

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F512721

LINDA GREEN, EMPLOYEE

CLAIMANT

**ARKANSAS DEPARTMENT OF CORRECTION,
EMPLOYER**

RESPONDENT

**PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED OCTOBER 17, 2007

Hearing before Administrative Law Judge Barbara Webb on July 19, 2007, in Pine Bluff, Jefferson County, Arkansas.

Claimant appeared pro se.

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

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on July 19, 2007, before Administrative Law Judge Barbara Webb. A Pre-hearing Order was entered in this case on May 22, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on November 9, 2005, when claimant sustained a compensable head injury.

3. Respondents have accepted the claim for a head and neck injury and have paid temporary total disability benefits and medical benefits from November 10, 2005, through the present.

4. The claimant has received a change of physician to Dr. Steven Cathey.

5. The claimant's average weekly wage was \$600.38, resulting in a TTD rate of \$400.00 and a PPD rate of \$300.00.

By agreement of the parties, the issues presented at the hearing were as follows:

1. Compensability of claimant's claim of carpal tunnel syndrome.

2. Claimant's entitlement to additional medical treatment for her continued complaints of neck and low back pain.

3. Claimant's entitlement to additional temporary total disability benefits.

The record consists of a one volume transcript of the July 19, 2007 hearing, consisting of the testimony of Linda Green, Trip Green, Linda White, and Mitchell Armstrong, and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Claimant's Exhibit No. 1 (Letter to Commission); Claimant's Exhibit No. 2 (Medical Record); Respondent's Exhibit No. 1 (medical records); Respondents' Exhibit No. 2 (Medical Report of Dr. Cathey); and Respondents' Exhibit No. 3 (Letter to Judge Webb dated 4/27/07).

CONTENTIONS

The claimant contends that she should be evaluated and treated as necessary by the Arkansas Spine Center for continued problems in her neck and

back which she contends are related to her original fall and that she should also be treated for carpal tunnel syndrome.

The respondents contend that the preponderance of the evidence does not establish the compensability of the carpal tunnel syndrome claim. Respondents further contend that the claimant had a compensable temporary aggravation of her pre-existing head and neck condition and that all benefits have been paid.

FACTUAL BACKGROUND

Linda Green is forty-eight years old (b.d. 9/13/58). She quit school in the ninth grade but later completed her GED in her mid-twenties. She had worked in the fast food industry. She also worked at Jefferson Regional for four years starting out in the laundry, surgical processing, patient transporter, and working her way up to an x-ray technician. She worked with two veterinarians, Dr. Bryan and Dr. Sartain. She worked at Arkansas Cutting and Tools for ten years making drill bits which involved lifting heavy steel. She applied for a job with the Department of Correction and passed her physical. She testified that she worked every day until the day she was hurt on November 9, 2005. She explained that she was working at the main gate in the guardhouse and that she was mopping because the rain was coming through the bottom of the door. She described her accident, as follows: "And I had been mopping off and on all night. Well, then I started to mop the floor again, and I came up too close and I hit that cabinet. And it was a cabinet sitting on the table, and that old-timey hinge years ago on handles, it was like a spike. Well, I hit that and it cut my head." She explained

that she kept working but noticed she was bleeding. She called her sergeant and was taken to the emergency room. She told the doctor that she had jerked her neck and back. She was released and noticed on the following Wednesday that her vision was blurry. She went to Healthcare Plus and was given a neck collar. She later went back to the same doctor because her arm and fingers would go numb. She was given medication and referred to Dr. Silas, a neurologist who had previously treated her for jumping legs. He performed a nerve conduction study on her arm and referred her to Dr. Simpson. Dr. Simpson diagnosed her with possible carpal tunnel and told her that he would start with her hand, but that worker's comp would not pay for it. She was also treated by Dr. Williams and Dr. Pollard. Dr. Pollard performed carpal tunnel surgery. She continued to complain of neck pain and was referred to Dr. Bruffett. Dr. Bruffett referred her to Dr. Mocek at the Innovative Spine Center. In March of 2007, she was referred to Dr. Cathey through workers' compensation. Dr. Cathey performed an MRI but didn't examine her neck. She continued to have neck pain and went back to her primary doctor, Dr. Williams, where she has continued treatment. She was prescribed a back brace on May 27, 2007. In June of 2007, she received a cortisone shot in her elbow to help her back and arm. She was prescribed Vicodin and steroids. She was given Lexapro for depression. She explained that Dr. Williams had put her in an arm brace on her right arm and a back brace to help her back. She was told to wear her neck collar when she drove or when it began hurting. She tried physical therapy but testified that she only got worse. She was released by Dr. Cathey but wants to see another neurologist. She has

not worked since the day of her injury. She explained that she can hardly get out of bed or do dishes. If she does laundry, she is weak the next day. She cannot mop or lift heavy objects. She cannot work in her flowerbeds or bathe her cats. She testified that she did not have problems before the accident, except jumping legs. She explained that she had previously underwent an MRI which did not reflect back problems but did reflect osteoporosis and disc disease.

On cross-examination, she testified that she was rear-ended in a motor vehicle accident in 1997 and suffered a whiplash in her neck. She was treated by Dr. Duckworth who diagnosed her with degenerative disease in her cervical spine of her neck and osteoporosis. She complained of stiffness in her neck area with bad headache and left shoulder pain, cervical pain, and lower back pain. She explained that she had physical therapy and recovered from those injuries and had not suffered problems since that time. She explained that she caught herself falling and put her hands on the table. She first mentioned the fall to Dr. Morris on November 30, 2005, twenty-one days after the incident. She explained that she did not write that she "Fell on the floor." She denied falling on the floor. She testified that her prior problems had not kept her from working.

George Green testified that he was the claimant's husband for the last six years. He was at home at the time of her injury. He testified that she was active prior to her injury. He explained that after the injury she required full-time assistance 95 percent of the time and was not able to cook, do laundry, mop floors, vacuum, and sweep. He explained that he works during the day and she

lays on the chair and has very limited activities. He explained that they had no children so there was no one at the house to assist her during the day.

Linda White testified that she had been good friends with the claimant for five years. She spends time with her at least twice a week. She testified that prior to the accident, the claimant was always working out in the flower garden and was a hard worker. She did not complain of neck or back problems or problems with her hands or arms. After the accident, she explained that the claimant is very limited in her activities and has a hard time doing everything. She needs help and does not cook, clean, or work in her flowerbeds. She recalled incidents in which the claimant was observed putting sealant on her roof and shoveling dirt.

Mitchell Armstrong testified that he was the claimant's brother. He lives across the street. He explained that his sister could do anything she wanted to physically prior to the accident, but that after the accident she could hardly do much of anything and has difficulty getting up. He did not recall any complaints of head, neck, or arm pain prior to the accident. He testified that she had replaced boards in the floors of their trailers and cleaned up their yards, including pulling stumps.

The medical records reflect that claimant was treated for head and neck injuries beginning in November of 2005, the date of the accident. The first medical record to reflect problems in her hands is a medical report dated March 23, 2006, by Dr. Silas. On March 19, 2007, Dr. Cathey performed an independent medical examination of the claimant. He concluded that there were

no significant changes between the MRI reports of August of 2004 and January of 2006. He concluded that her neck and lower back pain were secondary to degenerative disc disease and associated osteoarthritis. He indicated that she most likely suffered a musculoskeletal strain, superimposed on the pre-existing degenerative changes in her neck and lower back. He indicated his opinion was consistent with the opinion of Dr. Bruffett and Dr. Simpson. He concluded that Green had reached maximum medical improvement and concluded she would not respond favorably to spinal surgery or other neurosurgical intervention. He indicated that Green could return to work without restrictions as a guard for the prison, find another line of employment, or file for long-term disability through Social Security due to her pre-existing structural cervical and lumbar changes.

DISCUSSION

I. COMPENSABILITY

Ark. Code Ann. § 11-9-102(4)(A) defines “compensable injury”:

(i) (a)n accidental injury causing internal or external physical harm to the body or accident injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence; (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is: (a) Caused by rapid repetitive motion . . . (v) A hernia as set out in § 11-9-523.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D)(Repl. 2002). Claimant’s burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-

9-102(4)(E)(i). If claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Brotherton v. White River Area Agency, ___ Ark. App. ___, ___ S.W.3d ___ (Dec.14, 2005); Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). The Commission may accept or reject medical opinions and determine their medical soundness and probative force. Id. It is important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985); Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

If 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.

The Full Commission has held that in order to establish compensability of an injury, a claimant must satisfy all the requirements set forth in Ark. Code Ann. § 11-9-102 as amended by Act 796. Jerry D. Reed v. ConAgra Frozen Foods, Full Commission Opinion filed Feb. 2, 1995 (E317744). When a claimant alleges

that he sustained an injury as a result of a specific incident, identifiable by time and place of occurrence, he must prove by a preponderance of the evidence (1) the injury arose out of and in the course of his employment and (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death. See Ark. Code Ann. § 11-9-102(4)(A)(i) and § 11-9-102(4)(E)(i) (Repl. 2002). She must also prove (3) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. See Ark. Code Ann. § 11-9-102(4)(A)(i). Moreover, the claimant must establish (4) that the compensable injury is supported by 'objective findings' as defined in § 11-9-102(16). Ark. Code Ann. § 11-9-102(4)(D); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 31 Ark. App. 804, 20 S.W.3d 900 (2000). If the claimant fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability of the injury, he fails to establish the compensability of the claim, and compensation must be denied. Jerry D. Reed, supra.

Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B)(Repl. 1996). The Arkansas Court of Appeals has held:

the plethora of possible causes for work-related injuries includes many that can be established by a common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be

sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident - but not in every case. We find the Court of Appeal's reasoning in *Millican* and *Tilley* persuasive. We therefore adopt the holding in *Millican* that objective medical evidence is necessary to establish the existence and extent of an injury, but is not essential to establish the causal relationship between the injury and the work-related incident (emphasis added).

Freeman v. Con-Agra Frozen Foods, 70 Ark. App. 306, 27 S.W.3d 762 (2000), quoting Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). See Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997) and Aeroquip, Inc. v. Tilley, 59 Ark. App. 163, 954 S.W.2d 305 (1997).

Based on this reasoning, Freeman, summed up the current state of the law as such:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between the injury and the claimant's employment, but if an unnecessary medical opinion is offered on that issue, the opinion must be stated with a reasonable degree of medical certainty.

Freeman, supra, citing Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

The law is clear that medical opinions based upon "could", "may", "possibly", and "can" lack the definitiveness required by Ark. Code Ann. §11-9-102(16)(B)(Supp.1999) which requires that medical opinions be stated within a reasonable degree of medical certainty. Scott v. Middleton Drywall, 2005 AWCC 22 (Feb. 9, 2005) ("probably did" found insufficient to prove causation); Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000) (overruling prior Court of Appeals decision and holding that "could" was

insufficient to satisfy standard); Crudup v. Regal Ware, Inc., 3341 Ark. 804, 20 S.W.3d 760 (2001) (“theoretical possibility” did not meet standard of proof); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001) (to pass muster, opinion must be more than speculation and go beyond possibilities).

Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991); Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1970); Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Claimant contends that in addition to her head and neck injury, she also suffered a compensable carpal tunnel injury to her right extremity. A review of the medical records reveal that claimant did not initially report an injury to her right arm and hand. On November 30, 2005, Dr. Morris at Healthcare Plus notes that the claimant reported right arm pain which she originally believed to be minor but had worsened. He notes “I feel it is certainly related to the fall she had on the early part of November.” On June 26, 2006, Dr. Williams notes that the claimant has carpal tunnel syndrome. She states “I believe her neck problem at this time is the cause of her present symptoms.” In his report of January 2, 2007, Dr. Mocek notes that “She has some neurological problem with the right arm. . .” Based on the medical evidence, I find that claimant has proven by a preponderance of the evidence that she suffered a compensable carpal tunnel injury during the scope and course of her employment.

REASONABLY NECESSARY TREATMENT

Pursuant to Ark. Code Ann. § 11-9-508(a), an employer must promptly provide all reasonably necessary medical services which are needed to treat an employee's compensable injury. However, it was not the intent of the Arkansas Workers' Compensation Law to provide general accident insurance. Duke v. Perkin Wood Products Co., 223 Ark. 182, 264 S.W.2d 834 (1954). Claimant has the burden of proving by a preponderance of the credible evidence that medical treatment is reasonable and necessary. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission, Opinion filed February 17, 1989 (D612291); B. R. Hollingshead v. Colson Caster, Full Workers' Compensation Commission, Opinion filed August 27, 1993 (D703346). Employers are only liable for medical treatment and services which are deemed reasonably necessary for the treatment of employees' injuries. DeBoard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, both the proposed procedure and the condition it is sought to remedy must be analyzed. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, Opinion filed December 13, 1989 (D512553). What constitutes reasonably necessary medical treatment is a fact question for the Commission. Wright Contracting co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984). Also, whether the medical treatment actually provided is reasonable and necessary is a question of fact for the Commission. DeBoard v. Colson Co., supra. While the results obtained may be a consideration in some cases, the

primary considerations are the nature of the service in relation to the injury sustained. Tonnie Crisp v. Weyerhaeuser Corp., Full Workers' Compensation Commission, Opinion filed July 27, 1993 (D812922).

In the instant case, I find the claimant and the corroborating witnesses to be highly credible. Prior to her accident, the claimant was a hard working and very active woman. After the accident, she is no longer able to perform even her basic job functions nor her prior activities at home, including cleaning, cooking, or gardening. However, the medical evidence reflects that claimant has reached maximum medical improvement and no additional medical treatment is recommended. Therefore, I find that claimant has failed to prove she is entitled to additional medical treatment or temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on November 9, 2005, when claimant sustained a compensable head injury.
3. Respondents have accepted the claim for a head and neck injury and have paid temporary total disability benefits and medical benefits from November 10, 2005, through the present.
4. The claimant has received a change of physician to Dr. Steven Cathey.
5. The claimant's average weekly wage was \$600.38, resulting in a TTD rate of \$400.00 and a PPD rate of \$300.00.

6. The claimant has proven by a preponderance of the evidence that she suffered a compensable carpal tunnel injury on November 9, 2005, and is entitled to payment of all medical expenses incurred as a result of her prior surgery.
7. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her continued complaints of neck and low back pain.
8. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits.

ORDER

For the reasons discussed herein, respondents are directed to pay additional medical benefits in accordance with the findings of fact and conclusions of law set forth herein.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge