

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212623

SELETIA LEWIS,
EMPLOYEE

CLAIMANT

WSD TURNER,
EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 12, 2004

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

Claimant represented by HONORABLE RALPH C. GOZA, Attorney at
Law, Camden, Arkansas.

Respondents represented by HONORABLE WILLIAM C. FRYE,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed September 16, 2003 awarding
Claimant temporary total disability benefits from October
28, 2002 through a date yet to be determined and finding
that Claimant is entitled to additional medical treatment.
After conducting a de novo review of the record, we find
that the Administrative Law Judge's opinion should be
affirmed.

Claimant incurred an admittedly compensable back
injury on October 24, 2002 while bending over to tape up
boxes. Claimant received treatment from her family
physician, Dr. Rollin Wycoff, from October 28, 2002, to

November 26, 2002. Dr. Wycoff's October 28, 2002, report notes observation of muscle spasms in the lower lumbar region on both sides and some straightening of Claimant's natural lordosis. Dr. Wycoff took Claimant off of work, prescribed pain medication, and diagnosed her with lumbar strain. He also noted in this report that Claimant complained that she "was working on taping up some boxes, had been bending down quite a bit, and as she stood up she had excruciating pain in her low back. It was to the point that it took her breath away...she is not able to stand completely upright, and it has kept her from sleeping as well as making it difficult for her to perform regular duties at work." On November 5, 2002, Dr. Wycoff released Claimant to return to light duty work, but the employer did not return her to work. Dr. Wycoff also noted muscle spasms during his November 12, 2002 evaluation of Claimant. Dr. Wycoff diagnosed Claimant with low back pain and a bulging disc at L5-S1 pursuant to an MRI dated November 14, 2002.

Dr. Wayne Bruffett at the Arkansas Spine Center evaluated Claimant once on December 18, 2002. Dr. Bruffett opined that Claimant had a bulging disc at L5-S1 that is worse on the left side, which he noted was consistent with her complaints that her pain was worse on the left side. Dr. Bruffett concluded that Claimant was not a surgical

candidate, recommended that she see Dr. Bruce Safman for nonsurgical care, and released her to light duty work:

I think it would be helpful for her to see Dr. Bruce Safman for further nonsurgical care. However, I am a bit pessimistic about her responses to treatment because this problem has been present now for eight weeks and she has really had minimal improvement. I think she needs a trial of some more specific nonsurgical treatments, but if these do not prove helpful, then she may just need to find an occupation that is more suitable for her back....I am going to release her with some restrictions of no lifting or pushing or pulling greater than 20 pounds and no repeated bending, twisting or stooping. Hopefully her employer will have some type of light duty sedentary work that she can continue...I have advised her that this problem may not go away quickly...

Claimant gave undisputed testimony that she presented the light duty work release to the Respondent-Employer on December 18, 2002, at which time she was terminated.

Dr. Safman first examined Claimant on December 19, 2002. Dr. Safman recorded that she had trigger points in the left quadratus lumborum and the left piriformis and gave her an injection in the left quadratus lumborum and the abductor and rectus femoris tendons of the left hip. Dr. Safman prescribed Ultracet, lidoderm patches for myofascial pain, and noted that she was currently on Vioxx. He also

maintained the same light duty restrictions that Dr. Bruffett had issued.

On January 4, 2003, Dr. Safman noted that "[o]n examination, there is a trigger point in the left lower lumbar region but no guarding or muscle spasm present." His notes also state that Claimant reported that her back pain has improved with trigger point injections and medications. Dr. Safman "injected the left rectus femoris tendon and the trigger point in the quadratus lumborum" and stated that he intended to reassess her in one month.

Dr. Safman noted in his February 1, 2003, evaluation of Claimant that she reported that the last injections were helpful, but the effects soon wore off in her back and that she is no longer having left hip pain. Dr. Safman noted that she "has tenderness in the lower lumbar region and a trigger point in the left quadratus lumborum." Dr. Safman switched her medication from Vioxx to Bextra, increased the Wellbutrin dosage, and maintained her light duty work restrictions.

On March 13, 2003, Dr. Safman noted that Claimant reported that her lumbar and hip pain remain the same and that the trigger point injections have helped but that the medication has not been beneficial. His record also states that he "palpated a trigger point in the paravertebral

muscles in the left lower lumbar spine and also one in the left quadratus lumborum" and that he repeated trigger point injections in these areas. Dr. Safman also prescribed Zonegran, "which is similar to Neurontin and sometimes beneficial for chronic pain." His report concludes by stating that he will keep her on the same work restrictions and will see her in two and a half weeks.

Dr. Safman's April 5, 2003 report states that Claimant described lower lumbar pain with more pain on the left side. Claimant reported that she had GI symptoms from the Zonegran and could not tolerate it, but that she felt that the trigger point injections were helpful. Dr. Safman noted that there was tenderness and a trigger point in the left quadratus lumborum. Dr. Safman prescribed Neurontin and Mobic and stated that he will reassess her in a month.

On May 10, 2003, Dr. Safman reported that "her Worker's Comp benefits have been terminated. She states that Worker's Comp is not paying for her medications. Thus she did not get her medications...She did not get her medications, thus I am at a loss to determine whether or not they have been beneficial...I have asked her to get her prescriptions filled on her commercial insurance so that I can determine whether or not they would be of any benefit to her. I have not received notification that her benefits

have been terminated, as far as medical care goes. I will reassess her in another month."

Dr. Safman testified that Claimant had not yet reached MMI as of the end of March, 2003:

Q: Now, she got hurt on October 24th, and we're now at March 1st, and that's what, almost -- that's close to six months?

A: October to March would be five months, yeah.

Q: Well, by the end of March, I think it would be six months?

A: Okay, by the end of March, it would be six months.

Q: Okay. At that point with a lumbar strain, are we getting near to where she has plateaued from an MMI standpoint?

A: Well, what we were doing is implementing some things, some measures that work for chronic pain. Pain is subjective. She had had treatment that was focused on treatment of acute pain. I was implementing some of the measures for chronic pain, as the measures for acute pain were not successful. So as far as treatment of acute pain goes, I would say, yes, we were fairly close to having treated her with many of the modalities that we used. There are some modalities that are used to treat chronic pain that are sometimes effective when pain has persisted for more than three to six months, and these would be the only other measures that I would think would have been worthwhile trying, and those are the

measures that I subsequently implemented.

* * *

Q: All right. As of March 13th, 2003, has there been any change in her condition since that point?

A: No, there hasn't.

Q: Do you think she reached maximum medical improvement as of March 13th?

A: No, I had just started her on the Zonegran, the first of the medications. I then prescribed Neurontin for her, and she reports that -- we would titrate the medication to higher and higher doses, and we go up to about 15, 1800 milligrams before we state that it wasn't successful. The titration was complicated by the fact that she no longer had funds nor funding to get the Neurontin, so that process was halted.

* * *

Q: Now, you tried the Neurontin, and she came back on April 5th. Do you think she reached MMI at that point?

A: That was Zonegran. That's when we put her on -- I gave her samples of Neurontin on April 5th. That's when she first got the Neurontin.

Q: But that didn't produce any change either, did it, on her exam or her complaints?

A: Subsequently, she reported that she could not get her medications, so that kind of put an end to that.

* * *

Q: All right. And then the last time I've got you seeing her was May 10th, is that correct?

A: I saw her this Saturday, and again - - I don't have notes -- nothing has changed. She didn't have any ability to obtain medications, and I related to her that there was no reason for me to pursue seeing her, that she didn't have the ability to try medications. I didn't have an adequate supply of samples, and I really had nothing additional to offer her.

Dr. Safman gave additional deposition testimony that at the March 13, 2003, office visit he determined that the acute pain medications were not effective and began treating Claimant for chronic pain:

Q: Was she as of March 1st getting any better, or was she just pretty much staying about the same?

A: She was feeling much the same. The pain had not changed significantly. She had transient responses to the treatments up to that point.

Q: And I've got you seeing her March 13th?

A: That's correct.

Q: And the meds that you changed her to weren't beneficial?

A: Then we started medications that we use for chronic pain.

Q: Okay.

A: We assumed that implementing the measures to treat acute pain were not successful and were not going to be successful, so basically what I then do is use some of the medications sometimes successful with chronic pain. If they don't work, then basically I've done all that I can for that person.

Dr. Safman testified that it is possible that Claimant's bulging disc is causing the pain the she describes:

Q: Let me ask you this then, Doctor. Is a -- we'll call it a bulging disk, but is a bulging disk that brushes against the left S1 nerve root that's been reported here, is that consistent with pain in the left lower lumbar area?

A: I've had patients with bulges that brush against nerve roots who have reported no pain on the side where it occurs, and I've had patients who have this finding that have had significant findings, including objective findings. Unless the radiologist can demonstrate impingement, in other words, definite pressure against the nerve root, it would be very difficult for me to establish a cause and effect between that finding, which means it's very close to the nerve root, and the patient's symptoms, because the radiologist has not defined that it's actually impressing on the nerve root. So it would be very difficult, but I have had patients who have demonstrated this finding who have had pain with objective findings. So I would have to say, yes, it's possible.

Claimant testified that she had never had problems with her back prior to this incident. She further testified that she continues to have pain on the left side of her lower back and shooting pain down her leg that causes her leg and foot to go to sleep. Claimant has not worked since being terminated by Respondent and testified that she cannot stand for prolonged periods of time. Claimant's job history includes working as a cashier, working for UPS, waiting on customers, and a machine operator. She also stated that she could not work in any of her previous employment positions because they required repeated bending, stooping, reaching, and prolonged standing. Claimant stated that her condition has not gotten any better or any worse since seeing Dr. Safman but remains the same.

The Administrative Law Judge awarded Claimant additional medical treatment and temporary total disability benefits from October 28, 2002, through a date yet to be determined. On appeal, Respondents argue that Claimant is not entitled to temporary total disability benefits, that further medical treatment is not reasonably necessary, and that there are no objective findings supporting an award of disability benefits or additional medical treatment. We disagree and find that the Administrative Law Judge's opinion should be affirmed.

Medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. See generally, Georgia-Pacific Corp. v. Dickens, 58 Ark. App. 266, 950 S.W.2d 463 (1997); Artex Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983); Tiner v. Total Petroleum, Full Workers' Compensation Commission, Opinion filed April 3, 2003 (W.C.C. F104990). In addition, an employer may remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. Artex Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983) ("Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.").

In Gansky v. Hi-Tech Eng'g, 325 Ark. 163 (1996), the claimant's treating physician recommended a functional capacity assessment before releasing the claimant from medical care. The respondent, however, "contested the need for continued medical treatment and refused to pay for this evaluation." The claimant testified that even though his pain persisted, he did not seek further medical treatment because the carrier denied additional treatment and he could not afford to pay for it. The court held that "[u]nder

these circumstances when the treating neurosurgeon has prescribed a functional capacity assessment and that was not done because [the respondent] would not pay for it, we cannot agree with the Commission that additional medical treatment was not reasonably necessary or that the healing period had ended." Id. at 169.

We find, as in Gansky, that additional medical treatment is reasonably necessary to treat Claimant's admittedly compensable injury. Dr. Safman began treating Claimant for chronic pain on March 13, 2003. Respondents terminated Claimant's medical and prescription drug benefits shortly thereafter even though Dr. Safman had not yet released Claimant from his care, released Claimant to return to work without restrictions, determined that she was at MMI, or otherwise discontinued treatment for the undisputed work-related injury. Additionally, we find that Dr. Safman's treatment of Claimant was impeded because Claimant could not afford to pay for the prescribed medications once the carrier terminated prescription drug benefits. Under these circumstances, we find that additional medical treatment is reasonable and necessary.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark.

State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 247, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). A claimant who has been released to light duty work but has not returned to work may be entitled to temporary total disability benefits where there is insufficient evidence that the claimant has the capacity to earn the same or any part of the wages that he was receiving at the time of the injury. Breshears, supra; Sanyo Manufacturing Corp. v. Leisure, 12 Ark. App. 274, 281-82 (1984).

The Full Commission finds that Claimant is entitled to temporary total disability benefits from October 28, 2002, to a date yet to be determined. We find that Claimant was in her healing period and had not yet reached MMI at the time Respondents controverted Dr. Safman's continued treatment for Claimant's back injury and payment for related prescribed medicines. We also find that Claimant credibly testified that she cannot stand for prolonged periods of time, that she continues to have pain on the left side of her lower back and shooting pain down her leg that causes her leg and foot to go to sleep, and

that she cannot work in any of her previous forms of employment due to her physical limitations. Claimant was terminated on December 18, 2002, upon presenting Dr. Bruffett's light duty work release and has not worked since last working for Respondent. Although Dr. Safman maintained Dr. Bruffett's December 18, 2002, light duty work restrictions, we find that there is insufficient evidence to show that Claimant had or has the ability to earn the same or any part of the wages that she was receiving at the time of the injury. The evidence establishes that Claimant has remained in her healing period and that further treatment that may improve Claimant's condition is available, as proposed by Dr. Safman. We, therefore, find that Claimant is entitled to temporary total disability benefits from October 28, 2002, to a date yet to be determined.

We further note, in response to Respondents' argument, that objective findings, though a factor, are not required to establish entitlement to temporary total disability benefits or additional medical treatment. Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997); Williams v. Prostaff Temporaries, 64 Ark. App. 128, 979 S.W.2d 911 (1998). Even so, we find that Claimant's undisputed injury at the L5-S1 level is supported by the November 14, 2002, MRI and by Dr. Safman's consistent

observation of palpable trigger points, which have been recognized as objective findings. See High Capacity Prods. v. Moore, 61 Ark. App. 1, 6 (1998).

Respondents also argue that Dr. Safman had released Claimant based on Dr. Safman's foregoing testimony:

Q: When people are seeking monetary benefits, again secondary gain comes into play, is that -- and that can be one explanation for her subjective complaints, can it not?

A: It could be, but I can't state that it is.

Q: And when you see someone like that, those are the type of people that don't get better no matter what you try. Is that a fair statement?

A: I don't always know that I can with certainty identify people who are seeking secondary gain or benefits. When I suspect it, these are patients who are more difficult to treat, people who are less likely to respond, and basically after I have exhausted the medications I use, I basically release them at that point in time with or without a functional capacity test to define what they can and can't do.

Q: And in her case, you released her and said, "I've done all I can do"?

A: I've done all that I can. There may have been one or two other medications I would have liked to have tried, just to satisfy myself that I've done everything that I know of to try and help her with her pain.

In light of previous testimony, however, we find that Dr. Safman has "done all that [he] can" only because Respondents refused to pay for the prescription drugs that Dr. Safman prescribed, which inhibited him from being able to treat Claimant for chronic pain resulting from her compensable injury.

For the foregoing reasons we find that the Administrative Law Judge's opinion should be affirmed and we hereby order Respondents to provide additional reasonable and necessary medical treatment to Claimant and to pay temporary total disability to Claimant from October 28, 2002 to a date yet to be determined. 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 Claimant's injury occurred after July 1, 2001, Claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by 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 \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant is entitled to temporary total disability benefits from October 28, 2002, through a date yet to be determined and finding that the claimant is entitled to additional medical treatment. Based upon my de novo review of the entire record, I find that the claimant has failed to prove by a preponderance of the evidence that she remained within her healing period and totally incapacitated from earning wages after March 1, 2003, or finding that additional medical treatment is reasonably necessary in connection with claimant's compensable injury.

Claimant was examined by Dr. Wayne Bruffett on December 18, 2002. In his report of that date, Dr. Bruffett recorded the following findings on physical examination:

She is 5 feet 5 3/4 inches tall and weighs 231 pounds. Her pulse rate is regular at 108 beats per minute. She has a few subtle positive Waddell signs in

that she has pain with simulated compression and she seems to have some hypersensitivity to simple soft palpation or even skin rolling. She does not have pain with trunk rotation. She really will not attempt to do much range of motion at all because she says her back hurts too bad. Straight leg raising is negative. She has no motor, sensory, or reflex deficits on her legs. Her pulses are intact. There is no edema or atrophy. She has no pathologic reflexes.

After reviewing the claimant's imaging studies, Dr. Bruffett concluded that the claimant was not a surgical candidate. Dr. Bruffett recommended that the claimant be seen by his partner at Arkansas Specialty Care Centers, Dr. Bruce Safman, for nonsurgical care. In making this referral Dr. Bruffett opined:

I am a bit pessimistic about her responses to treatment because the problem has been present now for eight weeks and she has really had minimal improvement. I think she needs a trial of some more specific nonsurgical treatments, but if these do not prove helpful, then she may just need to find an occupation that is more suitable for her back. I am going to release her with some restrictions of no lifting or pushing or pulling greater than 20 pounds and no repeated bending, twisting, or stooping. Hopefully, her employer will have some type of light duty sedentary work that she can continue....

Claimant was first examined by Dr. Safman on December 19, 2002. Dr. Safman opined that the claimant had a lumbosacral/sacroiliac strain and enthesopathy of the left hip, for which he administered trigger point injections and prescribed lidoderm patches and Ultracet. Dr. Safman specifically noted that the claimant did not have any guarding or muscle spasm at that time. Dr. Safman kept claimant on the same work restrictions imposed by Dr. Bruffett. During his examination of the claimant on January 4, 2003, Dr. Safman noted that the claimant's back pain had improved with the injections and medications. On examination, Dr. Safman noted a trigger point in the left lower lumbar region, but no guarding or muscle spasms. Dr. Safman again administered trigger point injections. Upon her return examination on February 1, 2003, the claimant advised Dr. Safman that the injections helped but the effects had worn off. Similar to his previous examinations, Dr. Safman noted tenderness in the lower lumbar region and a trigger point in the left quadratus lumborum, but no guarding or muscle spasm. Dr. Safman altered claimant's medications, but did not administer a trigger point injection at that time.

When the claimant returned to Dr. Safman on March 13, 2003, Dr. Safman specifically stated in his report

that the claimant's "review of systems is unchanged." The claimant continued to report that her lumbar and left hip pain remained the same. The claimant reported that neither Celebrex or Darvocet had been beneficial. Dr. Safman changed claimant's medication to Zonegran, which he stated was sometimes beneficial for chronic pain. Claimant advised Dr. Safman on her April 5, 2003, office visit that she could not tolerate the Zonegran. Dr. Safman therefore, provided the claimant with samples and a prescription for Neurontin and Mobic but otherwise did not offer any additional treatment at that time. The last report in the record from Dr. Safman is dated May 10, 2003. In this report, Dr. Safman relates that the claimant's workers' compensation benefits had been terminated and that the claimant was unable to get her medications. Otherwise, this report contains the same medical findings.

Dr. Safman was deposed on June 16, 2003. After discussing his treatment of the claimant, Dr. Safman was asked if the claimant was getting better, or remaining the same when he examined her in March of 2003, to which he responded; "She was feeling much the same. The pain had not changed significantly. She had transient responses to the treatments up to that point." After a discussion concerning secondary gain and Dr. Safman's trial with Zonegran for

chronic pain, Dr. Safman was asked whether the claimant had plateaued as of his April 5, 2003, examination of the claimant which prompted the following exchange.

A. Well, I guess she had plateaued [sic] prior to that point.

Q. When do you think she reached maximum medical improvement?

A. I would guess, you know, she's probably there now. I think we've exhausted all we can. She doesn't have funds for medications. I've just about exhausted medications with the failure of Neurontin to be effective in doses that I had provided her with, and at that point I think that I have done all that I can for her. Certainly, at this time she doesn't have funds for medication. There are one or two other medications in that category that I sometimes try. One would be Daypro, another one would be Gabitril, but I was just - - I have just about exhausted medications that I could try for her.

Q. Do you really think that either one of those would do any good?

A. I'm pessimistic. But for the sake of - - I'm here to treat patients, so we try these medications successively, try the ones I've had greatest success with initially and the ones I've had a lesser degree of success with subsequently, and when that fails, I've done all that I could do.

Nevertheless, Dr. Safman further testified that since he had additional medications to try on the claimant he did not deem the claimant to have reached maximum medical improvement.

At the hearing the claimant was asked to describe the condition of her back. The following exchange transpired.

Q. And as I understand it, your condition today, in your mind, is the same as it was back in March?

A. Right.

Q. And back in December?

A. Right.

Q. So there's no difference in it now as it was back then?

A. No.

Q. It hasn't gotten any worse or any better; it has stayed about the same?

A. Right, the same.

Although Dr. Safman stated in his deposition that the claimant had not reached maximum medical improvement because he still wanted to try medications for chronic pain, Dr. Safman admitted that the claimant's condition had plateaued prior to his April 5, 2003, examination. Despite the efforts of Dr. Safman to find a medication to address

claimant's complaints of pain, the medical records reveal that the claimant's condition stabilized on or before her March 13, 2003, visit with Dr. Safman. The claimant's muscle spasms halted before the claimant was ever examined by Dr. Safman in December of 2002. Moreover, while Dr. Safman noted some improvements in the claimant's symptoms and complaints during his examinations in December, January, and February, as of March 13, 2003, claimant's examinations and complaints remained unchanged.

The claimant has failed to show any improvement in her condition since March 13, 2003. Claimant continues to remain in pain, however, it is well established that pain, in and of itself, is not sufficient to extend the healing period. Dr. Bruffett did not believe that the claimant would obtain any relief from her pain since she had failed to show much improvement in eight weeks. Likewise, when asked if he felt the claimant would obtain any relief from additional medications, Dr. Safman conceded that he was pessimistic, but he is "here to treat patients" so he tries these different medications to do all that he can.

In my opinion, a preponderance of the evidence supports a finding that the claimant reached the end of her healing period on March 13, 2003. There is no indication in the record that the claimant's condition improved or

deteriorated after this date. Claimant testified that her condition has remained the same since December of 2002. Nevertheless, Dr. Safman's medical records indicate a slight improvement in the claimant's condition during his first three months of treatment. Since March 13, 2003, claimant had not had a change in her condition. Accordingly, in my opinion, the claimant's condition became stable and nothing further in the way of treatment has improved her condition. While Dr. Safman has additional chronic medications to try, he is candidly pessimistic about their success rate.

Having found that the claimant's healing period ended on March 13, 2003, I further find that the claimant is not entitled to temporary total disability benefits after that date. Pallozollo v. Nelms Chevrolet, 46 Ark. App. 130, 877 S.W.2d 938 (1994); Arkansas State Highway & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

Claimant contends that she is entitled to additional medical treatment. As noted above, neither claimant's treating physician nor Dr. Bruffett were optimistic about the benefit of additional treatment. Claimant has utilized numerous pain medications, all to no avail. Claimant is not a surgical candidate. The only recommended treatment is additional medications for chronic pain, which Dr. Safman has only offered because it is

available, not because he honestly believes that it will benefit the claimant. Accordingly, I find that additional medical treatment is not reasonably necessary in connection with claimant's compensable injury.

Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner