

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E803108

ANTONIA McCLAIN,  
EMPLOYEE

CLAIMANT

E Z MART STORES, INC.,  
EMPLOYER

RESPONDENT

AMERICAN INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 24, 2003

Upon review before the FULL COMMISSION in Little Rock,  
Pulaski County, Arkansas.

Claimant represented by HONORABLE GENE E. McKISSIC, Attorney  
at Law, Pine Bluff, Arkansas.

Respondents represented by HONORABLE GAIL PONDER GAINES,  
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an Administrative Law Judge's  
opinion filed February 27, 2003. The Administrative Law  
Judge found that the claimant was not entitled to additional  
temporary total disability compensation or additional  
medical treatment. After reviewing the entire record *de*  
*novo*, the Full Commission affirms the opinion of the  
Administrative Law Judge.

I. HISTORY

\_\_\_\_\_ Antonia McClain, age 51, testified that she sustained  
an accidental injury on March 3, 1998. Ms. McClain

testified that she hurt her back while trying to grab a box of falling soda. The incident was apparently accepted as compensable. The claimant presented to Dr. P.B. Simpson, Jr. on March 12, 1998:

Patient initially seen in June of 1988 for neck and shoulder pain. Ms. McClain complains of having pain in her back with pain in both legs, more so on the left than on the right. On 3/03/98 she was lifting a case of drinks and started having pain in her back. She actually tried to work another day or so, but then started having pain in her back with some pain into both hips and both legs.

Dr. Simpson's impression was "Back pain, bilateral lumbar radiculopathy, worse on the left than the right." An MRI of the lumbar spine was taken on March 12, 1998, with the following opinion:

Degenerative disc changes at L4-5 with bulging annulus, possible small focal herniation with no mass effect produced upon theca, no nerve root compression.

Dr. Simpson wrote on March 13, 1998, "Basically, her MRI is negative and I think that she should continue conservative management." Dr. Simpson noted on March 16, 1998 that the claimant had torn up a prescription for Darvocet, because she wanted "something stronger." Dr. Simpson wrote, "I do not want to give her narcotic medication with a negative MRI and with her having bilateral

symptomatology." Dr. Simpson set up thoracic diagnostic testing for the claimant, and he noted on March 18, 1998, "I have looked at Ms. McClain's MRI of her thoracic area and this is completely normal. I really can't find any reason for her continued complaints." Nevertheless, Dr. Simpson took the claimant off work on March 20, 1998 until she could complete physical therapy.

The claimant began treating with Dr. Bruce L. Safman on April 29, 1998:

I believe that we are dealing with a thoracolumbar strain and a right sacroiliac strain. I injected all three areas with Decadron, Depo-Medro, and Xlyocaine. I will order a wide sacroiliac belt and a TENS unit, and reassess her in one week. She is off work at this time. I will not re-implement vocational endeavors until I see her in one week and make a reassessment at that time.

Dr. Safman returned the claimant to light restricted duty on May 27, 1998. The claimant complained in subsequent follow-ups that the employer was not complying with her work restrictions. The claimant testified that her supervisor told her, "If you can't do the job, you need to quit." Dr. Safman stated on July 20, 1998, "I believe that she is at maximum medical improvement but I would like to continue seeing her, just for medication regulation as she is still on the Prozac and Soma."

The claimant testified that she was in effect removed from her manager position and transferred to a cashier position at another store, which also constituted a pay reduction. The claimant testified that she was moved to the "graveyard" shift at the Crossett store, and that this position was not within her physical restrictions.

Dr. Safman reported on September 2, 1998:

Ms. McClain is unchanged. She has been off work for a week. Her employer cannot accommodate her in the managerial position and as it has been given to another employee. She is still very resistant to returning to a cashier's position.

I have related to her that she is at maximum medical improvement. I will not keep her on the Soma for a protracted period of time because there is some habituating potential. She claims that she has lost the prescription for it. I asked her to use over-the-counter medication.

If she needs to see me in the future, she will have to go through her adjustor or case manager. I feel that I have done all that I can for her. Her symptoms are purely subjective: There is no objective documentation of significant pathology that would be responsible for her protracted symptoms. With the conflict between her and her employer, I doubt whether a successful re-integration back to her former job is going to be forthcoming.

The record indicates that the claimant was discharged from employment with E-Z Mart for misconduct, effective October 22, 1998. The claimant testified that she was in the store talking with a friend about their grandchildren,

"and I told her, 'That's a bunch of bullshit,' just in a normal conversation, and the next thing I knew, I was fired." The claimant testified that she had been physically unable to work since October 1998, because of her back.

After experiencing "agony 24 hours a day," the claimant began treating with Dr. Harold H. Chakales on June 30, 2000. The claimant complained of "chronic lower back pain" and did not mention her 1998 accidental injury. Dr. Chakales noted from a radiograph report, "An MRI of the lumbar spine was done on November 17, 1999, which was interpreted as showing bulging lumbar degenerative discs." The diagnosis was "Lumbar disc syndrome with radiculopathy, primarily on the left."

After discography was performed, Dr. Chakales diagnosed "Lumbar disc syndrome at L3-L4, L4-L5, and L5-S1" on August 3, 2000. Dr. Chakales performed extensive surgery at L4, L5, and S1 in April 2001. The claimant underwent additional surgery in April 2002.

Ms. McClain claimed entitlement to additional worker's compensation. The claimant contended that she was entitled to additional medical treatment following her release by Dr. Safman. The claimant contended that she was entitled to additional temporary total disability compensation "from the

date of termination" until a date to be determined. After a hearing before the Commission, the Administrative Law Judge found that the claimant was not entitled to additional benefits. The claimant appeals to the Full Commission.

## II. ADJUDICATION

### A. Medical treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the Full Commission affirms the Administrative Law Judge's finding that the claimant failed to prove she was entitled to additional medical treatment. The claimant sustained an accidental injury in March 1998. An MRI showed degenerative changes at L4-5 with no indication of an acute diskal injury. Dr. Simpson opined that the MRI was negative, and he recommended conservative

treatment. By March 18, 1998, Dr. Simpson could find no reason for the claimant's continued complaints of pain. Dr. Safman began treating the claimant in April 1998, and he thought the claimant had suffered from thoracolumbar strain and right sacroiliac strain. Dr. Safman treated the claimant conservatively.

Dr. Safman pronounced maximum medical improvement on July 20, 1998, although Dr. Safman indicated at that time that he would continue to regulate the claimant's medication. On September 2, 1998, Dr. Safman again pronounced maximum medical improvement. Dr. Safman expressed a concern for the habituating potential with regard to the claimant's continued use of Soma. Dr. Safman stated, "I feel that I have done all that I can for her. Her symptoms are purely subjective: There is no objective documentation of significant pathology that would be responsible for her protracted symptoms." The claimant does not have to support a continuing need for medical treatment with objective findings. Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

Nevertheless, the preponderance of the evidence before the Commission, including the reports of treating physicians Dr. Simpson and Dr. Safman, does not indicate that additional

medical treatment would be reasonably necessary in connection with the claimant's compensable injury.

The claimant began treating with Dr. Chakales in June 2000, over two years after her March 1998 accidental injury. The claimant complained of chronic back pain, but she did not express to Dr. Chakales that this condition was causally related to the March 1998 incident. Dr. Chakales noted that an MRI taken in November 1999 showed "bulging lumbar degenerative discs." Dr. Chakales did not causally relate this degenerative condition to the claimant's March 1998 accidental injury. In August 2000, Dr. Chakales diagnosed "Lumbar disc syndrome at L3-4, L4-5, and L5-S1." There is no evidence before the Commission showing any causal connection between this multi-level syndrome and the claimant's accidental injury, nor did Dr. Chakales attempt to describe such a causal connection. Nor does the record show a causal connection between the subsequent surgeries performed by Dr. Chakales and the claimant's March 1998 accidental injury. The decision of the administrative law judge is affirmed.

B. Temporary total disability

An injured employee is entitled to temporary total disability compensation during the time that she is within

her healing period and is totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). Ark. Code Ann. §11-9-102(12) defines "healing period" as "that period for healing of an injury resulting from an accident[.]" When the underlying condition causing the disability becomes stable, and when nothing further will improve that condition, the healing period has ended. The claimant is no longer to receive temporary total disability compensation, regardless of her physical capabilities. Moreover, persistent pain does not suffice to extend the healing period or to find that the claimant is totally incapacitated to earn wages. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In the present matter, we affirm the Administrative Law Judge's finding that the claimant is not entitled to additional temporary total disability compensation. The claimant sustained a compensable injury on March 3, 1998 and was treated conservatively. Dr. Simpson noted that an MRI was negative. Dr. Simpson took the claimant off work for physical therapy beginning March 20, 1998. Dr. Safman returned the claimant to light restricted duty on May 27, 1998. The claimant testified that she was ultimately

transferred to a "graveyard" shift with the respondent-employer, and that this position allegedly did not comport with the claimant's physical restrictions, but there is no evidence showing that the claimant suffered an aggravation of her injury as a result of returning to work.

Dr. Safman pronounced maximum medical improvement on July 20, 1998 and September 2, 1998. Whether an employee's healing period has ended is a factual determination for the Commission. Ketcher Roofing Co. v. Johnson, 50 Ark. App. 63, 901 S.W.2d 25 (1995). The Commission finds that the claimant reached the end of her healing period no later than September 2, 1998. The claimant's employment was terminated effective October 22, 1998 for reasons unrelated to her compensable injury. We have determined *supra* that Dr. Chakales' treatment beginning in June 2000 was not reasonably necessary in connection with the claimant's compensable injury. Therefore, the claimant did not re-enter a healing period when she began treating with Dr. Chakales. The claimant contends that she is entitled to additional temporary total disability from the date of her employment termination until a date to be determined. Based on the record before us, the Full Commission finds that the claimant failed to prove she was within her healing period

and totally incapacitated to earn wages at any time after September 2, 1998. The opinion of the Administrative Law Judge is affirmed.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove she was entitled to additional medical treatment or additional temporary total disability compensation. We therefore affirm the opinion of the Administrative Law Judge. This claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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JOE E. YATES, Commissioner

Commissioner Turner dissents.