

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E903727

SOUK VANTHAVONG,  
EMPLOYEE

CLAIMANT

TWIN RIVERS FOODS, INC.,  
EMPLOYER

RESPONDENT

RISK ENTERPRISE MANAGEMENT,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 16, 2003

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

Claimant represented by HONORABLE DOUGLAS CARSON, Attorney  
at Law, Fort Smith, Arkansas.

Respondents represented by HONORABLE NEAL HART, Attorney at  
Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals  
from a decision of the Administrative Law Judge filed April  
25, 2003. The Administrative Law Judge entered the  
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission  
has jurisdiction of this claim.
2. On March 17, 1999, the relationship of  
employee-employer-carrier existed between the  
parties.
3. The claimant sustained a compensable injury  
to her back on March 17, 1999.
4. The respondents have paid temporary total  
disability to August 9, 2000.

5. The claimant is entitled to a weekly compensation rate of \$217.00 for temporary total disability and \$163.00 for permanent partial disability.
6. The respondents accepted and paid a 12 percent permanent partial impairment rating to the body as a whole.
7. The claimant was authorized to be seen by Dr. Robert Peinert in Dallas, Texas.
8. The claimant has proven by a preponderance of the evidence she is entitled to additional medical treatment subsequent to February 1, 2003, for her compensable injury.
9. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability from August 9, 2000, to a date to be determined.
10. The respondents have controverted this claimant's entitlement to additional benefits. There was some question as to whether the respondents had paid all of the medical benefits for this claimant up until February 1, 2003. According to the testimony of the claimant, she has not been receiving any bills from any of her doctors; therefore, the respondents have not controverted medical treatment up to February 1, 2003.
11. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact

made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 1996).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

\_\_\_\_\_ I concur with the finding in the principal opinion that claimant is entitled to additional medical treatment

subsequent to February 1, 2003. However, I must respectfully dissent from the denial of any additional benefits for temporary total disability.

Dr. Robert Chouteau, claimant's treating orthopedic surgeon, opined that claimant was still within her healing period at least until a lumbar myelogram and discogram can be performed to fully assess the extent of claimant's lumbar condition. Claimant's current diagnosis is failed back syndrome with right leg radiculopathy. Dr. Chouteau added that if these diagnostic studies were negative, then claimant would be at maximum medical improvement. Additionally, there is insufficient evidence that claimant has the capability to earn the same or any part of the wages she was earning at the time of the compensable injury. Accordingly, claimant has proven by a preponderance of the evidence that she is entitled to additional benefits for temporary total disability.

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SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs in part and dissents in part.

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CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant has failed to prove by a preponderance of the evidence that she is entitled to

additional temporary total disability from August 9, 2000, to a date yet to be determined. However, I must dissent from the majority's finding that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment subsequent to February 1, 2003, for her compensable injury. In my opinion, the claimant has failed to meet her burden of proof.

The medical evidence reveals that the claimant treated with Dr. Robert Peinert, Jr., and later with Dr. Robert Chouteau. It is of note that Drs. Peinert and Chouteau operate a clinic in Dallas that specializes in treatment for patients involved in personal injury cases. Dr. Peinert apparently attempted various methods of conservative treatment on the claimant. None of these treatments were of any success in relieving the claimant's alleged symptoms.

X-rays and MRI studies show that the hardware installed in the claimant's back was in excellent position. Further, a nerve conduction study, performed by Dr. Cruz, a Dallas neurologist, indicated that a "large amount of the patient's symptoms appear to represent conditions that could not adequately be explained by an S1 radicular problem." A second nerve conduction study performed by Dr. Michael Seals was interpreted as normal with no evidence of right lumbosacral radiculopathy.

Dr. Melissa Tonn, an occupational medicine specialist, evaluated the claimant on July 9, 2002. In her report, Dr. Tonn indicated that the claimant's behavior was grossly inconsistent with her subjective complaints. She opined that additional medical care was not reasonably necessary.

The claimant has been provided numerous treatments with no results in improving her alleged symptoms. The only doctor who feels that there may be something else he can do to improve the claimant's problems, is Dr. Chouteau. Dr. Chouteau's opinion is entitled to little weight. It is well established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d (2002). The Commission has the duty of weighing the medical evidence as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. CDI Contractors v. McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993) In short, Dr. Chouteau's opinion that the claimant needs additional treatment is based upon her subjective complaints.

Accordingly, I find that the claimant is not entitled to additional medical treatment.

Therefore, for all the reasons set forth herein, I must respectfully concur in part and dissent in part from the majority's opinion.

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KAREN H. MCKINNEY, Commissioner