

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F711266

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| ALINA SHACKELFORD, EMPLOYEE | CLAIMANT |
| O'REILLY AUTOMOTIVE, INC., EMPLOYER | RESPONDENT |
| INDEMNITY INSURANCE CO. OF NORTH AMERICA/ GALLAGHER BASSETT SERVICES, INC. (TPA), INSURANCE CARRIER | RESPONDENT |

OPINION FILED SEPTEMBER 23, 2008

Hearing before Administrative Law Judge Barbara W. Webb on June 25, 2008, in Little Rock, Pulaski County, Arkansas.

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

The respondents were represented by Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on June 25, 2008, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on April 22, 2008. 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 September 21, 2007, when the claimant sustained a compensable injury to the thoracic spine.
3. The claimant's earnings were sufficient to entitle her to a compensation rate of \$220.00 for temporary total disability and \$165.00 for permanent partial disability benefits.
4. Respondents have paid some medical expenses.

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Compensability of claimant's alleged lumbar injury.
2. Claimant's entitlement to temporary total disability benefits from November 1, 2007, until December 15, 2007, the date claimant began to work at Wal-Mart.
3. Claimant's entitlement to additional medical treatment.
4. Controversion and attorney's fees.

The record consists of a one volume transcript of the June 25, 2008, hearing, consisting of the testimony of Alina Shackelford, Aaron Shackelford, Tesi Stewart, and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Claimant's Exhibit No. 1 (Documentary Evidence); Claimant's Exhibit No. 2 (Medical records); and Respondents' Exhibit No. 1 (Medical records).

FACTUAL BACKGROUND

_____The claimant is 22 years of age (b.d. 10/24/85). She graduated high school in 2005. She began working as a full time delivery driver at O'Reilly's Automotive ("O'Reillys") in February of 2007. Her job duties included driving and delivering parts to customers. She previously worked at fast food restaurants and a tobacco store.

On September 21, 2007, she sustained an injury to her back while lifting a starter out of the delivery truck. She testified that she immediately felt pain, drove back to work, reported the injury to her supervisor, and sought medical treatment at Concentra.

She testified that she had no prior injuries to her low back but had dislocated her shoulder in an accident in 2003 and began treating with a chiropractor. She testified that between February and September of 2007, she did not receive medical treatment for her back or her shoulder.

Shackleford explained that her pain was in her mid-left side down to her lower right above her buttock. She testified that she was crying and could barely drive back to work or walk. She continued to treat with Concentra and underwent physical therapy. She began having trouble with her leg two weeks after the incident. She explained that the therapy made her worse. She testified that she attempted work in a light duty capacity but was sent home by her supervisor due to unavailability of work within her restrictions. She explained that her condition improved while she was off her feet during the month of November. She was

evaluated by Dr. Thomas Hart, but was told there was nothing he could do since she was too young.

She began working as a cashier at Wal-Mart on December 16, 2007. After four months, she left Wal-Mart and began working in housekeeping at Baptist Health, where she is currently employed. She testified that the work at Wal-Mart and Baptist Health were lighter and easier than her work at O'Reillys.

She began treatment with Dr. Qureshi. He numbed her back and it helped. After he burned the nerves, she no longer has any problems with her leg. She testified that she continues to have low back problems but was a lot better now. She testified that she had health insurance but her claim was denied because it was a work-related injury. She was prescribed hydrocodone and Advil 2, but explained that the hydrocodone was not helping as much since she had been on the medication for such a long period of time.

She testified that she can no longer clean her bathtub or get on hands and knees to pick up something on the kitchen floor. She testified that at times her back locks up and restricts her movement when she is in the shower or getting in her truck. She testified that she had not sold any of her medication to others.

On cross-examination, Shackelford testified that she had also worked at Comcast for one week as a dispatcher after her employment with O'Reillys. She testified that her low back was hurting after the incident on September 21, 2007, and she told the doctor that she had low back pain on that date. She returned to the doctor on September 24th and 27th. Her condition improved gradually. She

explained that her treatment by Dr. Qureshi helped the most when he burned her nerves. She testified that after the work incident, she had muscle spasms in her leg and back. She explained that her leg would jump for no reason and her back would twitch. She explained that standing on her feet aggravated her back. She testified that she was prescribed hydrocodone by Concentra one time and continues to get prescriptions by Dr. Qureshi and has taken hydrocodone continuously twice a day since September 21, 2007, for pain relief. She testified that she treated with Dr. Rocky Vannucci, a chiropractor, for her shoulder and headaches. She began treatment with Vannucci in April of 2003 but denied that she saw him regularly prior to the incident at O'Reillys. She admitted that she saw Dr. Vannucci on January 17, 2007, March 21, 2007, and September 17, 2007 (four days prior to the incident). She testified that he never treated her for back problems. She admitted that she told him that she had pain in the middle of her back on her left side on April 5, 2003, and that lifting at work aggravated the condition. On September 29, 2006, she complained of neck and back pain and a lot of headaches. On September 24, 2007, she told the doctor at Concentra that she was working within her restrictions. She testified that at Wal-Mart she was standing on her feet for shifts between five and seven hours and bending as needed to scan merchandise. As a housekeeper, she changes the trash, mops, and cleans the toilet and sinks. Her supplies are kept on a cart. She acknowledged that she was released to full duty by the doctor at Concentra on September 27, 2007. She currently takes Lexapro for anxiety.

She testified that her mother-in-law, Tesi Stewart, came to live with her for approximately one to two months since the incident. The claimant is currently able to drive her truck on a regular basis around town. She is also able to clean the house, except for the bathtub. She is currently able to do the cooking and laundry. She swims for fun and physical exercise.

Aaron Shackelford testified that he is twenty years of age. He has been married to the claimant for two years and living with the claimant for five years. He did not observe the claimant having back problems prior to the incident at work, but noticed that she was having problems with cleaning the bathtub and lifting trash after the incident. He observed her leg jumping like it was throbbing and saw her back get stuck in position after September 21, 2007.

On cross-examination, he was not able to testify to the reasons his wife was treated by a chiropractor prior to September 21, 2007. He explained that the claimant never lifted the 50 gallon trash can either before or after the incident.

Tesi Lynn Stewart testified that her son is married to the claimant. She explained that she came to Arkansas at the claimant's request and that her son paid her travel expenses. She stayed with the claimant and her son in February and March of 2008. She testified that the claimant complained about her physical condition all the time. Prior to the work incident, she complained about heart trouble and headaches. Stewart testified that the claimant told her that she was selling some of her hydrocodone pills to her Aunt Kim. She explained that the claimant would take a half of a pill instead of a whole pill. The claimant went to her aunt's

twice a week. The claimant told Stewart that her aunt was going to give her \$100.00 for ten pills but that she couldn't charge her that much. Stewart estimated that the claimant was getting \$30.00 to \$40.00 for gas and cigarette money by selling her pills to her aunt.

On cross-examination, Stewart testified that she was currently homeless and staying with a friend. She testified that she had slept in her car after being kicked out of her son's home. She is not working and has filed for SSI. She is supposed to be on Prozac, Dapakote, and Klonopin, but is not taking any prescription drugs. She testified that she was not aware of any back problems that the claimant had prior to September of 2007. She explained that her son and the claimant did a drug test on her. She explained that the reason she was kicked out of their trailer was because she went next door and got some medicine because of her anxiety problem. She testified that she does not do street drugs. She testified that the claimant never complained of back problems and was aware that the claimant saw a chiropractor.

Medical records reflect that the claimant sought treatment on September 21, 2007, by Dr. John Adamez, Jr., at Concentra with complaints of back pain located in the left thoracic region caused when lifting a product at her job. She was assessed with a thoracic strain, shoulder strain, and back pain. She was given prescription medication and scheduled for physical therapy. On September 24, 2007, she returned to Concentra for follow-up and was seen by Dr. Scott Carle. She was assessed with non specific soft tissue pain following benign muscular

strain event at work. She was released to work on September 24, 2007, with restrictions on lifting over ten pounds, no reaching above shoulders, and unable to drive company vehicle. From September 21-27, 2007, the claimant underwent physical therapy. Therapist notes reflect that the claimant reported worsening of symptoms during therapy and noncompliance with home exercise program. On September 27, 2007, the claimant returned for a follow-up evaluation by Dr. Carle. She reported that the pain was now on the right posterior shoulder and across the mid back and lumbar region. She was assessed with symptom magnification or illness behavior. Carle noted that she has illness affirming behavior and no objective findings of occupational impairment. The claimant was released from his care and returned to regular duty on September 27, 2007.

On October 3, 2007, the claimant underwent an MRI of lumbar spine and on the thoracic spine. The thoracic view revealed "single-level midline disc bulge without significant mass effect on the traversing thecal sac." The lumbar examination showed "Very minimal disc bulge at L3-4 and L4-5 without significant protrusion or stenosis. Congenitally short pedicles."

On October 18, 2007, the claimant was seen by Dr. Thomas Hart. He notes that she is a self referral since she was not pleased with the work comp physician, Dr. Carle. His impression was that the claimant had suffered an acute lumbar sprain or strain which should be treated conservatively. He recommended that she continue her chiropractic treatments. He did not recommend surgery based on the fact that she was a 21 year old female "who is neurologically intact and has no signs

of instability". On October 26, 2007, she returned to Dr. Hart with continued back pain complaints. She reported that she had three chiropractic treatments which had aggravated her back. He noted that he informed her again that there was no need for injections since she was neurologically intact. He recommended that she continue with the chiropractor. He observed that the claimant was frustrated because he wouldn't do anything for her back. He informed her that interventional-spine procedures were not warranted and that a lumbar sprain or strain might last several weeks to a few months. On November 19, 2007, she underwent a nerve conduction study and EMG. The tests revealed normal findings of the left peroneal nerve and no definite evidence of motor nerve root compression, peripheral neuropathy, or myopathy. On December 7, 2007, she was evaluated by Dr. Qureshi. His impressions were lumbar spondylosis, lumbar disc herniation, and left S1 dysfunction. He scheduled her for a left lumbar medial branch block and if successful, a left lumbar radiofrequency with the future possibility of a left SI injection or a left L3 and L4 transforaminal epidural. On February 15, 2008, the claimant underwent another MRI of the lumbar spine at the request of Dr. Qureshi.

The test revealed:

1. Mild increased STIR signal consistent with edema along the left paraspinal soft tissues of L2-3 level seen only on the sagittal images. No underlying mass is seen. This could be muscular and could represent muscle edema.
2. Stable congenitally short pedicles.
3. Stable minor bulges at L3-4 and L4-5 without focal protrusions.

Medical records also reveal that claimant began chiropractic care with Dr.

Rocky Vannucci on March 5, 2003, with complaints of pain in the middle of her back

and left side. She returned to Vannucci on September 29, 2006, with complaints of neck pain and upper and mid back pain especially on the left side. She also complained of having a lot of headaches. He diagnosed her with “subluxation multiple cervical vertebrae - subluxation T7 - severe muscle spasm; cervicalis; thoracic discomfort; vertebrogenic headaches”. She presented to Vannucci on January 17, 2007, with complaints of upper back discomfort “probably from working”. On March 21, 2007, she returned to Vannucci with complaints of pain in her neck and left side. On September 17, 2007, she continued chiropractic treatment with Vannucci for pain in her neck, upper back and left hip tenderness due to some heavy lifting at work at O’Reillys. On October 19, 2007, Vannucci notes that the claimant had undergone an MRI which showed 2 bulging discs and she also complained of leg pain down her right calf. On October 26, 2007, in a return visit, Vannucci notes that the claimant had seen her back specialist that day “who told her to keep seeing her D.C.”. He further notes that she complains of low back, mid back pain, and reports that the leg was better.

DISCUSSION

The claimant contends she sustained a compensable injury to her back on or about September 21, 2007, caused by a specific lifting incident while lifting a starter. The claimant contends she had a lumbar injury in addition to the accepted thoracic injury. The claimant contends respondents are responsible for all reasonable necessary medical treatment for this injury including Dr. Thomas Hart, Dr. Burson and Dr. Qureshi. The claimant contends she is entitled to temporary

total disability benefits from the time she left O'Reillys because of no light duty until she started working for Wal-Mart (approximately November 1, 2007, until November 30, 2007). The claimant contends her attorney would be entitled to an attorney's fee on any amounts in accordance with Ark. Code Ann. § 11-9-715. The claimant specifically reserves the issues of permanent impairment rating, wage loss, etc.

The respondents contend that the claimant sustained a minor injury in the form of a thoracic sprain on September 21, 2007. The claimant was provided treatment at Concentra Health Centers and was released without restrictions on September 27, 2007. The respondents contend that any additional medical treatment is either unauthorized or unreasonable and unnecessary. The respondents contend that work was made available to the claimant within her restrictions from September 21, 2007, through September 27, 2007, and therefore is not entitled to temporary total disability benefits. Respondents controvert any lumbar injury.

I. COMPENSABILITY

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 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. 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, 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. 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).

In the instant case, there is no dispute over whether a specific incident occurred on September 21, 2007, at work. The claimant testified that she injured her back when she lifted a starter from the back of her delivery truck. She testified that she reported the incident immediately to her supervisor and sought treatment on the same date. Respondents have accepted the thoracic injury as compensable and paid some medical bills. Respondents further contend that the injury was a thoracic sprain and the claimant is not entitled to additional medical treatment nor

temporary total benefits since she was released to full duty seven days later by her treating physician. The claimant contends she also suffered a lumbar injury and that she attempted to return to work but that O'Reillys did not have work available within her restrictions. The preponderance of the evidence shows that the claimant did not return to work at O'Reillys and eventually sought employment with Wal-Mart in December of 2007.

II. OBJECTIVE FINDINGS

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 not establish a compensable lumbar injury by medical evidence supported by objective findings.

A review of the medical records offered in this case reflect there is no objective medical evidence that the claimant sustained a new injury to her lumbar spine as a result of this incident. Although the doctor diagnosed the claimant with a "Thoracic strain," he did not report any findings of any objective medical findings. Further, the objective findings of the MRI taken after the accident did not reveal any new findings but instead showed evidence of congenital and degenerative conditions.

In Lockett v. Cooper Tire & Rubber Co., 2005 AWCC 123 (June 21, 2005), the Commission found that the claimant had failed to meet his burden of proof

when his MRI reflected normal findings. Similarly, in Overstreet v. Pontiac Coil, Inc., 2004 AWCC 194 (November 2, 2004), while finding that an on-the-job incident happened, the Commission held the claimant failed to meet her burden in that there was no medical evidence offered supported by objective findings of injury in the record. In the case of Hassler v. Thomas & Betts Corporation, 2005 AWCC 215 (October 19, 2005), the claimant contended that she sustained an injury to her right shoulder when she heard it “pop” while lifting parts. In reviewing the evidence, the Commission noted that the “mild tendinosis” and “small amount of fluid” shown on the MRI were not objective findings sufficient to establish a compensable injury to the claimant’s shoulder. Further, the Commission noted that the doctor did not report any findings of swelling, bruising, or any other objective medical findings.

III. CAUSATION

In the instant case, it has been established that an incident involving the claimant occurred at work. It is equally clear from the medical evidence that objective medical evidence established the claimant’s need for treatment for the thoracic strain. The primary dispute is whether claimant has established a causal connection between her compensable injury and need for other medical treatment given the fact that claimant suffered from preexisting back problems prior to the work-related incident. 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). This is not a case where the claimant must prove that the other back injury had to be the

major cause of the need for the medical treatment in order for it to be covered by workers' compensation. That analysis is not applicable since this is a case involving a specific injury and request for medical treatment as opposed to a gradual onset injury or an award of permanent disability benefits. See, Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 145, 923 S.W.2d 883, 885 (1996). 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).

In the instant case, it is clear that claimant suffered from prior back problems and that her complaints of back pain preceded the alleged incident. The facts further reflect that the claimant was not diagnosed with a herniated disk until two months following the alleged incident at work and surgery was not performed, notwithstanding examination and treatment from other doctors, including x-rays and an MRI. If a 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 (1961).

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting 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). However, an aggravation is a new injury resulting from an independent

incident. Id. An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. Id.

In the instant case, respondents have presented medical evidence indicating that the claimant required medical treatment for back pain complaints and radicular symptoms prior to this accident with symptoms very similar to those after her accident. Medical records reflect that claimant did have a significant history of prior back complaints, for which she had sought chiropractic care. Claimant's prior complaints included upper and low back pain and radicular type symptoms into her leg. On her initial visit to Concentra immediately following the work incident, she complained of back pain in the left thoracic region and shoulder strain and did not mention pain in the lumbar area. 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).

In the instant case, I find that the claimant is not credible. She testified that she had never had back pain prior to the work incident. The medical records clearly show that she had sought chiropractic treatment for back pain for several years prior to the work incident and had seen the chiropractor only four days prior to the incident with complaints of back pain.

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).

In the instant case, Dr. Carle and Dr. Hart both determined that the claimant has suffered a minor thoracic sprain and released the claimant back to full duty. Based on my review of the entire record, I find that claimant failed to prove that the work-related incident was the cause of the need for her medical treatment.

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. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonable and necessary. Winslow v. D & B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

Based on the credible medical evidence, I find that the respondents have provided claimant with all reasonable and necessary medical treatment related to her compensable injury. Dr. Carle released the claimant from treatment and has opined that there is no further medical treatment that would be helpful to the claimant. The claimant has undergone a nerve conduction study which resulted in normal findings and MRI scans which revealed only degenerative changes which Dr. Carle and Dr. Hart relied upon in reaching their diagnosis and recommendations. Although Dr. Qureshi wanted to pursue additional treatment, the record reflects that the procedure performed by Dr. Qureshi only improved the claimant's alleged leg pain. Her continued complaints are subjective in nature and are unrelated with the original complaints and symptoms initially arising from the work-related activities. Moreover, Dr. Carle opined that the claimant exhibited symptom magnification or illness behavior with no objective findings of occupational impairment. Based on the preponderance of the credible evidence, I find that the respondents have fulfilled the

obligation of providing adequate medical treatment, diagnostic testing, and consultation with specialists as required by the Arkansas Workers' Compensation laws.

The claimant is entitled to temporary total benefits if she can satisfy a two-prong test: (1) claimant must be within her 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). The preponderance of the evidence demonstrates that the claimant had been released by her doctors to return to light duty work on September 21, 2007, and eventually her regular work duties on September 27, 2007. Light duty work was made available to claimant but she failed to return to work. Notwithstanding the opinion of her doctors, the claimant contends that she was not able to return to work after September 21, 2007, due to continuing symptoms. Based on the preponderance of the evidence, I find that the claimant is not entitled to additional temporary total disability.

_____ In the instant case, the claimant was released to full duty work on September 27, 2007. Based on the preponderance of the evidence, I find that the claimant has not proven that she is entitled to 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 September 21, 2007, when the claimant sustained a compensable injury to the thoracic spine.
3. The claimant's earnings were sufficient to entitle her to a compensation rate of \$220.00 for temporary total disability and \$165.00 for permanent partial disability benefits.
4. Respondents have paid some medical expenses.
5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment.
6. The claimant has failed to prove by a preponderance of the evidence that the treatment by Dr. Hart, Dr. Burson, and Dr. Qureshi was reasonable and necessary medical treatment and causally related to the work-related injury.
7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical benefits and indemnity benefits from September 21, 2007, until she returned to work on December 17, 2007.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge