

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214101

SHARON ANN STONE, EMPLOYEE

CLAIMANT

**DOLLAR GENERAL STORE,
SELF-INSURED, EMPLOYER**

RESPONDENT

OPINION FILED OCTOBER 1, 2003

Hearing before Chief Administrative Law Judge David Greenbaum on August 22, 2003, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Richard A. Reid, Attorney-at-Law, Blytheville, Arkansas.

Respondent represented by Ms. Betty J. Demory, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted August 22, 2003, to determine whether the claimant was entitled to additional workers' compensation benefits as the result of an admitted, compensable injury.

A prehearing conference was conducted in this case on July 2, 2003, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed between the

parties at all relevant times, including February 28, 2002; that claimant sustained a compensable injury on said date; that claimant's average weekly wage was \$410.00, entitling her to compensation rates of \$273.00 per week for temporary total disability and \$205.00 per week for permanent partial disability, if applicable; that respondent paid the initial medical expenses to Dr. Trent Lamb, as well as Dr. James Metcalf, in the total amount of \$1,681.33; and that the respondent had controverted all benefits beyond those previously paid.

By agreement of the parties, the primary issue presented for determination was whether the claimant's medical problems and disability after her release by Dr. Metcalf were causally related to the February 28, 2002, injury, entitling her to additional benefits.

Claimant contended, in summary, that all of her continued medical problems were directly and causally related to the February 28, 2002, admitted injury; that the respondent should be held responsible for all medical and related treatment, including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment; that she was entitled to temporary total disability benefits from the date of the injury and continuing through the present, less credit for any dates that she worked following the injury; and that a controverted attorney's fee should attach to any benefits awarded.

The respondent maintained that the claimant's surgery and additional medical treatment was not reasonably necessary, causally related or authorized medical treatment.

Although, as will be set out further below, I find that all of the claimant's causally related medical treatment was by referral of an authorized medical provider, her family physician and primary care provider, and that claimant's subsequent course of treatment was by referral of her primary care physician and thus not unauthorized, respondent acknowledged that it failed to provide the claimant with a Commission Form AR-N, and, further, that it did not have a contract with a managed care organization. Accordingly, even if the claimant made an unauthorized change, which is not conceded herein, the rules concerning change of physicians and authorized medical treatment do not apply because respondent controverted all additional benefits and failed to furnish the claimant with a notice of her legal rights concerning medical treatment.

The claimant testified in her own behalf. Her husband was called as a corroborating witness. The record is composed solely of the transcript of the August 22, 2003, hearing containing numerous exhibits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in

accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On February 28, 2002, the claimant sustained a compensable cervical injury which arose out of and during the course of her employment with Dollar General Store, at which time she earned sufficient wages to entitle her to compensation rates of \$273.00 per week for temporary total disability and \$205.00 per week for permanent partial disability.
3. The claimant has proven, by a preponderance of the credible evidence, that all of her cervical problems and need for treatment, including cervical surgery performed by Dr. Rebecca Barrett-Tuck are directly and casually related to the February 28, 2002, admitted injury, and were reasonably necessary and are, therefore, the responsibility of the respondent.
4. The claimant has failed to provide, by the greater weight of evidence, that her low back problems, multinodular goiter, and/or thyroid problems, and carpal tunnel syndrome are causally related to the February 28, 2002, injury.
5. Respondent is responsible for all medical and related treatment for the claimant's cervical injury, including, but not limited to surgery performed

by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment for the cervical complaints.

6. Respondent is not responsible for any medical treatment related to the claimant's lumbar complaints, goiter and/or thyroid problems, or carpal tunnel syndrome.
7. The claimant is entitled to temporary total disability beginning March 1, 2002, and continuing through at least March 27, 2003, and until such date that her healing period can be determined which requires further development of the medical evidence.
8. Respondent is entitled to a credit for any days that the claimant worked following her February 28, 2002, compensable injury.
9. The extent of claimant's disability attributable to her cervical injury requires further development of the medical evidence and is by necessity, specifically reserved.
10. Respondent has controverted all benefits beyond those previously paid.

DISCUSSION

The claimant, Sharon Ann Stone, testified in her own behalf. The claimant is forty-six (46) years old. She has an 11th grade education. She denied obtaining any vocational training beyond her limited schooling. The claimant began working for the respondent in 1997. She was initially hired as a clerk and stocker. At the time of the claimant's injury, she was a store

manager. On February 28, 2002, while closing and locking the Dollar General Store in Manila, Arkansas, the claimant was assaulted and robbed by two (2), masked individuals. The claimant was beaten, choked, and dragged by her neck outside the store. The claimant did not have any store money in her possession at the time of the assault, but was robbed of her personal money and left outside the store by the fleeing assailants. The claimant eventually walked to a nearby gas station, TJ's Quick Stop, where her daughter worked. An ambulance was called and claimant was taken to a local hospital where she was treated and released. (Tr.14-20)

The claimant denied experiencing any prior physical problems involving her neck or upper extremities. She acknowledged having sustained a prior low back injury as the result of being rear ended in a motor vehicle accident during the later part of 1989. The claimant was treated primarily by Dr. Rebecca Barrett-Tuck, a neurosurgeon in Jonesboro, Arkansas, who has also treated the claimant for the within claim. Dr. Tuck apparently last examined the claimant for her lumbar injury in February or March, 1990. Again, the claimant was initially examined and treated at the Baptist Memorial Hospital in Blytheville, Arkansas, during the early morning of March 1, 2002. The claimant was diagnosed as having sustained a neck strain, facial contusion, and head injury; prescribed medications and released to be follow-up by her personal physician. (Resp. Ex. A, pp.19-23)

The claimant next went to her family physician, at the Manila Family Clinic, where she was examined and evaluated by Angela McKinness, a nurse practitioner, with complaints of neck pain, as well as bilateral arm numbness. The claimant was continued on medications. In addition, a CT scan of the cervical spine, as well as EMG/NCV studies were ordered by Dr. Trent Lamb of the Manila Family Clinic, who is claimant's primary care physician. Dr. Lamb also ordered a course of physical therapy which did not improve the claimant's symptoms. Apparently, the claimant continued working while receiving medical treatment through on or about April 15, 2002, at which time she was terminated by the district manager for Dollar General Stores, Mark Fagan. The claimant's termination appeared to be under extremely questionable circumstances. The claimant's undisputed testimony is that she repeatedly communicated her continuing physical problems to Mr. Fagan and that he failed and/or refused to authorized additional medical treatment while, at the same time, referring the claimant to the HR manager. Dr. Lamb subsequently referred the claimant to Dr. James C. Metcalf, Jr., a neurosurgeon at the Semmes Murphy Neurologic and Spine Institute in Memphis, Tennessee. Dr. Metcalf examined the claimant one-time only on May 14, 2002. He diagnosed cervical degenerative disc disease. Dr. Metcalf recommended continued medications, as well as a program of physical therapy, but, did not feel surgery was warranted. (Resp. Ex. A, pp.50-51)

Following an extended course of conservative treatment, which did not improve the claimant's symptoms, she returned to Dr. Lamb and was eventually referred to Dr. Rebecca Barrett-Tuck, a neurosurgeon in Jonesboro, Arkansas, for a second opinion. Dr. Tuck had previously treated the claimant for her lumbar injury. The claimant was first examined and evaluated by Dr. Tuck on June 17, 2002. Based upon Dr. Tuck's examination, together with a review of the diagnostic studies, specifically a CT scan, as well as MRI studies, Dr. Tuck diagnosed a disc rupture at C5-6 and a disc rupture eccentric to the left at C6-7. Dr. Tuck's recommendations are set out below:

I have recommended to Mrs. Stone ACDF at C5-6 and C6-7 with plating, although I have talked to her in great detail about the fact that her symptoms really go beyond what I could ascribe to her disc ruptures alone and I do not know how much relief she will get from the neck surgery. Certainly she might get complete relief but on the other hand, she may get little relief. She seems to understand. We talked about risks and complications. She has recently been found to have a piloid goiter. This was noted on the CT scan. She has an appointment with Dr. Ganong next week for evaluation. I have asked her to call and schedule her surgery when and if she is ready to proceed once she has completed her thyroid workup. (Resp. Ex. A, p.55)

Dr. Tuck eventually performed an anterior cervical discectomy and fusion of C5-6 and C6-7 on August 6, 2002. Based upon the claimant's testimony at the hearing, it appears that the surgery did not achieve the desired objective which Dr. Tuck cautioned in her June 17, 2002, report, aforementioned.

The primary issue presented for determination was whether the

claimant's various medical problems and disability after her release by Dr. Metcalf on May 14, 2002, are causally related to the admitted, February 28, 2002, injury.

As previously noted, the medical evidence reflects that the claimant suffers from a multitude of physical problems, including, but not limited to problems with her lumbar spine, cervical spine, enlarged thyroid gland and/or goiter, and possible carpal tunnel syndrome. The claimant's lumbar complaints pre-dated the February 28, 2002, admitted injury and are clearly unrelated to the incident. Further, it does not appear that claimant is making a claim for a low back injury. The claimant's cervical complaints, as well as her diagnosis of an enlarged thyroid and possible carpal tunnel syndrome all manifested themselves after the admitted injury. However, as reflected by the record as a whole, claimant's thyroid and/or goiter problems are congenital in nature and appear unrelated to the assault. The claimant's possible carpal tunnel syndrome was first diagnosed following the claimant's cervical surgery, and there is no credible evidence whatsoever that the carpal tunnel syndrome is work-related. In fact, claimant's admitted facial and cervical injury was the result of a specific incident identifiable in time and place of occurrence. Our law recognizes carpal tunnel syndrome as being the result of rapid repetitive work activities. The only injury that the claimant has proven, by a preponderance of the credible evidence, is a cervical injury which respondent

initially accepted as compensable and for which it paid initial medical treatment provided by Dr. Trent Lamb and Dr. James Metcalf prior to controverting all benefits beyond those previously paid. I specifically find that the claimant has proven, by a preponderance of the credible evidence, that her cervical problems and need for treatment related to the cervical injury are compensable and that the respondent should be held responsible for all medical and related treatment for the cervical injury, including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment, as well as temporary total disability related thereto.

The claimant's thyroid problems were actually diagnosed by Dr. Lamb prior to the claimant's being evaluated by Dr. James Metcalf. However, the diagnosis was made as a result of a workup for the cervical injury, and its etiology is unrelated to the work incident despite claimant's apparent contention that it was related. See, (Comm. Ex. 1)(Tr.29) Since each of the three (3) physical problems manifested themselves following the February 28, 2002, assault and injury, and are part of the claim, each must be examined separately.

The claimant was initially examined and treated at the Baptist Hospital emergency room in Blytheville, Arkansas, on March 1, 2002, where she was diagnosed as having sustained a facial contusion, head injury, and neck strain. The claimant was next examined and evaluated at the Manila Family Medical Clinic where her primary complaint was neck pain, as well as bilateral arm

numbness. The claimant was treated with medications and physical therapy. Dr. Trent Lamb, her family physician, has at all times remained her primary treating physician. Dr. Lamb ordered various diagnostic studies to ascertain the nature and extent of claimant's injury. A CT scan was conducted on April 11, 2002, which revealed significant disc herniations at multiple levels. In addition, the study also revealed an enlarged thyroid gland. Dr. Lamb's April 17, 2002, report is set out, in part, below :

CT SCAN: The patient did have a CT scan of the neck, which was done on 04/11/02, and we have these results from SBRMC today (they are in her chart). This shows 3 herniated discs, 1 at C3-4, which has a tiny central disc protrusion, C5-6 shows a small left paracentral and posterior lateral herniated disc, but no severe nerve root impingement or canal stenosis. Also, C6-7 shows a left paracentral herniated disc, but no obvious frank stenosis.

Also, of note she did have an enlarged thyroid gland that was seen, and they do recommend an ultrasound of the thyroid.

PLAN:

- 1) In the meantime she is going to physical therapy, and she has some Soma 1 at h.s. per Angela McKinness, RNP in Manila. She also has Vioxx 25-mg per day so we will keep her on this. I went ahead and gave her a prescription for Lorcet Plus #90 1 p.o. t.i.d. p.r.n. and a Medrol Dosepak to see if we can help with the anti-inflammation effect.
- 2) She may need a referral to neurosurgery for this, but she does have physical therapy referral. Therefore, we will try to conservatively manage this, and hopefully if we can get the inflammation down out of this area the pain will subside. If it is not any better within the next 4-6 weeks we will schedule a MRI

and refer her to neurosurgery. (Resp. Ex. A, p.43)

Dr. Lamb then ordered an MRI followed by referral of the claimant for a neurosurgical consult to Dr. James C. Metcalf, at the Semmes Murphy Clinic in Memphis, Tennessee. Dr. Metcalf evaluated the claimant on May 14, 2002. His diagnosis was not totally consistent with Dr. Lamb's, but he confirmed that the MRI study revealed a bulging disc at C5-6 and C6-7 with no significant spinal cord compression, at which time he recommended a program of physical therapy which had already been instituted by Dr. Lamb. (Resp. Ex. A, p.51)

The record reflects that the claimant continued to experience significant problems, including severe neck pain and radiculopathy. Dr. Lamb next referred the claimant to Dr. Ganong for evaluation of the thyroid mass. In addition, Dr. Lamb referred the claimant to a local neurosurgeon, Dr. Rebecca Barrett-Tuck, with Neurosurgical Associates of Northeast Arkansas in Jonesboro, Arkansas. A portion of Dr. Tuck's neurosurgical consultation is set out below :

CT scan of the cervical spine shows osteophytic spurring along with a disc rupture at C5-6 and a disc rupture eccentric to the left at C6-7, which is a bit larger. MRI confirms these findings.

I have recommended to Mrs. Stone ACDF at C5-6 and C6-7 with plating, although I have talked to her in great detail about the fact that her symptoms really go beyond what I could ascribe to her disc ruptures alone and I do not know how much relief she will get from the neck surgery. Certainly she might get complete relief but on the other hand, she may get little relief. She seems to understand. We talked about risks and complications. She has recently been found to have a piloid goiter. This was noted on the CT scan. She has an appointment with Dr. Ganong next week for

evaluation. I have asked her to call and schedule her surgery when and if she is ready to proceed once she has completed her thyroid workup. (Resp. Ex. A, p.55)

Apparently, the claimant experienced some resistance with Dr. Ganong concerning the thyroid mass which is reflected in a July 10, 2002, report from Dr. Lamb which states:

HPI: She appears to be doing okay, but I am somewhat surprised by this patient. She says that she went to see Dr. Ganong, and he told her that he did not know what she was there for and she really did not need to be there. This is all by her account. I am unsure of what to make of all this. She did have a normal thyroid function test on her blood work, but she has a mass on the left side of her thyroid, as per thyroid scan. I told her that we would go ahead and schedule her for a fine needle aspiration of a 2-cm thyroid mass on the left, since Dr. Ganong did not do this, and I will get a release of information from NEA Clinic where she had an ultrasound of the thyroid done on 06/24/02. I am still not convinced that this is not something that we need to be worrying about. She did have a thyroid scan done 05/24/02, which showed a greater than 2-cm diameter, active thyroid nodule involving the mid- to lower pole of the left thyroid lobe consistent with an active thyroid nodular goiter. However, this does need to be followed up. If this is truly what Dr. Ganong told her I disagree with him and am not in concurrence with his opinion. We will follow this up ourselves, and if she needs a referral for radioactive iodine ablation or referral to a surgeon, then we will make that referral ourselves. (Resp. Ex. A, p.56)(emphasis supplied)

The claimant eventually returned to Dr. Tuck and underwent an anterior cervical discectomy and fusion of C5-6 and C6-7 using anterior plating on August 6, 2002. In addition, the claimant has undergone considerable treatment including surgical procedures for removal of the thyroid and/or goiter mass which apparently recurred.

The claimant contended that all of her continued medical problems were directly and causally related to the February 28, 2002, injury and that the respondent should be held responsible for all medical and related treatment including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck. Respondent maintained that the claimant's surgery and medical treatment was not reasonably necessary, causally related or authorized medical treatment.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Concerning the claimant's cervical injury, suffice it to say that all the credible evidence of record reflects that the claimant's cervical surgery and medical treatment related to her neck was reasonably necessary, as well as causally related to the February 28, 2002, injury. Further, the credible evidence reflects that the treatment was by referral of an authorized, treating physician.

The claimant's primary treating physician has been Dr. Trent R. Lamb. His

March 3, 2003, report addressed to whom it may concern states:

Sharon Stone is a patient of this office who suffered severe neck pain following an assault and robbery in February of 2002. Ms. Stone reported that she had been assaulted during a robbery at her place of employment on 02/28/02. She was grabbed by the neck and shaken quite hard. Subsequently, Ms. Stone was evaluated and underwent a CT scan that showed three disc herniations. Due to the severity of her injuries, she was referred to Dr. James Metcalf of Semmes-Murphy. It is my understanding that Dr. Murphy [sic] did not feel that surgery would be of benefit for Ms. Stone.

Ms. Stone continued to have complaints of severe neck pain with diffuse tenderness. I felt that a second opinion was in order and referred Ms. Stone to Dr. Rebecca Barrett-Tuck, a neurosurgeon in Jonesboro. Dr. Tuck reviewed both the CT scan and MRI films and recommended an ACDF at C5-6 and C6-7 with plating. Ms. Stone underwent anterior cervical discectomy and fusion of C5-6 and C6-7 using anterior plating on 08-06-02.

It is my medical opinion that the nature of Ms. Stone's [sic] injury certainly fit with her explanation of the events of 02-28-02. I believe that this was substantiated by the findings of both the CT scan and the MRI.

If I may be of any further assistance to you regarding this matter, please feel free to contact this office. (Cl. Ex. 1[b])

Admittedly, the surgery performed by Dr. Tuck has, to date, only minimally improved the claimant's overall symptoms. Further, Dr. Metcalf did not believe that surgery was warranted. He recommended additional, conservative treatment which was attempted and, likewise, proved unsuccessful. There is no requirement under our workers' compensation laws

that treatment prove beneficial before it is deemed reasonably necessary. Dr. Tuck advised the claimant in advance that the surgery might provide complete relief or very little relief. After further consideration, and, apparently, after consulting her primary treating physician, the claimant elected to proceed with the surgical option. The lack of complete success does not mitigate respondent's responsibility to pay for the surgery.

As regard to the enlarged thyroid or goiter, the record reflects that the claimant had a strong history of goiters in her family. The diagnostic studies ordered by Dr. Lamb discovered the goiters, but there is no competent evidence that the injury caused said problem. A portion of claimant's testimony on cross-examination is set out below :

Q Talking about the goiter that you had, you said that it had never given you any problems before?

A Didn't know I had it.

Q And the only way you knew you had it was because the MRI or the CT scan that was performed on your neck, is that right?

A Yes.

Q Now, you have a strong history of goiters in your family, do you not?

A My two sisters had it.

Q In fact, even though it was identified back around April of 2002, you didn't actually have surgery until this year –

A Right.

Q – is that right? And it had continued to increase in size to the point that you then had to have surgery, is that right?

A Right.

Q Back when I took your deposition, you said you were taking Synthroid, which is the thyroid replacement medication, is that right?

A Yes.

Q That was the only medication that you were taking at the time?

A I don't know what I was taking. I know I was on Synthroid, but now I'm on two different other kinds of medicine.

Q Is that something that Dr. Tuck prescribed for you?

A No, Dr. Lamb.

Q Now, are you still seeing both Dr. Lamb and Dr. Tuck?

A Yes, and Dr. Jiu.

Q And that's the physician who did the surgery on your thyroid, is that right?

A Thyroid, yes. (Tr.36-37)

The medical evidence further reflects that the claimant's thyroid nodules were related to a strong family history of such growths. (Resp. Ex. A, pp.76-78)

Further, I do not find any causal connection between the assault and the claimant's subsequent diagnosis by Dr. Tuck of possible carpal tunnel syndrome. First, the claimant's injury occurred as the result of a specific

incident identifiable in time and place of occurrence when she was grabbed by the neck and dragged around. Carpal tunnel syndrome is a gradual onset injury caused by repetitive activities. A.C.A. §11-9-102(ii)(a). Neither the lay testimony nor the medical evidence relate the carpal tunnel to a work injury.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. *Arkansas Code Annotated §11-9-704(c)(4)*; *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has proven, by a preponderance of the evidence, that her continued medical problems for her

cervical spine were directly and causally related to the February 28, 2002, admitted injury and that respondent should be held responsible for all medical and related treatment, including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment for the cervical injury. However, I find that claimant has failed to prove that she is entitled to medical treatment for any other physical problems other than the cervical injury. The only remaining issue concerns claimant's entitlement to temporary total disability.

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *Arkansas State Highway and Transportation Department vs. Breshears*, 272 Ark. App. 244, 613 S.W.2d 392 (1981); *Johnson vs. Rapid Die & Molding*, 46 Ark. App. 244, 878 S.W.2d 790 (1984).

"Disability" means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant's physical capabilities and evaluate her ability to engage in any gainful employment. The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. *see, Palazolo vs. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

Dr. Tuck has continued to follow the claimant since the surgery was performed on August 6, 2002. Dr. Tuck subsequently referred the claimant to Dr. Calin Savu, for pain management, after which the claimant returned to Dr. Tuck for follow up. Dr. Tuck's February 13, 2003, report states:

Ms. Stone returned for follow-up. She was supposed to have follow-up EMG's and nerve conduction studies prior to her return as well as follow-up AP and lateral cervical spine films. She did not have either one of these done. She was also to see pain management and apparently she did see a pain management physician but has not had any treatment. I have not received reports from the pain management doctor. Ms. Stone tells me that she is scheduled to have thyroid surgery in the near future. She still complains of tightness in her posterior neck and shoulders. She sits today holding her neck in a very stiff position with both of her shoulders elevated about as high as she can get them. I am not surprised that she is having neck pain holding herself in this posture. Also, after sitting for a few moments, her arm begins to shake in a trembly type fashion. She did undergo a myelogram and post-myelogram CT a couple of months ago, which looked fine. I think we are seeing some definite symptom magnification.

I have scheduled her plain films as well as EMG/NCV studies and will see her back thereafter. (Resp. Ex. A, p.101)

The record reflects that the claimant has continued to receive additional treatment, including surgeries for her non-work-related thyroid problems which may, in some way, affect the claimant's overall physical condition and ability to work. The record reflects that the claimant was last examined by Dr. Tuck on March 27, 2003, at which time she issued two (2) separate reports which follow:

I did have an opportunity to receive and review the follow-up

cervical spine films for Ms. Stone. Her hardware looks great. The plate is in good position, screws in good position. The alignment is great. It has been six months since her ACDF at C5-6 and C6-7, however, she still is not solidly fused, particularly at C5-6. She is a heavy smoker and would not desist her smoking during the healing time. Of the lower level, it does look like she has had some bridging. This may continue, and in fact, she may eventually fuse at C5-6 but at this point, certainly she has not progressed as well as she should have. I will be seeing Ms. Stone back at some point in the future for a right carpal tunnel release. I think we will want to go ahead and do follow-up films on her cervical spine in another 4-6 months. (Resp. Ex. A, p.125)

* * * *

Ms. Stone returned for follow-up. She underwent an ACDF at C5-6 and C6-7 about six months ago. She has continued to complain some of neck pain. She has recently undergone thyroid surgery as well and has had some numbness in the skin of her neck following the thyroid surgery. I have told her that usually this returns. She is also continuing to have tingling in her right hand. EMG nerve conduction velocity studies confirm right carpal tunnel syndrome. I have offered her a carpal tunnel release anticipating that this would relieve the numbness and tingling as well as the aching in her forearm, wrist, and hand area. She did have plain films of the cervical spine but they were not sent with her, therefore, I was able to look at her films only after she had left the office. Her fusion is still certainly not solid, in fact, it appears she may develop a pseudoarthrosis at C5-C6, however, her hardware looks great. Her alignment is excellent. I would like follow-up neck films in about six months. She is instructed to call when she is ready to proceed with her right carpal tunnel release. She did not want to schedule it at this time. (Resp. Ex. A, p.126)

In view of the foregoing, I find that the claimant is entitled to temporary total disability through at least March 27, 2003. By necessity, the exact nature and extent of claimant's disability and entitlement to further indemnity benefits, both temporary total disability and/or permanent partial disability requires further

development of the medical evidence and is specifically reserved.

Finally, I feel compelled to point out that the record reflects that some of claimant's medical expenses have been paid by a third-party health insurance provider, and, therefore, it appears that the provisions of A.C.A. §11-9-411 apply.

AWARD

Respondent, Dollar General Store, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$273.00 per week, beginning March 1, 2002, and continuing through at least March 27, 2003, less credit for any dates that the claimant worked following her admitted injury.

All accrued benefits shall be paid in lump sum and without discount.

Respondent is further directed and ordered to pay all reasonably necessary hospital, medical, and related expenses as the result of claimant's compensable cervical injury, including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment for the cervical injury.

Additionally, claimant's attorney, Mr. Richard A. Reid, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715; *Coleman vs. Holiday Inn*, 31 Ark. App. 224, 792 S.W.2d 345 (1990); and *Chamness vs. Superior Industries and*

Sedgwick James of Arkansas, Inc., Arkansas Workers' Compensation
Claim #E019760, (March 5, 1992).

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge