lumbar lordosis. Claimant's Ex. 1, pp. 152-156. Despite Dr. Baskin's physical examination, the Claimant still complains of "some low back pain and numbness down to about the level of the knee in the right thigh and pain in the left leg below the knee that is a combination of burning, numbness, pins and needles, and stabbing." *Id*. Ultimately, Dr. Baskin thinks the Claimant does have some low back pain that may have resulted from her walking with altered gait mechanics due to "left foot problems, the walker boot, and the knee scooter." Claimant testified that she has been in a boot or scooter more than 75% of the time since the date of her injury, March 1, 2021, and after her third surgery performed on February 13, 2023. Trans. p. 63, lines 18-25 through p. 64, lines 1-2. I credit Claimant's testimony. I find that due to her altered gait, she continues to suffer low back pain. After months of walking with an altered gait, Claimant visited with Dr. Guastella at Conway Regional Health System concerning back pain. Claimant's Ex. 1, pp. 112-120. Dr. Guastella ordered an MRI for her lumbar spine. *Id*. The MRI showed "Moderate facet arthropathy at L4-L5 with a right-sided facet effusion and mild surrounding soft tissue edema and enhancement, indicating **acute reactive inflammatory changes**. There are small ganglion cyst formation extending posteriorly from the

facet." *Id*. (*emphasis added*) The Claimant continues to have pain in her left foot. Trans. p. 28, lines 15-24. Therefore, it stands to reason that Claimant has not returned to a normal gait when she walks. Thus, the preponderance of the credible evidence, highlighted above, establishes that Claimant's low back injury was a natural consequence of her stipulated compensable left foot injury. Accordingly, she had met her burden of proving that her low back injury is a compensable consequence.

C. Whether Claimant is entitled to reasonable and necessary medical treatment for her alleged lower back injury as a compensable consequence of the compensable left foot injury.

I find that Claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment for her back injury, which includes an EMG and nerve conduction studies for the left and right lower extremities that have been recommended by Dr. Baskins. For clarity, I have reviewed Dr. Baskin's treatment recommendations in his second opinion for her low back that are in evidence, and I find that she has proven by a preponderance of the evidence that all of it reflected therein is reasonable and necessary. Moreover, all prior back treatment subsequent to the compensable work-related injury was reasonable and necessary and shall be paid or reimbursed by the Respondents.

D. Whether Claimant is entitled to Temporary Total Disability (TTD) benefits from August 29, 2023, to a date yet to be determined.

When it comes to TTD as part of the instant claim, Claimant is seeking temporary total disability benefits from August 29, 2023, to a date to be determined. Respondents deny that she is entitled to these benefits. Nevertheless, the law is clear.

Claimant's compensable injury to her left foot is a scheduled one. *See* Ark. Code Ann. § 11-9-521(a)(11) (Repl. 2012). An employee who suffers a compensable scheduled injury is

entitled to temporary total disability compensation "during the healing period or until the employee returns to work, whichever occurs first . . . ." *Id*. § 11-9-521(a). *See Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

Dr. Martin stated that Claimant had reached maximum medical improvement on July 20, 2023. Claimant Ex. 1, p. 143. Dr. Roman saw Claimant on August 29, 2023, and concluded that she had reached maximum medical improvement as of that date. Claimant Ex. 1, p. 146. I credit Dr. Roman's opinion and find that her healing period concerning her left foot had ended on August 29, 2023. Claimant has thus failed to prove by the preponderance of the evidence that she is entitled to additional temporary total disability benefits.

As to the back injury, the result of a compensable consequence of the left foot, the evidence above is unclear whether the Claimant has not reached maximum medical improvement. The Claimant is entitled to medical treatment of her back so a determination can eventually be made concerning maximum medical improvement. This issue is not ripe. Nevertheless, this injury is an unscheduled one. *See* Ark. Code Ann §11-9-521. An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which she has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Also, a claimant must demonstrate that the disability lasted more than seven days. *Id.* §11-9-501(a)(1). Claimant must likewise prove her entitlement to these benefits by the preponderance of the evidence. Ark. Code Ann. §11-9-705(a)(3).

However, the credible evidence, assuming the Claimant is currently under the healing period, does not show that Claimant suffered a total incapacity to earn wages as a direct result of her back injury. This issue was not fully developed. Therefore, the Claimant failed to prove by the preponderance of the evidence that the Claimant is entitled to TTD benefits.

E. Whether Claimant is entitled to Temporary Partial Disability (TPD) benefits from August 29, 2023, to a date yet to be determined.

The Claimant is also requesting temporary partial disability benefits. Temporary partial disability is the period within the claimant's healing period in which she suffers only a decrease in the capacity to earn the wages she was receiving at the time of the injury. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). Per Ark. Code Ann. § 11-9-520 (Repl. 2012):

> "there shall be paid to the employee sixty-six and two-thirds percent (66 2/3%) of the difference between the employee's average weekly wage prior to the accident and his or her wage earning capacity after the injury."

Claimant's compensable left foot injury is a scheduled one. Ark. Code Ann. § 11-9-521(a)(1) (Repl. 2012). This section reads that a claimant suffering from a scheduled injury "shall receive . . . compensation for temporary total **and temporary partial benefits during the healing period** or until the employee returns to work, whichever occurs first . . . ." (*emphasis added*) In passing Act 796 of 1993, the General Assembly made it plain that the provisions of the Arkansas Workers' Compensation Act are to be strictly construed by the Commission and the courts. *See id.* § 11-9-704(c)(3)*; Duke v. Regis Hairstylists*, 55 Ark. App. 327, 935 S.W.2d 600 (1996). "Strict construction means narrow construction and requires that nothing be taken as intended that is not clearly expressed." *Hapney v. Rheem Mfg. Co.*, 341 Ark. 548, 26 S.W.3d 771 (2000).

In discussing § 11-9-521(a), the Arkansas Court of Appeals in *Wheeler v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001) wrote that:

> "the plain meaning of the language employed indicates that an employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits **during his healing period** or until he returns to work regardless of whether he has demonstrated that he is actually incapacitated from earning wages."

Id. (Emphasis added) The law is clear that a Claimant who has suffered a compensable scheduled injury is no longer eligible to receive temporary partial disability benefits once he has reached his healing period. *Id*.

As stated previously, Dr. Martin stated that Claimant had reached maximum medical improvement on July 20, 2023. Claimant Ex. 1, p. 143. Dr. Roman saw Claimant on August 29, 2023, and concluded that she had reached maximum medical improvement on that date. Claimant Ex. 1, p. 146. I credit Dr. Roman's opinion and find that her healing period concerning her left foot had ended on August 29, 2023. Claimant has thus failed to prove by the preponderance of the evidence that she is entitled to additional temporary partial disability benefits.

Again, in reference to the back injury, and assuming the Claimant continues to be in the healing period, the credible evidence does not show that Claimant suffered a decrease in the capacity to earn the wages as a direct result of her back injury. This particular issue was not developed in the evidentiary record. Thus, the Claimant has failed to prove by the preponderance of the evidence that she is entitled to TPD benefits.

ATTORNEY FEES

Claimant has argued that her counsel should be entitled to a fee under Ark. Code Ann. § 11-9-715 (Repl. 2012) for indemnity benefits awarded herein. This provision reads in pertinent part:

> (B) Attorney's fees shall be twenty-five percent (25%) of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee . . . In all other cases whenever the commission finds that a claim has been controverted, in whole or in part, the commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (½) by the employer or carrier in addition to compensation awarded; and one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them.
>
> (ii) The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.

Id. § 11-9-715(a)(1)(B) & (a)(2)(B)(i)-(ii).

The Claimant has not been awarded any indemnity benefits. Thus, Claimant's counsel is not entitled to a controverted attorney's fee.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

_____
Hon. Steven Porch
Administrative Law Judge