

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E911807

ROBERTA J. BUSBEA, EMPLOYEE	CLAIMANT
ST. VINCENT INFIRMARY MEDICAL CENTER, EMPLOYER	RESPONDENT
ALTERNATIVE INSURANCE MANAGEMENT SERVICES, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 15, 2005

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

Claimant represented by the HONORABLE STEVEN R. McNEELY,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE WALTER A. MURRAY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and
reversed in part.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals
an administrative law judge's opinion filed April 22, 2005.
The administrative law judge found that the claimant was not
entitled to temporary total disability compensation from
April 1 through April 6, 2004. The administrative law judge
found that treatment provided by Dr. Moore and Dr. Wilson
was reasonably necessary in connection with the claimant's
compensable injury. After reviewing the entire record *de*

novo, the Full Commission reverses in part and affirms in part the opinion of the administrative law judge. We find that the claimant proved she was entitled to temporary total disability from April 1, 2004 through April 6, 2004. The Full Commission finds that the treatment provided by Dr. Moore and Dr. Wilson was reasonably necessary pursuant to Ark. Code Ann. §11-9-508(a).

I. HISTORY

Bobbie Busbea, age 60 (8-31-44), testified that she was a CNA, and that she had been employed at St. Vincent's since September 1987. Ms. Busbea testified that she underwent two back surgeries after being involved in an automobile accident in 1996. The claimant testified that she eventually returned to full work duty.

The parties stipulated that there was a compensable low back injury on August 5, 1999.

The claimant began treating with Dr. John L. Wilson on September 27, 1999:

This nice lady was seen on 9-27-99 with pain in her back, buttocks, and entire right leg. She relates she injured herself approximately three weeks ago working on 3 am shift at St. Vincent's. She relates she was helping lift an individual that had bypass surgery and felt pain in her leg....

Past history is significant in that she had two laminectomies in 1996 at L-4-5 by Dr. Tom Fletcher. She has done quite well and since that time has had no lost time as far as her back is concerned. She denies any knee problems....

This lady has two separate problems.

1. Probable disc at L-3-4 on the right.
2. Probable torn meniscus.

Dr. Wilson treated the claimant conservatively and took her off work.

Dr. Wilson reported on October 6, 1999, "On MRI, she has a laterally placed disc at L-3-4 on the right. She has an old disc at 4-5 on the left. She has been operated on in the past. This has nothing to do with her current problem. This lady is sent to Dr. Jim J. Moore for epidural steroid injection."

The claimant began treating with Dr. Jim J. Moore on or about October 7, 1999. The parties stipulated that Dr. John L. Wilson and Dr. Jim J. Moore were authorized treating physicians.

Dr. Wilson noted on May 10, 2000 that the claimant was working part-time. Dr. Wilson took the claimant off work on November 1, 2000. Dr. Wilson informed the respondent-carrier on January 8, 2001, "Ms. Busbea has not reached the end of her healing period from her August 5, 1999, injury."

Dr. Wilson reported on January 31, 2001, "Today she relates she is doing somewhat better, having less pain in her leg. Ms. Busbea has had a recent MRI, which reveals a bulge at 3-4 with a smaller bulge at 2-3. Again, Ms. Busbea was advised that she does not need surgery. She was released to return to work five hours a day. She is to continue her therapy and return for follow up."

Dr. Moore's diagnosis on July 24, 2002 was "Lumbar HNP." Dr. Moore noted on December 4, 2002, "The patient will remain off work until I see her in follow up after a second LESI has been accomplished. I doubt that this patient will ever get into a situation that she will be able to do heavy physical pulling and lifting." Dr. Moore diagnosed "1. Lumbar radiculitis. 2. Arachnoiditis."

Dr. Moore noted on July 30, 2003:

1. I believe the patient is reaching a plateauing (sic) as far as improvement, not necessarily maximal medical improvement in reference to the back injury of 8-05-99.
2. Other treatment depends upon the patient's status but in general conservatism is thought to be appropriate if at all possible.
3. Maximum medical improvement date is difficult to ascertain in view of the patient's difficulties that may ultimately come to a surgical recommendation. The problems, I think and decisions are thought to be well documented in the reports that have been submitted on this patient along during her course of clinical follow.

Dr. Moore diagnosed, "1. Lumbar radiculitis. 2. Arachnoiditis."

The claimant testified that she was unable to work from April 1-6, 2004. The administrative law judge examined the claimant at hearing:

Q. I want to ask you about this April of 2004 period when you didn't work. That was April 1 through April 6th. Correct?

A. Yes, sir.

Q. And why was it you weren't working that time?

A. I was down with my back.

Q. It looks - seem to be that you saw, I guess, Dr. Wilson?

A. Yes, sir.

Q. And that was on the 12th?

A. Yes, sir.

Q. But you didn't see him at this particular time. Right?

A. Yes, sir, I did see him. Because I couldn't get approval through the workmen's comp, he agreed to see me on his own. So I went to his office.

Q. And that was on the 12th?

A. Yes, sir....I had called in, and I had to wait for an appointment.

Dr. Wilson reported on April 12, 2004, "Ms. Busbea returned to our office today. She was advised by WC that

they would not pay for any of her care. She has had increase in her back pain with restriction of motion. Neurological examination is unchanged. She was given Decadron today and her medications were refilled. She is to return as needed."

An OrthoArkansas Work/School Status form for non-workers' compensation was filled out on April 12, 2004. The following was handwritten: "Please excuse for 4/1/04 & 4/6/04 from work." Dr. Wilson apparently signed the form.

The parties deposed Dr. Moore on June 7, 2004. The respondents' attorney questioned Dr. Moore:

Q. Is there any way, without looking at any of the prior records when Dr. Fletcher treated her, to tell the administrative law judge who's going to try this case whether her current problems are related to something that occurred in 1999 or 1995 or 1996?

A. Are you asking this as an opinion?

Q. Yes, sir.

A. Am I being compensated as an expert opinion?

Q. Well, I hope so.

A. Well, I don't think I am....My compensation is not adequate for expert opinion.

Q. Okay. Does that - do I take that to mean you won't give an expert opinion today.

A. Well, no, I don't think I will.

Q. Okay. Well, then, that's just fair enough with me, and you answered it to start with, and I understand where you're going, and I understand you have some difficulty with Rule 30.

A. I certainly do....

Q. Do I understand that - that you will not give an expert opinion today?

A. I will give a treating - I will give - I will read my records....

Q. If you're only going to read your records, I would say that for me to go forward would be a waste of my time, your time, Mr. McNeely's time, the court reporter and the law judge. We're all capable to reading your records, and if you will not give an expert opinion outside of those records, then it's a waste of my time to be here.

A. Under the circumstances of today, I won't.

The parties deposed Dr. Wilson on June 7, 2004. Dr. Wilson testified on questioning from the respondents' attorney:

A. Her problem is that she has got a 3-4 disc on the right with persistent residuals of that. She also has an anomalous - most likely an anomalous dura or arachnoid to where she leaks when you give her a myelogram. She doesn't want to seal off like she should, and so we have been fearful in doing epidural steroids, because you can inadvertently puncture the dura when you do an epidural, and we're fearful of having her leak more because it's very difficult to get her to stop....

Q. And with the type of injury that she had, was that a herniated disc at L3-4?

A. Yes.

Q. What's the heal time for that?

A. Well, sometimes never. As a matter of fact, according to the AMA guidelines, once you have a herniated disc, even though it's asymptomatic, you have impairment....To answer your question, you never get over a herniated disc. You'll always have problems but normally the healing problem - healing is six weeks to three months.

Q. I probably should have phrased that as far as maximum medical improvement instead of heal time. If we talk about maximum medical improvement, what is Mrs. Busbea's, or what was her maximum medical improvement when she reached whatever the date would be?

A. I'm not sure if she has ever really reached this. She has waxed and waned. She has never settled down to where we could put a finger on and say this is as good as you're going to get or not. She continues to have peaks and valleys as far as her treatment. I think in my experience of taking care of people, there's been very, very few people that I haven't been able to say you've - you're at the end of this particular rope, but she continues to have problems off and on. She does continue to work, she's not drawing benefits as such, but she still is being treated and being followed for this injury in 1999, and I feel is still symptomatic from that particular injury....

Q. You have in your reports indicated that she doesn't need surgery?

A. I don't think that she would respond well to surgery. I think that she has an anomalous dura, and I don't want to go in there....

Q. Do we have any idea what her anatomical impairment is going to be?

A. Her anatomical impairment is in the range of 7 percent to the body.

Dr. Wilson reported to Dr. Paul Zelnick on September 30, 2004, "Ms. Busbea has acute sciatica on the right. She is unable to work. She was given and (sic) injection of Decadron today and placed on exercises to be done in the tub over the weekend. She is released to return to work on Monday."

A physician from Memphis Orthopaedic Group, Dr. Mark S. Harriman, reported on October 25, 2004:

I have been asked by Alternative Insurance Management Services Inc to perform an independent medical examination on Ms. Roberta Busbea who is a hospital PNA who is 60 years old and basically lists her health as being good. She currently works in the psychiatric ward at St. Vincent's Hospital in Little Rock, Arkansas. Previously, she was on orthopaedics. She has been placed on light duty with a 20 pound lifting limit and no prolonged sitting or standing due to a back injury which she says that she sustained in August 1999 lifting a very heavy patient. She was worked up after this back injury and was found to have a ruptured disc at L3-4. She never underwent surgery for that because apparently there were some complications after a myelogram and was treated conservatively including some epidural blocks....She still complains of primarily low back pain and some into the upper buttocks bilaterally. She says that she will occasionally get a sensation of numbness down in her right great toe. Her past history is important in that

she has had two previous laminectomies apparently for a left sided disc problem. These were done in 1996. She states that she had no symptoms whatsoever after she had recovered from these surgeries. She is also here for evaluation of left knee injury which occurred in early 1999. She says she had a fall at work and then surgery in 2000 for partial lateral meniscectomy. She underwent another scope in 2003 and had removal of a plica. There is an old surgery on the left knee as well that included an extraarticular anterior cruciate ligament reconstruction back in the 80s....

First of all, the diagnosis is that she has healed the injury to the left knee. She apparently had meniscus damage there but I see no evidence of ongoing injury in the left knee at this time. From the left knee standpoint, I believe she can be placed at maximum medical improvement and I do not recommend any restrictions on the left knee.

From the back standpoint, I found the patient to be very non-physiologic in today's evaluation. She has some minor complaints yet during the exam demonstrated pain behavior that would indicate she is in almost unbearable pain. However, this simply was not observed at all prior to the onset of the examination. Objective findings therefore are almost absent on this patient as there were so many non-physiologic and paradoxical findings.

Specifically, however, I did not find any evidence of ongoing radiculopathy in spite of the fact that the patient's original MRI in 1999 did show a ruptured disc on the right at L3-4.

I do feel that the patient is likely at maximum medical improvement in regards to the back injury of August 5, 1999. Her complaints and apparent exacerbations of pain seem rather non-physiologic as of this evaluation.

It is my impression that Ms. Busbea likely can return to her job as a nurse's aide. A functional

capacity evaluation might be useful here but if the patient responds to that evaluation similar to her response in the office today the results may not be reliable. I simply have not found anything on today's exam that would indicate that she cannot return to full activities however as a nurse's aide.

There is impairment in regards to Ms. Busbea's problems. Partial meniscectomy on the left knee would award her 2% to the extremity, 1% to the whole person based on the Fifth Edition AMA Guidelines. The lumbar disc problem would award her 7% to the whole person based on the Fifth Editions AMA Guidelines.

A pre-hearing order was filed on November 3, 2004. The claimant contended that she was entitled to continuing medical care by Dr. Moore. The claimant contended that she was entitled to temporary total disability compensation from April 1, 2004 through April 6, 2004. The claimant further contended that Dr. Wilson's bills had not been paid and were controverted.

The respondents contended that the requested medical care from Dr. Moore was not reasonably necessary. The respondents contended that the claimant was not entitled to temporary total disability compensation, "because her healing period ended."

A claim coordinator for the respondent-carrier informed the claimant on November 10, 2004, "Enclosed are bills for

dates of service 5-17-04 & 9-30-04 with Dr. Wilson. This treatment was not authorized by workers' compensation, therefore we are denying these bills at this time. I am returning these to you so that you can submit them to another source for consideration of payment."

The respondents' attorney wrote to the claimant's attorney on January 7, 2005: "I was unable to cross-examine Dr. Moore as requested on June 7, 2004, therefore I ask that you have him available at the Hearing in this matter for the purpose of cross-examination."

A hearing was held on January 26, 2005. At that time, the claimant's attorney called Dr. Moore as a witness and submitted into evidence some medical reports authored by Dr. Moore. The respondents' attorney cross-examined Dr. Moore.

The claimant testified with regard to Dr. Moore's treatment, "Normally, when I get that, the medication that he inserts in there, I can go, like, anywhere from two to three months, sometimes longer, without having to go back to him. It keeps me off absentee list and I am able to function. And that is, of course, where I am not lifting over like 20 pounds or standing or stooping or, you know - I am on limitations, but I can still do my job."

The administrative law judge found, in pertinent part, "3. The record fails to show that the claimant was in a healing period from April 1 through April 6, 2004, and, consequently, she is not entitled to benefits for temporary total disability for that period. 4. The medical care suggested by Dr. Moore is reasonably necessary for her compensable injury as has been the treatment received by Dr. John L. Wilson, both of which are the responsibility of the respondents." The ALJ determined, apart from his findings of fact, that the claimant was responsible to pay a witness fee for Dr. Moore's hearing testimony.

Both parties appeal to the Full Commission.

II. ADJUDICATION

A. Temporary disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). In the present matter, the Full Commission reverses the administrative law judge's finding that the claimant did not prove she was entitled to temporary total disability compensation from April 1, 2004 through April 6, 2004. The

parties stipulated that the claimant sustained a compensable low back injury in August 1999. The claimant began treating with Dr. Wilson and Dr. Moore, and she was taken off at various times following the compensable injury. Dr. Wilson indicated in January 2001 that the claimant had not reached the end of her healing period. Dr. Wilson, Dr. Moore, and independent examiner Dr. Harriman opined that the claimant had sustained a herniated disc as a result of the compensable injury. Although Dr. Wilson did not think the claimant would need surgery, Dr. Moore thought that an operation might eventually be required.

The claimant credibly testified that she was off work from April 1-6, 2004, because "I was down with my back." The claimant was not able to get in to see Dr. Wilson until April 12, 2004. Dr. Wilson asked that the claimant be excused from work for the period April 1 through April 6, 2004. Although the work excuse was on a non-worker's compensation form, the Full Commission notes that the respondent-carrier had controverted benefits at that time. By June 2004, Dr. Wilson still did not think the claimant had reached the end of her healing period. However, Dr. Wilson also thought that the claimant had sustained

permanent anatomical impairment, a clear indication that the claimant had reached the end of a healing period. Johnson v. General Dynamics, 46 Ark. App. 188, 878 S.W.2d 411 (1994). We also note that Dr. Harriman assigned a permanent impairment rating in October 2004.

The Full Commission finds that the claimant proved she was entitled to temporary total disability compensation from April 1, 2004 through April 6, 2004. We reverse the administrative law judge's denial of temporary total disability for this period.

B. Medical treatment

The employer shall 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. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). 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 parties stipulated that the claimant sustained a low back injury in August 1999. The parties stipulated that Dr. Moore and Dr. Wilson were authorized physicians. Dr. Wilson opined following the claimant's compensable injury that she had a "probable disc" at L3-4. An MRI in January 2001 confirmed that the claimant had a post-injury disc bulge at L3-4. Dr. Moore diagnosed "lumbar HNP" in July 2002. Both Dr. Moore and Dr. Wilson have consistently opined that the claimant needed additional medical treatment. The Full Commission recognizes our finding *supra* that the claimant reached the end of a healing period in June 2004. However, it is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's compensable injury. Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Dr. Wilson testified in June 2004 that the claimant remained symptomatic, even if the claimant had reached the end of a healing period. The claimant credibly testified that she benefitted from Dr. Moore's injection therapy and was able to work for several months afterward. The Full Commission affirms the administrative law judge's

finding that "The medical care suggested by Dr. Moore is reasonably necessary for her compensable injury as has been the treatment received by Dr. John L. Wilson, both of which are the responsibility of the respondents."

C. Witness fee

Finally, the administrative law judge determined that the claimant should pay Dr. Moore a witness fee pursuant to ARCP Rule 45. The administrative law judge erred.

Commission Rule 20 is entitled REPORTING COSTS, TRANSCRIPTION COSTS, WITNESS FEES. Subsection 4 of Rule 20 provides:

A. In the event a written report of a physician, osteopath, chiropractor or other provider is offered in evidence and the right of cross-examination is requested, it will be granted.

B. The party offering the report must produce the author of the report for cross-examination, but the attendance fee or charge of the witness is the liability of the party requesting cross-examination.

In the present matter, the record contains correspondence from the respondents' attorney, to wit: "I was unable to cross-examine Dr. Moore as requested on June 7, 2004, therefore I ask that you have him available at the Hearing in this matter for the purpose of cross-examination." Our reading of Rule 20 indicates that the

respondents are therefore liable for Dr. Moore's fee. The respondents's attorney at hearing cited Cyphers v. United Parcel Serv., 68 Ark. App. 62, 3 S.W.3d 698 (1999). In that case, the Court of Appeals reversed the Commission's determination that the respondents should pay a witness fee pursuant to Rule 20. Instead, the Court ruled that Dr. Moore's fee was governed by the cost limitation of Rule 30.

Cyphers is clearly distinguishable from the present matter. In Cyphers, the Court applied Rule 30 to Dr. Moore's fee, because he was an independent examiner in that case. In the present matter, Dr. Moore was a stipulated treating physician, not an independent medical examiner. The Full Commission finds that Rule 20 applies to the present matter, and that the respondents are liable for Dr. Moore's hearing fee.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant did not prove she was entitled to temporary total disability compensation from April 1, 2004 through April 6, 2004. The Full Commission finds that the claimant proved she was entitled to temporary total disability for that period. We affirm the administrative

law judge's finding that treatment provided by Dr. Wilson and Dr. Moore was reasonably necessary in connection with the claimant's compensable injury. The Full Commission finds that the respondents are liable for Dr. Moore's hearing fee, pursuant to Commission Rule 20. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(a) (Repl. 1996). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of two-hundred fifty dollars (\$250), pursuant to Ark. Code Ann. §11-9-715(b) (1) (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

CONCURRING AND DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. Specifically, I concur in the majority's finding that, pursuant to Rule 20, the

respondents are responsible for the witness fee for Dr. Jim J. Moore. However, I must respectfully dissent from the majority's finding that the claimant was in her healing period from April 1st through April 6th, 2004, and the award of additional medical treatment.

With respect to the award of temporary total disability benefits for the period April 1, 2004 through April 6, 2004, I find that the claimant cannot meet her burden of proof. The off-work slip of Dr. Wilson that the majority relies on does not state the reason why the claimant was taken off of work. Further, it is dated April 12, 2004, twelve days after the first date that the claimant was allegedly unable to work. Dr. Wilson has previously treated the claimant for problems that were unrelated to August 5, 1999, compensable injury. Further, the claimant had last seen Dr. Wilson on January 30, 2004, and his report of that date deals exclusively with the claimant's left knee injury, not her compensable back injury. Simply put, I think it requires conjecture and speculation to conclude that the claimant was off work April 1, 2004, through April 6, 2004, as a result of her compensable back injury. Conjecture and

speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

I must also respectfully dissent from the majority's award of additional medical treatment by Drs. Wilson and Moore. A review of the medical records demonstrates that the claimant has been treated over the years for headaches and her knee. Of particular interest is Dr. Moore's report dated November 12, 2002, which was over three years subsequent to the claimant's compensable injury, wherein he states:

Plan: This patient has had a number of MRI's and a number of LESI's. The last MRI, I believe, was 1-30-01 suggesting DDD (degenerative disc disease) at L2/3 with a brushing of the L2 root, DDD L3/4 without nerve root compromise but the suggestion of clumped nerve roots. The patient has had two surgical procedures by Dr. Fletcher in the past and I have reviewed these operative notes today.

Clearly, Dr. Moore is treating the claimant for a number of different ailments that have no relation to her compensable injury.

Additionally, Dr. Moore testified that the claimant is forever going to be off work from time to time and he did not relate this fact to her compensable low back injury. In Crisp v. Weyerhaeuser Corp., Full Commission Opinion filed July 27, 1993 (Claim D812922), the Commission found that the results obtained from medical treatment is a factor in determining whether it is reasonable and necessary medical treatment. In this regard, Dr. Moore admitted in his testimony that his treatment of the claimant will only give her a "modicum" of relief and that he was unable to state how many more times he would have to treat the claimant. The claimant also testified that she is going to have occasions where she has to miss work for the rest of her life.

Dr. Wilson has been treating the claimant for her compensable injury for many years at the expense of respondents. While he is unwilling to state that the claimant is at maximum medical improvement from her compensable injury, Dr. Wilson acknowledged that the claimant had "a history of back problems before this episode in 1999." Moreover, on one occasion Dr. Wilson stated that the claimant was unable to work because of her sciatica and

muscle spasms, and he does not relate these back issues to her compensable injury.

In my opinion, the claimant's current alleged need for treatment is the result of her 1996 car accident and her other pre-existing conditions. In addition to the degenerative disc disease and scoliosis, in 1996, the claimant received two surgeries for her back from Dr. Thomas Fletcher following a motor vehicle accident for which she missed at least 12 weeks of work on more than one occasion.

The claimant's current condition has been reviewed by two doctors, Drs. Daniel Wolens and Mark S. Harriman. Dr. Wolens opined that "[o]verall, this individual's diagnosis is the generic term "lumbar radiculitis" and atachnoiditis". Dr. Wolens further stated:

From a scientific perspective, this is likely due to pre-existing spinal pathology and her having previously undergone two lumbar operations. Her strain injury of 8/5/99 was a minor contributor to her condition and again superimposed on this underlying pathology.

Dr. Harriman, who personally examined the claimant pursuant to an independent medical examination, reported that claimant is at maximum medical improvement from her

August 5, 1999, injury and that her current complaints were "rather non-physiologic." Dr. Harriman further reported:

From the back standpoint, I found the patient to be very non-physiologic in today's evaluation. She has some minor complaints yet during the exam demonstrated pain behavior that would indicate she is in almost unbearable pain. However, this simply was not observed at all prior to the onset of the examination. Objective findings therefore are almost absent on this patient as there were so many non-physiologic and paradoxical findings.

Specifically, however, I do not find any evidence of ongoing radiculopathy in spite of the fact that the patient's original MRI in 1999 did show a ruptured disc on the right at L3-4.

It is clear that the claimant's alleged need for continuing medical treatment is not reasonable and necessary for her August 5, 1999, compensable low back injury. The claimant's "long history of back problems before this episode in 1999," as described by Dr. Wilson, consisting of the two back surgeries in 1996, scoliosis, degenerative disc disease, sciatica and muscle spasms, are the true cause of any continuing complaints and need for treatment.

Accordingly, for all the reasons set forth herein, I must respectfully dissent from the majority's opinion

awarding additional temporary total disability benefits, as well as, additional medical benefits. Therefore, I must respectfully, concur, in part, and dissent, in part, from the majority opinion.

KAREN H. MCKINNEY, Commissioner