

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E912139

FANNIE GREENE,
EMPLOYEE

CLAIMANT

McGEHEE SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

MANAGEMENT CLAIM SOLUTIONS, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 26, 2004

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

Claimant represented by HONORABLE H. OSCAR HIRBY, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE MICHAEL J. DENNIS,
Attorney at Law, Pine Bluff, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed December 31, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employee-employer-carrier existed among the parties on October 7, 1999 at which time the claimant sustained a compensable back injury at a compensation rate of \$131.00. Medical expenses and temporary total disability benefits were paid

until this claim was controverted on February 3, 2000.

2. The claimant has failed to prove that surgery performed by Dr. Bruffett to correct spondylolisthesis and stenosis are causally related to the fall at work. Therefore, the additional medical treatment by Drs. Bruffett, Reddy and Prosser is not reasonably necessary for treatment of the compensable injury.

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.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ In light of the Court's recent decisions in Williams v. L & W Janitorial, Inc. ___ Ark. App. ___, ___ S.W.3d ___ (February 4, 2004) (CA03-681) and Pollard v. Meridian Aggregates, ___ Ark. App. ___, ___ S.W.3d ___ (September 29, 2004) (CA04-218) in which the court found that treatment for aggravations of previously asymptomatic preexisting conditions is compensable, I find that the majority has erred in failing to award Claimant the requested medical and temporary total disability benefits.

Claimant, at the age of 50, incurred an admittedly compensable back injury on October 7, 1999 while working in a school cafeteria for Respondent. (Comm. Ex 1). Claimant testified, and the medical records reflect, that Claimant did not have any back pain prior to this incident. Medical benefits and TTD benefits were paid until this claim was controverted on February 2, 2000. At the hearing, Claimant contended that she remains symptomatic from the compensable injury, seeks continuing medical treatment with Dr. Prosser, requests payment for expenses incurred from Drs. Prosser, Bruffett, and Reddy, and requests additional TTD from February 4, 2000 to a date yet to be determined. Respondents contended at the hearing that additional

benefits are unreasonable and unnecessary based on Dr. Simpson's medical records and an invalid FCE.

Dr. Prosser treated Claimant immediately following the injury and scheduled a CT scan of the lumbar spine on November 4, 1999. The CT scan was interpreted by Dr. Rosen at the Pine Bluff Imaging Center as follows: "Evidence of diffuse symmetric bulging of the disc annulus at the L4-5 level & L5-S1 level, with no evidence of any disc herniation. Evidence of grade I spondylolisthesis at L5-S1 level, probably due to degenerative changes."

Claimant was subsequently seen by Dr. Simpson, a neurosurgeon, who ordered other tests of her lumbar spine and concluded that there was no abnormality. Dr. Simpson released Claimant to return to work on November 22, 1999. Claimant continued to complain of pain and was not able to work, though she attempted to do so. On February 3, 2000, Dr. Simpson wrote that Claimant was to "remain off work for an undetermined amount of time." He also stated that he was arranging for Claimant to have a Functional Capacity Evaluation. The FCE was determined invalid, which I find very unsurprising in light of the fact that Claimant was unable to work and was still in a great amount of pain.

Claimant continued to receive treatment from Dr. Prosser, who referred her to Dr. Reddy for conservative pain management treatment. After these treatments failed to resolve Claimant's pain, she was referred to Dr. Bruffett in September, 2000.

Dr. Bruffett ordered two MRIs and diagnosed Claimant with spondylolisthesis, bulging disc that was worse on the left side, and stenosis, which I note was consistent with Dr. Rosen's interpretation of the CT scan taken immediately after Claimant's injury. After conservative treatment failed, Dr. Bruffett ultimately recommended and performed surgery on Claimant. On August 20, 2002, Claimant underwent a spinal fusion and posterior lumbar interbody fusion at L5-S1 for treatment related to spondylolisthesis at L5-S1 with stenosis. Dr. Bruffett made the following observations in his operative report: "Intraoperative Findings: It appeared that the pars was elongated and maybe not completely fractured through. Nonetheless, there was a spondylolisthesis at L5-S1 and marked foraminal stenosis, worse on the left side." (R. 120).

In Dr. Bruffett's December 18, 2002 deposition he testified that Claimant's fall made her preexisting degenerative condition symptomatic, that a FCE in 2000 was

premature and accordingly would be invalid, and that Claimant was expected to reach MMI six to twelve months after surgery.

The Court has held that a claimant is entitled to compensation for a preexisting and previously asymptomatic condition that is aggravated by a work-related injury. Williams, supra. In Williams, the claimant slipped on stairs and injured her knee at work in November, 2000. The claimant first injured her knee in 1996 at work. She testified that before the November, 2000 injury that she would take Tylenol for pain and would still work despite the pain. The respondents paid for the first knee surgery, but refused to pay for the total knee replacement surgery after two doctors opined that the claimant's pain was caused by degenerative arthritis.

The Court of Appeals reversed and remanded the case for an award of benefits:

the Commission had found that appellant had failed to prove a causal connection between her compensable injury and her need for total-knee-replacement surgery. Moreover, the Commission concluded that '[t]here is no evidence that the degenerative disease was worsened by the work-related injury.' Even reviewing the evidence in the light most favorable to the Commission's findings, we conclude

that they are not supported by substantial evidence. Appellees had to take appellant as they found her, and the compensable injury that she suffered was a factor in her need for the additional surgery.

Here, it appears undisputed that her fall at work aggravated her condition and made it symptomatic. Certainly Claimant's preexisting condition was a factor in her need for the surgery performed by Dr. Bruffett and the related treatment from Drs. Reddy and Prosser. As in Williams, Dr. Bruffet opined that Claimant's work injury caused her preexisting condition to become symptomatic, which contributed to her need for back surgery and fusion. Therefore, I find, as did the Court of Appeals, that Claimant's admittedly compensable injury was a factor in his need for the total knee replacement surgery.

In adopting the ALJ's opinion, the majority finds that "[a]lthough the claimant's work activities may temporarily aggravate her condition, the compensable injury is not the cause for the claimant's surgery and resulting disability." This analysis and denial of benefits is clearly contradictory to Williams where the claimant was entitled to surgery for her preexisting condition because the "admittedly compensable injury was a factor in his need for the total knee replacement surgery." Here, the

preponderance of the evidence establishes that Claimant's admittedly compensable injury was a factor in her need for back surgery.

The majority has given weight to Dr. Simpson's opinion. However, his opinion is contradicted by Dr. Rosen and Dr. Bruffett's interpretations of the MRIs of Claimant's lumbar spine and Dr. Bruffett's operative report in which he described his observations of Claimant's back condition.

Claimant credibly testified, and the record so reflects, that Claimant did not have symptoms or back pain prior to the admittedly compensable injury. It is clear that Claimant's need for surgery would not have resulted but for the work-related aggravation. Additionally, the record shows that Claimant had a preexisting stenosis and spondylolisthesis conditions that were asymptomatic prior to her fall. Specifically, Dr. Bruffett actually observed her preexisting condition during the operative procedure. These are objective findings of Claimant's condition. Furthermore, Dr. Bruffett testified that Claimant's fall caused her condition to become symptomatic. As such, I find that the preponderance of the evidence establishes that Claimant's admittedly compensable injury caused her

condition to become symptomatic and require medical treatment and surgery.

For these reasons, I dissent from the majority opinion and find that the Administrative Law Judge's opinion should be reversed. Accordingly, I find that Claimant is entitled to compensation for the requested medical treatment and temporary total disability benefits.

SHELBY W. TURNER, Commissioner