

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F610245

DARLENE ROOSA, EMPLOYEE

CLAIMANT

SHERIDAN SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOC. WCT/
RISK MANAGEMENT RESOURCES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 30, 2007

Hearing before Administrative Law Judge Barbara Webb on May 1, 2007, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by Mr. Steven McNeeley, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by Ms. Melissa Wood, Attorney at Law, Worley, Wood & Parish, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on May 1, 2007, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on March 20, 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 March 20, 2007 Pre-hearing Order is made a part of the hearing record.

By agreement of the parties, the stipulations as submitted by the parties in the Pre-hearing Order 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 September 5, 2006.
3. If found compensable, the applicable temporary total disability rate is \$238.00 per week and permanent partial disability rate is \$159.99 per week.
4. The respondents have accepted claimant's right thigh and knee injury and are paying appropriate benefits.
5. The respondents have controverted claimant's alleged lower back injury.
6. The respondents have paid temporary total disability benefits through March 6, 2007.

ISSUES

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

1. The compensability of claimant's back injury and her entitlement to reasonable and necessary medical treatment for her back injury.
2. Claimant's entitlement to temporary total disability benefits from March 7, 2007, to a date yet to be determined.
3. Controversion and attorney's fees.
4. All other issues are reserved.

CONTENTIONS

The claimant contends she sustained compensable injuries on September 5, 2006, to her right thigh, right knee and back while performing employment services for the respondent employer. The respondents have accepted the knee and thigh injuries and controverted the back injury, although claimant contends the injuries all stem from the same incident. The claimant contends that she is entitled to all benefits resulting from her back injury, including medical treatment, temporary total disability and permanent partial disability benefits, vocational/rehabilitation and/or wage loss disability, although only the issues of compensability, temporary total disability, and reasonable and necessary medical treatment are ripe for a hearing at this time. The claimant contends that her attorney is entitled to a controverted attorney's fee on any disability benefits awarded.

The respondents contend the claimant did not suffer a compensable lower back injury on or about September 5, 2006, or at any other time while working for respondent employer. The respondents further contend that claimant had pre-existing problems that account for any medical treatment. The respondents further contend a lack of notice of any back injury until December 21, 2006. Respondents alternatively contend that if the back injury is determined to be compensable, the March 11, 2007 incident reflected in the medical records constitutes an independent intervening cause.

The record consists of a one volume transcript of the May 1, 2007 hearing, consisting of the testimony of Darlene Roosa, Harold Jeffcoat, and B. J. Warrick,

and all documentary evidence consisting of Commission's Exhibit 1 (Pre-hearing Order); Claimant's Exhibit 1 (Medical Reports); Respondents' Exhibit No. 1 (Medical Records); and Respondent's Exhibit No. 2 (Non-medical records).

FACTUAL BACKGROUND

The claimant is fifty years of age (b.d. 08-12-56). She completed a two-year associate degree in early childhood education. On September 5, 2006, she worked for the East End Intermediate School in the Sheridan School District as a special education para-professional. She worked with handicapped children and children with special needs. At that time, she had worked for the Sheridan School District for three years and had previously worked assisting children with disabilities in a similar job in a larger school district prior to coming to Sheridan for fourteen years. Her job duties included assisting the teacher with lesson plans, working one on one with the children in academics, assisting the children in physical activity, and other duties as requested by the teacher. She explained that she would walk with one of the children, Ryan, with cerebral palsy, in order to provide him exercise and physical activity. Ryan was 12 years old, weighed approximately 70 pounds, and was five foot, five inches tall. She described the accident on September 5, 2006, as follows:

Q. What happened?

A. Okay, Ryan and I were walking, and Ryan was on a different walker than what he normally used the previous year. The walker was very, very old. It also was low to the ground and a – one of the wheels was kind of missing and was very rickety. We were on our walk. We went outside. As I was coming back in through the back door by the gymnasium, then Ryan fell. And when he fell, I went down and hit my right knee first on the pavement and then he tumbled over and tumbled over on top of me.

Q. I guess by your hand gestures he fell on you or your left side – excuse me to the right?

A. Yes.

Q. Then he fell on top of you and you both fell completely on the ground?

A. Yes. His feet actually tripped me first where I went down on one knee first. I went down on my right knee first. And I tried to catch him. I tried to keep him from falling, but I just wasn't able to, then Ryan came down on top of me.

Roosa explained that after the fall, her right knee became swollen and bruised. She did not return to work the next day due to continued swelling and pain in her knee. She was unable to reach her primary care physician and sought treatment at the Emergency Room. She explained that she initially called in sick but later that day called back and explained to the school secretary about the fall and told her that she had hurt her knee and that it would be a worker's compensation claim. She testified that her knee improved but her right thigh began having spasms and sharp pain. She also began having back pain approximately two weeks after the fall. She testified that she currently was not able to do more than ten minutes of physical activity without needing a pain pill. Her last day of work was September 5, 2006. She was paid disability through March 6, 2007, and began receiving unemployment benefits in April of 2007. She initially treated with Dr. Barron, but was subsequently referred to Dr. Rutherford, a neurologist. He recommended epidural injections and physical therapy. She was unable to receive the recommended treatment because the claim was denied by the insurance company. She explained that she did not have health insurance due to her husband's change of employment.

On cross-examination, Roosa agreed that she reported to the adjuster that she injured her knee and thigh but did not mention her back. She explained that her back injury was discovered later which she reported by sending copies of her doctor's notes to the school and the central office. She denied prior back trouble. She failed to remember complaining of severe pain in her lower back as a result of a motor vehicle accident in May of 2004, and explained that she had continued to work without problems.

She admitted that prior to the beginning of the school year in 2006, she suffered from depression due to the loss of family members and a dog within the last three years. She reported to her doctor that she was reluctant to leave her house and would remain in bed for 16 hours a day and was placed on anti-depressants. She also explained that she was having problems with arthritis in her knees and requested that her primary care doctor provide a note that she couldn't lift children and requested a change in position to accommodate her restrictions. She was offered a two-hour job in the cafeteria which she declined. She testified that she first reported her back condition to Dr. Barron in September of 2006 when she reported that she felt like she was crooked and could not walk straight. In October, her knee pain had resolved, but she continued treatment, including a nerve conduction study in November, due to her problems with her thigh. She acknowledged that she had sought treatment at St. Vincent Hospital for back pain in March of 2007. At that time, she reported an L4-5 disk problem which was old and a recent fall within two days of the date she sought treatment. She explained

that she had fallen four times since September 5, 2006, due to her leg going out on her.

She talked with the Sheridan schools on April 2, 2007, but was told that the only job available was in the alternative learning class. She did not believe she could perform the physical requirements of that job since she would be required to hold a child physically down until help arrived if a child became unruly.

Harold Jeffcoat testified that he was a principal with the East End Intermediate School. He recalled receiving a handwritten note from Roosa requesting a change of position at the beginning of the school year in 2006 to a job that did not require lifting students. He explained that the only position available was a part-time cafeteria position and the claimant chose to remain in her current position. He testified although the claimant had not returned to work, she was still considered employed by the school district, although her position had been changed to the alternative learning center supervising students which did not require as much physical activity. He agreed that during the three years he had known the claimant, she had not demonstrated any problems with her back prior to the fall in 2006.

Bobbie Jo (B.J.) Warrick testified that she was the secretary at the East End Intermediate School. She explained that Roosa had called her in September of 2006 and told her that she was sick. She recalled that Roosa called her later the same day and told her that she had hurt her knee and would probably be out the next day. Roosa never mentioned a back injury nor did she ever observe Roosa with a back injury.

The medical records of Roosa reflect that on May 25, 2004, Roosa sought treatment at the emergency room at St. Vincent Hospital complaining of low back pain and stiffness as a result of a “rear impact” motor vehicle accident. An MRI taken of her lumbar spine on that day reports “vertebral bodies appear well aligned. There is degenerative disk narrowing at L4-5 with associated spur formation.”

On September 11, 2006, clinic notes from Dr. Barron reflect that the claimant sought treatment for her knee due to the fact that a child had fallen on her knee. She was diagnosed with a knee sprain without fracture. He noted prior bilateral knee pain. He noted that she also complained of right thigh pain. He prescribed physical therapy and pain medication. On October 3, 2006, she returned to Dr. Barron with continued complaints of right thigh pain. He noted increased depression. He referred her to Dan Myers, a therapist, for placement of a tens unit to the right thigh region. On October 6, 2006, Myers noted that Roosa complained of right knee and thigh pain and “no back pain”. Myers’ records reflect that Roosa returned on October 9, 2006, and reported that the tens unit had helped and that she felt better. She reported her pain level at “4” and was referred to a neurologist for further evaluation. On October 19, 2006, Roosa was examined by Dr. Rutherford, a neurologist. Rutherford notes that although her initial examination was normal, he recommended further diagnostic testing including an MRI of the lumbar spine, a total body scan, and EMG/nerve conduction study. The EMG/nerve conduction study was performed on November 7, 2006. The study resulted in “normal” findings. The bone scan showed increased uptake at the lowest level of

the lumbar spine, based upon which Rutherford suspected a stress fracture. On November 15, 2006, Dr. Rutherford reported that the MRI revealed:

degenerative change of moderate severity L4/5 with accompanying disk bulge. The latter may be attributed to her fall and is the probable basis for current symptoms. Ms. Roosa will be referred for a course of physical therapy and receive a lumbar epidural steroid injection at L4-5. She is to remain off work until she completes her physical therapy program.

On December 20, 2006, Dr. Rutherford issued a physician's statement stating that "within a reasonable degree of medical certainty, the Major Cause (51% or more) of Darlene Roosa's need for treatment for the back in her work related accident on September 5, 2006". He further stated that "within a reasonable degree of medical certainty, the 'objective and measurable findings' related to the above referenced injury is/are: Disc Bulge L4-5 via MRI L/spine".

On February 23, 2007, the claimant underwent an independent medical evaluation conducted by Dr. Tad Pruitt. Following his review of the reports and his evaluation of the claimant, he assessed her with right thigh muscle contusion and sprain, 09/05/06 (work related injury) with ongoing thigh pain of uncertain etiology and negative diagnostic tests. He also noted that her back was unrelated to her leg. In conclusion, he opined:

ANSWERS TO REQUESTED QUESTIONS:

1. The diagnosis of the work injury to the thigh based on objective findings is a contusion and sprain to the muscles of the right thigh.
2. Additional recommendations for treatment of the work related injury are a physical therapy session to learn a home exercise program of knee and lower extremity strengthening exercises, if this has not already been done with her previous therapy sessions. Additionally, continued use of the TENS unit for two to three months might be of subjective pain relief benefit to the

patient. Additionally, an over-the-counter anti-inflammatory medication taken for a month may also help in reducing her symptoms.

3. There are no physical restrictions or work restrictions needed related to the thigh injury.

4. Within a reasonable degree of certainty, in my opinion, Ms. Roosa is at maximum medical improvement and no impairment is present as a result of her work related injury to the thigh.

5. Her lumbar spine findings are minimal and not related to her current leg symptoms. No objective finds are present to account for her ongoing leg pain.

DISCUSSION

Compensability of Back Injury and Additional Medical Treatment

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

(a)n accidental injury causing internal or external physical harm to the body or accidental 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. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). 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, she 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. Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). 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).

The respondents have accepted the September 5, 2006, right knee and thigh injury as compensable and paid medical expenses and temporary total disability benefits through March 6, 2007. Respondents rely on the medical evaluation of Dr. Pruitt, which concludes that Roosa suffered a right knee strain and contusion and sprain to the muscles of the right thigh in September of 2006 for which she was treated conservatively with physical therapy, use of a TENS unit, and pain medications. Dr. Pruitt concluded there were no objective findings to connect her alleged back pain to her fall and determined that she was at maximum medical improvement with no impairment for injuries associated with the work-related fall in September of 2006.

On the other hand, claimant contends that she continued to be symptomatic and could not perform her job duties after the September 5, 2006 injury. She relies on the reports of her treating physician, Dr. Barron, and a neurologist, Dr. Rutherford who performed a battery of diagnostic tests on the claimant in light of her complaints of right thigh and low back pain. Based on his suspicion that claimant

had a stress fracture from his review of a total body scan, Dr. Rutherford ordered the November 15, 2006 MRI. From the MRI report, Dr. Rutherford diagnosed the claimant with a disk bulge in her low back associated with the fall and recommended an epidural injection and further physical therapy as reasonable and necessary medical treatment related to the work-related injury in September of 2006.

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy 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). Respondents are responsible only for medical services which are causally related to the compensable injury.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). “Objective findings” are those findings which cannot come under voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). In the present case, I find that the claimant does establish a compensable low back injury by medical evidence supported by objective findings.

A review of the medical records offered in this case reflect there is objective medical evidence that the claimant sustained a new injury to her lower back as a result of a work-related incident on September 5, 2006.

In the instant case, it is undisputed that an incident involving the claimant occurred at work. The primary dispute is whether claimant has established a causal connection between the work-related incident and the need for medical treatment. In a workers' compensation case, a claimant must prove a causal connection between the work-related accident and the disabling injury. Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). The determination of whether a causal connection exists is a question of fact for the Commission to determine. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998).

This is not a case where the opinion of Dr. Rutherford is based solely on the subjective complaints of the claimant. Rather Dr. Rutherford relies on the November, 2006 MRI report which reveals new objective findings when compared with the earlier November, 2004 MRI report.

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, 1005) (“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. , 341 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). While Dr. Rutherford initially concludes that the disk bulge “may” be attributed to the claimant's fall, he

subsequently clarifies his opinions in a statement in which he states, within a reasonable degree of medical certainty, that the claimant's major cause for treatment for her back is the work related accident and the objective and measurable findings related to the injury are the disc bulge at L4-5 as shown in the MRI of the lumbar spine.

The Arkansas courts have frequently discussed the distinction between a recurrence and an aggravation of a preexisting injury. When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer remains liable. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence is not a new injury but simply another period of incapacitation resulting from the previous injury. Pinkston v. General Tire & Rubber Co., 30 Ark. App. 46, 782 S.W.2d 375 (1990). The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1 145 S.W.3d 383

(2004); Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a preexisting non-compensable condition by a compensable injury is, itself, compensable. *Id.*

In Davis v. Helena Chemical Co., claimant suffered from a pre-existing lumbar degenerative condition before sustaining a compensable injury. Full Commission Opinion, filed August 3, 1999 (D406121). The Full Commission affirmed an administrative law judge's finding that claimant was entitled to additional medical treatment, stating:

The respondents' and the dissent's central argument in this case is that the treatment the claimant is presently receiving is because of an ongoing degenerative condition which would be occurring whether or not the claimant suffered an injury in 1984. However, this argument overlooks the fact that the claimant's previously asymptomatic degenerative process physically progressed and became symptomatic because of his 1984 compensable injury . . . the compensable injury, not some speculative event, is what resulted in the claimant's present condition.

Id.

The Full Commission later upheld a finding of compensability where symptoms of claimant's pre-existing condition were asymptomatic for five years prior to the compensable event. Jerry Hambelton v. Guy King & Sons, Inc. & Bituminous Casualty Corp., Full Commission Opinion, filed February 22, 2001 (E904812). The Commission held that a preponderance of the evidence showed that claimant's symptoms were the result of his compensable injury, despite the fact that claimant had a pre-existing ongoing degenerative process. Id. at 19.

In the instant case, as demonstrated above, there is conflicting medical opinions offered into evidence as to whether the need for treatment to the lumbar

spine was related to the claimant's work-related injury. Dr. Pruitt concludes that there is no neurological explanation for claimant's ongoing thigh pain and that her lumbar spine findings are minimal and not related to her current leg symptoms. On the other hand, the medical records of Dr. Rutherford support the conclusion that the claimant suffered injuries to her right knee, thigh, and low back as a result of the fall as measured by the additional findings of a disk bulge as reflected in the MRI of November, 2006, as contrasted with the MRI of 2004. This medical evidence is further substantiated by the testimony of the claimant and her co-workers. The claimant testified that she had no prior problems with her right thigh and back prior to the fall in September of 2006. Although there is evidence that the claimant sought treatment for low back stiffness in 2004 after an automobile wreck and the 2004 MRI reflected some degenerative problems in her low back, she recovered fully and was able to perform her job duties without complaints or medical treatment until the fall in September of 2006. I find that the testimony of the claimant's treating physician and neurologist, Dr. Rutherford, should be given greater weight than the evaluation testimony of Dr. Pruitt. Based on the preponderance of the evidence, I find that the claimant's continuing symptoms after completion of conservative treatment and the subsequent discovery of the bulging disk during the diagnostic procedure are compelling evidence of the claimant's need for additional medical treatment. Based on the clear weight of the medical evidence in this case from claimant's treating physicians, I find that the medical treatment provided by Dr. Rutherford, beginning in October, 2006, and continuing through the date of the

hearing, and the recommended treatment for epidural injections and continued physical therapy is reasonable and necessary and related to the compensable injury.

Respondents further contend that if the back claim is found compensable, the claimant's back injuries were sustained by an independent intervening cause when claimant fell in March of 2007 as reflected in emergency room triage records. However, the evidence demonstrates that claimant was experiencing symptoms in her lower back as early as two weeks following the fall in September of 2006. The MRI of claimant's lumbar spine relied upon by Dr. Rutherford was performed in November of 2006. In addition, claimant testified that the March, 2007 incident was one of four similar incidents since September 5, 2006, in which she would fall when her leg went out from under her. Based on the preponderance of the evidence, I find that the March, 2007 incident for which claimant sought treatment was a natural and probable consequence of the work-related right leg injury.

Finally, respondents argue that claimant failed to notify the school district of an alleged back injury as a result of the September 5, 2006 incident until December 21, 2006. It is not disputed that claimant notified the school that she was injured in a work-related fall on the school premises on September 5, 2006. Rather, respondents point to the fact that the claimant originally complained only of right knee and thigh problems and failed to mention any back problems in her September 19, 2006, interview with the adjuster. However, the evidence demonstrates that the claimant provided the school district with doctor's reports and notes concerning her

treatment and that despite ongoing symptoms, the back problems were not diagnosed until the total body scan requested by Dr. Rutherford and the MRI performed in November of 2006, which was initially denied by the respondents. Therefore, based on the preponderance of the evidence, I find that the respondents' contention of a lack of notice is simply not borne out by the evidence in this case.

Additional Temporary Total Disability

Claimant is contending that she is entitled to additional temporary total disability benefits from March 6, 2006, to a date yet to be determined. The claimant is entitled to temporary total benefits if she can satisfy a two-prong test: (1) claimant must be within his healing period; and (2) completely incapacitated from earning wages. Ark. Highway & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is defined as that period for healing the injury, which continues until claimant is as far restored as the permanent nature of the injury will allow. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 459 (1994). Based on Dr. Rutherford's recommendations, the claimant was not released to return to work until after completion of additional physical therapy. The evidence further demonstrates that even if the claimant was able to return to work at the Sheridan school district, her current position would require some physical activity which goes beyond her current restrictions.

Based on the preponderance of the evidence, I find that the claimant is entitled to additional temporary total disability for the time period from March 6, 2007, through a date yet to be determined.

Controversion and Attorneys Fees

Based on my review of the evidence in this case, I find that respondents have fully controverted payment of compensability of a low back injury, additional medical treatment, and temporary total disability benefits from March 6, 2007, to a date yet to be determined. I find that the claimant's attorney is entitled to a twenty-five percent (25%) statutory attorney's fee on the indemnity benefits awarded to the claimant as a result of the findings herein, one-half of the fee to be paid by the claimant and one-half of the fee to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996); and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

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 September 5, 2006.
3. The applicable temporary total disability rate is \$238.00 per week and permanent partial disability rate is \$159.99 per week.
4. The respondents have accepted claimant's right thigh and knee injury and are paying appropriate benefits.
5. The respondents have controverted claimant's alleged lower back injury.

6. The respondents have paid temporary total disability benefits through March 6, 2007.
7. Claimant has proven by a preponderance of the evidence that her low back injury is compensable and that her need for additional medical treatment from Dr. Rutherford, including the epidural injections and physical therapy, is reasonable and necessary and causally related to her compensable work-related injury in September of 2006.
8. Claimant has proven by a preponderance of the evidence that she is entitled to continued temporary total disability benefits from March 6, 2007, the date her benefits ceased, until a date yet to be determined. Pursuant to Ark. Code Ann. § 11-9-506(b), respondents are entitled to a credit against any temporary total disability benefits owed with respect to any week for which the claimant received unemployment benefits.
9. Respondents have controverted the compensability of claimant's low back injury, claimant's entitlement to additional medical benefits, and additional temporary total disability benefits from March 6, 2007, to a date yet to be determined.
10. Claimant is entitled to a twenty-five percent (25%) statutory attorney's fee on the indemnity benefits awarded herein, one-half to be paid by the respondents and one-half to be withheld from the claimant's award of benefits.

AWARD

The respondents are hereby directed and ordered to pay benefits and attorney's fees in accordance with the findings of fact and conclusions of law set forth herein. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809. See, Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge