

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600793

JUDY A. CAMPBELL, EMPLOYEE	CLAIMANT
DEPARTMENT OF WORKFORCE EDUCATION, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 12, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on October 29, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Kenneth E. Buckner, Attorney-at-Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Richard S. Smith, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 29, 2007, to determine whether the claimant was entitled to additional workers' compensation benefits.

This claim has a lengthy procedural history, as reflected by the Prehearing Order filed September 10, 2007. The medical evidence is both voluminous and conflicting, as will be set out further below. Despite multiple prehearing conferences, the parties failed to either abstract the medical evidence, as requested in the Prehearing Order or submit legal arguments addressing how the medical evidence supported their conflicting contentions which was encouraged, but not required. I found the medical evidence to be extremely confusing, which was, in part, because the parties failed to fully develop the inconsistent opinions of various

medical providers. However, it is clear that the medical opinions solicited by respondents from non-treating physicians, specifically, opinions from Dr. Earl Peebles and Dr. Barry Baskin appeared to contain flawed medical histories. At the very least, their opinions were issued without a complete set of diagnostic studies which were completed after the opinions were issued. For some unexplained reason, respondents failed to cross-examine the claimant's primary treating physicians which it specifically reserved. Rather, they relied upon the medical opinions secured from non-treating physicians. After the claimant's treating physicians conducted additional diagnostic studies reflecting abnormalities requiring surgical intervention, respondents failed to obtain supplemental medical opinions addressing the new objective medical findings from any of its medical experts.

A final prehearing conference was conducted on September 10, 2007, 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 introduced as "Commission's Exhibit 1."

It was stipulated that the Arkansas Workers' Compensation Commission had jurisdiction over this claim; that the employment relationship existed between the parties at all relevant times, including January 12, 2006; that the claimant sustained a compensable injury as a result of a motor vehicle accident on said date; that claimant's average weekly was \$438.40, entitling her to a compensation rate of

\$292.00 per week for temporary total disability; that respondents paid temporary total disability through March 5, 2007; and that respondents controverted all benefits beyond those previously paid. More specifically, respondents admitted that the claimant sustained a compensable cervical injury as the result of the January 12, 2006, motor vehicle accident while controverting compensability of an alleged back injury related to the same incident, as well as controverting further medical treatment for the admitted cervical injury after March 5, 2007.

By agreement of the parties, the following issues were presented for determination:

- 1) Whether, in addition to the cervical injury, the claimant also sustained a low back injury on January 12, 2006.
- 2) The date claimant's healing period ended.
- 3) Claimant's entitlement to additional temporary total disability.
- 4) Respondents' responsibility for additional medical treatment.

Claimant contended, in summary, that she sustained both a cervical, as well as lumbar injury as the result of her compensable motor vehicle accident; that she was entitled to additional temporary total disability for the period beginning March 6, 2007, and continuing through the present, maintaining that her healing period had not ended; that respondents should be held responsible for all outstanding hospital, medical, and related expenses, including, but not limited to neck surgery that she has undergone since benefits were terminated, together with continued, reasonably necessary medical treatment, including recommended low back surgery; and that

a controverted attorney's fee should attach to any additional benefits awarded.

The respondents contended that the claimant reached maximum medical improvement on or before March 5, 2007; that her need for medical treatment after said date was unrelated to her compensable injury; and that the claimant was not entitled to any additional benefits.

The record reflects that between the September 10, 2007, prehearing conference and the October 29, 2007, hearing, the claimant underwent low back surgery. However, the claimant's recent surgery did not alter the stipulations, issues, and contentions of the respective parties set out above, except that the recommended back surgery was performed.

In addition to the claimant, her husband, Jack Campbell, was called as a corroborating witness. The record is composed solely of the transcript of the October 29, 2007, hearing containing volumes of medical 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. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that she sustained both a cervical injury, as well as a low back injury which arose out of and during the course of her employment with the Department of Workforce Education, and which required medical services and resulted in disability which was confirmed by medical evidence supported by objective findings and which was caused by a motor vehicle accident on January 12, 2006.
4. The claimant's healing period has not yet ended. Respondents were not justified in terminating temporary total disability on March 5, 2007.
5. The claimant is entitled to additional temporary total disability for the period beginning March 6, 2007, and continuing through a date yet to be determined.
6. The claimant has proven, by a preponderance of the evidence, that respondents should remain responsible for all hospital, medical, and related expenses, including, but not limited to both cervical surgeries, as well as lumbar surgery which has been performed since benefits were terminated, together with continued reasonably necessary medical treatment.
7. Respondents are entitled to a credit or offset for all benefits previously received pursuant to Ark. Code Ann. §11-9-411.
8. All additional issues are, by necessity, specifically reserved.

DISCUSSION

The record in this case is replete with inconsistencies and contradictions. Based upon my observations of the claimant's demeanor at the hearing, together with a review of the medical evidence, a logical inference can be drawn that some of the claimant's confusing testimony can be attributed to her memory having been affected by the use of various medications prescribed by the treating physicians subsequent to her January 12, 2006, admitted injury and surgeries. The inconsistencies in the medical opinions of record are more troubling. It has become customary for respondents to seek and obtain medical opinions from its own physicians in an effort to justify terminating workers' compensation benefits. That appears to be, in part, the justification in the instant case. However, as previously pointed out, and as will be reflected further below, part of the inconsistencies in the medical opinions of record in addressing the claimant's need for various surgeries, is because additional diagnostic studies performed by claimant's authorized treating physician and/or by referral of an authorized treating physician reflected a need for surgery was not made available to respondents' hand-selected medical experts.

HISTORY

The claimant, Judy Campbell, testified in her own behalf. On and before January 12, 2006, the claimant was employed as a utilization inspector for the Department of Workforce Education. Part of her job required her to travel, inspecting federal government property. In addition, she was required to attend

various municipal meetings, as well as meet with state and federal officials. It is undisputed that the claimant was involved in a work-related motor vehicle accident on January 12, 2006. The claimant left a meeting with the Municipal League in downtown Little Rock and was going back to her office when the accident occurred. The claimant was driving a state vehicle which was apparently totaled in the accident. The claimant stated that she injured her neck, back, and left knee in the accident. The claimant stated that she was initially treated at the emergency room, and was advised to follow-up with her family physician. The claimant next saw Dr. Joe Daugherty, a general practitioner in Jacksonville, Arkansas. No records were submitted from any hospital concerning the emergency room treatment. The only medical from Dr. Daugherty were off-work excuses. The claimant was then referred to Dr. Charles Schultz with the Jacksonville Neurology Clinic in North Little Rock, Arkansas. The record reflects that the claimant was initially examined by Dr. Schultz on February 1, 2006. Dr. Schultz has remained the claimant's primary care physician since that time. The claimant stated that she last saw Dr. Schultz on October 22, 2007, just one week prior to the hearing. The claimant acknowledged that she had pre-existing injuries and experienced some physical problems prior to the January 12, 2006, incident. Dr. Schultz treated the claimant for some of her prior physical problems, as well as the injuries sustained following her motor vehicle accident. The record reflects that the claimant underwent a cervical fusion in 1999 which was performed by Dr. Steven Cathey, a neurosurgeon in North Little Rock,

Arkansas. Dr. Cathey also evaluated the claimant by referral from Dr. Schultz following the immediate claim. After the claimant's 1999 cervical surgery, she returned to work for the employer herein and continued to be gainfully employed until the motor vehicle accident. The claimant has not returned to work since her January 12, 2006, accident. Again, the record reflects that the claimant was receiving active medical treatment from Dr. Charles Schultz prior to, as well as subsequent to the January 12, 2006, motor vehicle accident. However, the claimant pointed out that the only treatment she was receiving from Dr. Schultz prior to January 12, 2006, was for abnormal brain waves and a seizure disorder which was controlled by medications. The controlled seizure disorder did not prevent the claimant from working. The claimant denied receiving any active medical treatment for either her prior cervical problems or alleged low back problems before her compensable injury. The claimant and her husband confirmed that the claimant was taking prescription medication at the time of her accident. However, the medication was reportedly to control seizures and control breakout pain, and did not prevent the claimant from working. Again, none of the claimant's prior medical records were submitted as evidence.

Dr. Charles Schultz has remained the claimant's primary care physician. Dr. Schultz first evaluated the claimant on February 1, 2006. His initial history is set out below:

History of Present Illness: This is a 46-year-old white female complaining of continued pain in her neck with radicular pain into her right arm with muscle

spasms. The patient has a shaking of her arms with lying down and extending her hands. Her neck pain continues to be present almost all the time however her pain goes to severe on a pain scale with exacerbations [sic]. The patient is having shaking of her left arm. This pain has markedly worsened since her MVA on 1/12/2006. Patient has a marked decrease range of motion of her neck since her motor vehicle accident. Patient describes a squishing sensation with head movement. Her head shaking has also markedly worsened since her MVA. Patient is having pain and tenderness over her cervical facet joints bilaterally. She is now having a new tingling sensation in her left hand since her accident. Patient is willing to undergo cervical facet joint/medial branch block injections to improve her pain symptoms. She is doing worse with regard to her hand pain since her accident. Her tremor is much worse since her motor vehicle accident. She doing some better with her headaches since her last visit. She is doing much better with regard to her dizziness since her last visit. She is currently taking Pamelor for headache prevention. The patient is doing well with regard to her seizure control. She states that she is [sic] not had a seizure in over 5 years. Her last seizure was in February of 2001. Patient also since her motor vehicle accident is now having severe pain in her thoracic spine region. Patient was hit just by her drivers side door with the motor vehicle accident. Patient presented to emergency room following this accident with severe pain in her cervical and thoracic spine regions. Patient has had marked difficulty working since her accident. Patient was off for approximately 11 days following the motor vehicle accident. She has tried to return to work and is having marked difficulty. Patient was only able to work a few hours over the last few days secondary to severe pain. Patient is having marked difficulty with looking down secondary to severe neck pain. Patient also is having severe muscle spasms, which have only partially responded to her Flexeril medication. (Cl. Ex. A, p.2)(emphasis supplied)

Dr. Schultz's initial evaluation included an examination of the claimant's neck and low back. He noted that the claimant had tenderness over both the cervical and lumbar facet joints, bilaterally, as well as pain over her thoracic spine, radiating into her chest wall, bilaterally. Dr. Schultz ordered an MRI which was conducted on February 7, 2006, and which confirmed evidence of a prior anterior cervical fusion at the C5-6 level. The study also diagnosed a mixed broad based disc placement at C4-5 level causing mild flattening of the ventral cord. Dr. Schultz next referred

the claimant to Dr. Steven L. Cathey. Dr. Cathey evaluated the claimant on February 20, 2006, and concluded that the claimant had sustained a musculoskeletal injury superimposed on pre-existing degenerative/operative changes in her cervical spine which Dr. Cathey did not think would respond favorably to additional cervical disc surgery. Dr. Cathey referred the claimant back to Dr. Schultz for pain management, including physical therapy and trigger point injections, as well as a therapeutic trial of prescription medication. Thereafter, the claimant continued under the care of Dr. Schultz. On March 16, 2006, Dr. Schultz treated the claimant with a procedure which included cervical medial branch blocks with fluoroscopic guidance at right and left C3, C4, C5, C6 levels. The claimant returned to Dr. Schultz on March 30, 2006, without improvement, at which time Dr. Schultz ordered a 48-hour EEG to look for evidence of epileptiform activity as an etiology for increased seizure activity as an etiology for shaking episodes. The EEG was performed on May 1 and May 2, 2006. While the study demonstrated abnormal wave discharges, placing the claimant at risk for partial and secondary generalized seizures, Dr. Schultz opined that it did not appear that the claimant's shaking episodes were seizure related. The claimant returned to Dr. Schultz on June 21, 2006. Although the claimant had previously complained of neck, thoracic, and low back pain, Dr. Schultz also noted in his exam that the claimant complained of pain and tenderness over her right hip which had existed since the motor vehicle accident. The claimant returned to Dr. Schultz on June 29, 2006, at which time Dr.

Schultz attempted another procedure, specifically, a cervical medial branch radiofrequency thermocoagulation under fluoroscopic guidance at left C3, C4, C5, C6 levels. Dr. Schultz next ordered an x-ray of the claimant's right hip on July 14, 2006. In a report dated August 9, 2006, Dr. Schultz opined that the possibility of a spinal cord contusion could not be excluded. Dr. Schultz altered various medications to treat the claimant's various symptoms, including muscle spasms and shaking episodes. In an August 21, 2006, report, Dr. Schultz confirmed that the x-ray of the right hip failed to reveal any fracture. He further indicated that he would order a repeat MRI of the cervical spine because the claimant's symptoms had continued to worsen. Finally, Dr. Schultz indicated that he would send the claimant for an neuropsychological evaluation to evaluate her memory loss symptoms. An MRI was conducted on August 25, 2006. Although the radiologist stated that there had been no significant changes compared to the previous cervical MRI, dated 02/07/06, he noted that at the C4-5 level there was mild spondylosis with posterior endplate spurring and generalized disc bulging abutting and slightly flattening the central surface of the cord.

The claimant returned to Dr. Schultz on September 5, 2006, at which time Dr. Schultz prescribed Oxy IR 5 to 10 mg PO every 4 to 6 hours as needed for chronic pain. Dr. Schultz indicated that the claimant understood the addictive potential of this medication and agreed to use it sparingly and as directed while further pointing out that the medication should not be obtained from any other physician, not to

abruptly stop the medication without consulting a medical doctor first, and not to alter the dosage in any way. Again, Dr. Schultz indicated that he would send the claimant for a neuropsychological evaluation to evaluate her memory loss symptoms.

The claimant was next seen by Dr. A. J. Zolten, PhD, for a neuropsychological evaluation on September 27, 2006. Conflicting evidence addressed whether the claimant was referred to Dr. Zolten by Dr. Schultz or by respondents. The claimant stated that she was referred to Dr. Zolten by respondents. Dr. Zolten's consultation report indicated that this was his first referral by Dr. Schultz for neuropsychological testing. Dr. Zolten's acknowledgment that this was a first referral appears to support the claimant's testimony that respondents, rather than Dr. Schultz actually selected the evaluator which was subsequently confirmed by Dr. Peebles. Dr. Zolten pointed out that the claimant reported recent memory problems, while stating that the claimant had no difficulty recalling current information. A summary of his evaluation follows:

In summary, the patient is a 47-year-old female who was involved in a motor vehicle accident in January of 2006 and has been on disability since that time. She has a previous history of diagnosis of seizure disorder since 1997 under the care of Dr. Charles Schultz. The patient presents with recent onset of memory problems that appear to be worsened significantly in the last month and as noted above, this corresponds with a change in opiate medications for pain and with an increased use of these opiate medications. Curiously, the patient demonstrates no memory problems on clinical memory test.

The patient does demonstrate significant problems with exaggerating her symptoms, however. The patient's self-reported ratings of pain were clearly inflated and did not correspond with what was seen during 2 ½ hours of direct testing. She

never complained about her pain, rubbed the back of her neck only occasionally during the course of the testing, and was clearly task oriented well enough to provide average memory, indicating that her pain did not significantly interfere with memory functioning. In addition to this, she demonstrated an MMPI-II profile that in addition to clear depression, also indicated significant exaggeration of symptoms. In addition to this, she failed a significant clinical memory effort test, suggesting that her effort during the testing was suboptimal and one would expect her to function even better than the normal memory test results indicated during clinical testing. Of most importance here is that this patient was able to sit for an interview for an hour, testing for 2 ½ hours, take a 45 minute break for lunch, and then return and complete an MMPI that required almost 2 hours, giving the impression that she was able to function during this evaluation for almost a full work day without complaint, without asking for breaks, and with only an occasional rubbing of her neck.

This patient has some significant complicating factors that I think are unrelated to her current performance and may be adding to her problem with poor effort and exaggeration of symptoms.

1. She clearly has depression and this depression is clearly related to changes that occurred in 2003 with the death of her father. She reports no treatment for depression at all and she is clearly in need of good mental health care at this point. In addition to this, I am rather concerned that she has been treated for a seizure disorder with rather stout medications and at least from a historical standpoint, it is unclear whether she ever actually had any seizures. She was diagnosed with an abnormal EEG in 1997, did not have any "spells" until 2001, and these spells were characterized more as blackout spells in the context of having significant side effects to medications that she was taking for her seizures. I would recommend that this issue of whether or not she actually has seizures be revisited and the medications for this be critically evaluated before she goes forward. In addition to this, I believe that this patient is taking way too much opiate medications and certainly her symptoms that she complains about in terms of memory are consistent with somebody who is intoxicated with opiate medications. I suspect that for whatever reason, she is taking way too much of this medication and part of it has to do with her personal perception of the intensity of pain, which is inflated. (Resp. Ex. A, pp.5-7)

The claimant returned to Dr. Schultz on October 18, 2006, at which time Dr. Schultz went over the claimant's recent neuropsychological testing with the claimant. Suffice it to say that Dr. Schultz did not agree with the conclusions of the

testing. He noted that he would refer the claimant to psychiatrist to further evaluate what he described as unfounded conclusions by Dr. Zolten.

Respondents next solicited a medical opinion concerning the claimant's need for further treatment from Dr. Earl Peeples, an orthopedic surgeon in Little Rock, Arkansas. I feel compelled to point out that Dr. Peeples never examined the claimant. Rather, respondents submitted selected medical records to Dr. Peeples for the obvious purpose of terminating the claimant's medical treatment. Rather than conduct an exhaustive analysis of Dr. Peeples' October 26, 2006, report, suffice it to say that Dr. Peeples' summary conclusions appear to be designed to both terminate the claimant's entitlement to temporary total disability, as well as change her treating physician. I feel compelled to further point out that Dr. Peeples noted that the referral to Dr. Zolten for a neuropsychological evaluation came from Ms. Miller, respondent's case manager and not from Dr. Schultz. Based upon the selected medical evidence, and absent any physical examination and/or consultation, Dr. Peeples recommended that the claimant be discontinued from all medications with the exception of Tylenol and be allowed to resume normal employment without restrictions. Dr. Peeples further suggested a change of treating physicians which was self-contradicted by a later statement in the same report that invasive procedures for neck pain were contraindicated and that no further treatment was warranted. (Resp. Ex. A, pp.8-13, 33)

I found Dr. Peeples' report to lack any credibility. First, as previously pointed

out, Dr. Peebles never examined the claimant. It is unclear what medical evidence he reviewed. Further, his conclusion that the claimant could resume work without restrictions is totally inconsistent with the record as a whole. In fact, the claimant had a pre-existing cervical fusion which placed restrictions on her activities even prior to the January 12, 2006, motor vehicle accident.

Although the record reflects that the claimant's primary complaints related to her cervical spine, together with bilateral upper extremity difficulties, it is clear from the record that the claimant also complained of thoracic and low back problems, as well as hip pain and problems with her lower extremities. On November 27, 2006, the claimant underwent a lumbar spine MRI for the first time. The radiologist reviewing the study, Dr. Rudy L. Van Hemert, Jr., diagnosed a large disc extrusion centrally and on the left at the L5-S1 level with a small fragment extension down the superior aspect of the S1 vertebral body, as well as mild S1 root displacement. The claimant returned to Dr. Schultz on December 8, 2006, at which time Dr. Schultz treated the claimant with a selective left L5 and S1 nerve root injection with fluoroscopic guidance and further recommended additional diagnostic studies to better characterize the claimant's low back pain which he described as including radicular pain with paresthesia into both extremities, as well as muscle spasms. The claimant returned to Dr. Schultz on December 15, 2006, at which time he recommended a surgical evaluation if the claimant did not improve with recent selective epidural injections. Because the claimant did not improve, she was

referred to Dr. Harold Chakales, an orthopedic surgeon in Little Rock, Arkansas.

In the interim, the nurse case manager, Karen Miller, referred the claimant to Dr. Barry Baskin, a physical medicine and rehabilitation specialist in Little Rock, Arkansas. Dr. Baskin apparently evaluated the claimant on December 5, 2006. Again, various medical records were sent to Dr. Baskin in advance as noted in the statement containing his background information which was less than specific concerning what records were reviewed. Dr. Baskin's December 5, 2006, report clouded the medical evidence even further because it contained a past medical history including low back surgery in October, 2003, by Dr. Cathey, in addition to the admitted cervical discectomy and fusion by Dr. Cathey in 1999. Although the claimant acknowledged her prior cervical surgery, she denied having any prior low back problems. The only medical introduced by the parties concerning treatment by Dr. Cathey failed to indicate any history of low back surgery which respondents should have introduced if they, indeed, existed. Although, admittedly, Dr. Chakales, likewise, makes reference to prior low back surgery in some of his notes, it cannot be determined whether this reference is based upon erroneous statements contained in other medical providers' reports or based upon fact. Regardless of the claimant's pre-existing conditions, clearly, the record as a whole reflects that the January 12, 2006, motor vehicle accident aggravated both the claimant's cervical, as well as lumbar spine. I am persuaded that the large disc extrusion centrally at L5-S1 with a small fragment extension into the S1 vertebral body reflected in the

November 27, 2006, MRI did not exist prior to January 12, 2006. Specifically, there is no credible medical evidence reflecting any pre-existing findings of this nature. Further, it is clear from Dr. Baskin's December 5, 2006, report that his impressions were based upon the incomplete medical records submitted for his review rather than a comprehensive set of medical records. Dr. Baskin conceded that he did not have any previous studies documenting what the claimant's cervical MRI looked like at the time of the prior cervical fusion. Accordingly, his conclusion that the claimant sustained a cervical strain is not credible. Further, his impression that the claimant did not complain of low back pain or hip pain until three (3) to four (4) weeks prior to the December 5, 2006, evaluation is totally inconsistent with the medical evidence. The claimant and her husband both testified that she began experiencing low back pain immediately following the motor vehicle accident. Dr. Schultz's medical records confirm this complaint. Documentation of hip pain is contained in the reports no later than June 21, 2006, almost six (6) months prior to Dr. Baskin's evaluation.

I also recognize that the claimant underwent a functional capacity evaluation recommended by Dr. Baskin on or about February 6, 2007. Following the functional capacity evaluation, Dr. Baskin issued a February 21, 2007, report, at which time he opined that the claimant had reached maximum medical improvement. Dr. Baskin further stated that the claimant did not have any permanent partial impairment based on her injury of January 12, 2006, based, in part, upon the

reliability with the FCE which he described as suspect. Dr. Baskin felt that the claimant could work in the light physical demand category, occasionally lifting twenty-five (25) pounds, with restrictions on bending, stooping, and twisting. Dr. Baskin noted that the claimant reported that she had seen Dr. Chakales and that surgery for her neck was scheduled in the near future and that the claimant further reported that following cervical surgery, she would have to undergo surgery on her lumbar spine. (Resp. Ex. A, p.34)

Again, it is apparent that Dr. Baskin did not have benefit of all medical records and diagnostic studies, including the previously referenced lumbar MRI conducted on November 27, 2006. In fact, after the claimant was referred to Dr. Chakales on January 2, 2007, Dr. Chakales conducted additional diagnostic studies, specifically, cervical and lumbar myelogram performed on January 25, 2007. The lumbar myelogram was grossly abnormal and showed a filling defect at the L5-S1 level. The cervical myelogram showed spinal stenosis at C4-5 with a disc osteophyte complex which Dr. Chakales described as a form of disc herniation. Dr. Chakales opined that the claimant had undergone iatrogenic fusion at C5-6 and was developing adjacent segment disease at the C4-5 level. He recommended an anterior cervical discectomy and fusion. Dr. Chakales also stated that the claimant might need lumbar spine surgery and was a suitable candidate for a lumbar discogram. It is clear that the claimant wanted to proceed with the recommended surgery. Dr. Chakales noted that, in the event the claimant's workers'

compensation carrier denied the surgery, she wished to proceed under her private health insurance. (Cl. Ex. A, p.89)

As reflected in the stipulations, respondents controverted all benefits after March 5, 2007. The claimant underwent cervical surgery on March 8, 2007. Unfortunately, the claimant fell soon after surgery, causing a migration of the bone graft. The claimant was then required to undergo a repeat surgery on March 27, 2007. The record reflects that she fell again on or about April 7, 2007. However, the claimant did not sustain any additional injury as the result of the subsequent fall. The medical does not clearly reflect why the claimant repeatedly experienced falling episodes; however, it can be rationally inferred that they were attributable to the weakness in the claimant's lower extremities as the result of her lumbar disc extrusion reflected in the earlier diagnostic studies, specifically, the lumbar MRI, as well as the lumbar myelogram.

The claimant testified that the cervical surgery improved her symptoms involving her neck and upper extremities. At the time of the within hearing, the claimant had only recently undergone lumbar surgery and had not been released by either Dr. Chakales or Dr. Schultz.

The claimant's primary care physician, Dr. Schultz, in a report dated March 16, 2007, agreed with Dr. Chakales that surgical management of both the claimant's neck and low back were warranted.

ADJUDICATION

Numerous issues were presented for determination. The first issue is whether, in addition to the cervical injury, the claimant also sustained a low back injury on January 12, 2006.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
2. proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
3. medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
4. proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim, and compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Rather than conduct a further analysis of the record in this cause, suffice it to say that the claimant has satisfied each and every element necessary to establish compensability of both a cervical injury, as well as low back injury.

Admittedly, the claimant had a pre-existing cervical injury. Arguments can be made that the claimant had a pre-existing lumbar injury, which is not conceded

herein, as reflected by the extremely confusing medical set out above. However, a pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce a disability for which compensation is sought. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Minor v. Poinsett Lumber & Manf. Co.*, 235 Ark. 195, 357 S.W.2d 504 (1962); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that injury, *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). It is the Commission's duty to determine if a causal connection exists between the primary injury and any additional injuries. *Williams v. Prostaff Temporaries*, 336 Ark. 510, 988 S.W.2d 1 (1999).

While medical evidence is not required to show a causal connection, claimant must show proof, by a preponderance of the evidence. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 433, 990 S.W.2d 522 (1999).

It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following

the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 235 Ark. 104, 357 S.W.2d 263 (1962).

If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say, without hesitation, that there is no substantial evidence to sustain the Commission's refusal to make an award. *Clark v. Ottenheimer*, 229 Ark. 383, 314 S.W.2d 497 (1958); *Johnson v. Little Rock School District*, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But, if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the Commission's conclusion is controlling. *Kivett v. Redmond Co.*, 234 Ark. 855, 355 S.W.2d 172 (1962).

The claimant has proven that, in addition to her admitted cervical injury, she sustained a lumbar injury on January 12, 2006. Both injuries are confirmed by medical evidence supported by objective findings. Specifically, the diagnostic studies confirm cervical and lumbar injuries.

All the remaining issues turn primarily upon the credibility of the medical providers. As previously pointed out, I do not find the medical opinions of Dr. Peebles and Dr. Baskin to be as credible or persuasive as the findings and opinions

of the primary care physicians, Dr. Charles Schultz and Dr. Harold Chakales. Dr. Peeples never examined the claimant. The opinions of both Dr. Peeples and Dr. Baskin were based upon incomplete medical records. Neither Dr. Peeples nor Dr. Baskin had benefit of the additional diagnostic studies recommended and performed at the directions of Dr. Schultz and Dr. Chakales. The decision to surgically manage the claimant's cervical injury, as well as her low back injury is supported by medical evidence. Further, I am persuaded that the claimant would not voluntarily subject herself to multiple surgeries if, indeed, she was not experiencing significant physical problems. The claimant was gainfully employed prior to the January 12, 2006, motor vehicle accident. She has not returned to gainful employment since that time. The claimant has proven, by a preponderance of the credible evidence, that her physical problems, need for treatment, and surgeries are all causally related to the admitted motor vehicle accident. Accordingly, I find that the claimant is entitled to additional temporary total disability after respondents wrongfully terminated temporary total disability on March 5, 2007. The claimant's healing period has not yet ended.

ADDITIONAL 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. v. 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 v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. v. 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. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The claimant has proven, by a preponderance of the credible evidence, that the surgeries performed by Dr. Harold Chakales were reasonably necessary, as well as related to the January 12, 2006, incident. Accordingly, respondents are responsible for all hospital, medical, and related expenses, including, but not limited to both cervical surgeries, as well as low back surgery, and respondents remain responsible for continued reasonably necessary medical treatment.

Pursuant to Ark. Code Ann. §11-9-411, respondents are entitled to an offset for benefits paid under the claimant's health and accident providers, as well as an offset for any disability policies, if applicable.

By necessity, all additional issues not addressed herein are specifically reserved for future determination.

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 v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. 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 v. 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 the 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 v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. 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 the claimant has proven that she is entitled to the additional benefits requested. Accordingly, I hereby make the following:

AWARD

Respondent, Public Employee Claims, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$292.00 per week beginning March 6, 2007, and continuing through the date of the hearing and until such time as the claimant's healing period is determined to have ended.

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

Respondents are further directed and ordered to pay all outstanding hospital, medical, and related expenses, and respondents remain responsible for continued reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. Kenneth E. Buckner, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant, and limited by, Ark. Code Ann. §11-9-715.

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

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge