

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401342

LINDA C. ENSLEY,
EMPLOYEE

CLAIMANT

SOUTHWEST ARK. DEV. COUNCIL,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 10, 2005

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

Claimant represented by the HONORABLE GREG GILES,
Attorney at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE BETTY DEMORY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed February 18, 2005. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that

additional medical treatment after June 8, 2004, was reasonably necessary in connection with the compensable injury.

4. The claimant's healing period ended no later than June 8, 2004.

5. The claimant has therefore failed to prove by a preponderance of the evidence that she was entitled to temporary total disability benefits after June 8, 2004.

6. The claimant has proven by a preponderance of the evidence that the respondents controverted her entitlement to the temporary total disability benefits voluntarily paid in lump sum for the period from February 27, 2004, through June 8, 2004, and that she is entitled to attorney's fees on those benefits.

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.

Therefore we affirm and adopt the February 18, 2005 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

The Majority is affirming and adopting an Administrative Law Judge's denial of additional medical and temporary disability benefits. In my opinion, the denial is contrary to the weight of evidence presented at the hearing and, consequently, I respectfully dissent from the Majority's Opinion.

This case turns on whether the claimant suffered an injury to her lower back in her admittedly compensable automobile accident of January 29, 2004. Injuries to the claimant's neck and other body parts were the basis for awarding her medical treatment and disability benefits through June 8, 2004. However, the Majority, by virtue of affirming and adopting the

decision of the Administrative Law Judge, is apparently concluding that the claimant's back problems are not related to the automobile accident. The major point upon which the Majority relies is that the claimant did not report "back pain" until March 2004, a period of about six weeks following the accident. However, in my opinion, this fails to recognize a note dated February 4, 2004, less than a week after the accident, from Dr. Sheri Diamond, the claimant's initial treating physician, directing the claimant to undergo physical therapy because of neck pain and back spasms.

Also, following her injury, the claimant was prescribed both pain killers and muscle relaxants based upon her complaints of significant neck pain. I believe that it is quite likely her back symptoms were masked by the receipt of this medication.

The MRI scan performed on the claimant's lumbar spine on April 19, 2004 revealed, in addition to degenerative disc disease, a possible disc protrusion at L4-L5. This possible protrusion was later discussed by Dr. Lee Bueno, a Texarkana, Texas neurosurgeon. Dr. Bueno opined that while much of the claimant's condition was degenerative, it "could have flared up from work."

I find the medical evidence contained in the record demonstrates that the claimant did sustain an

injury to her lower back in her compensable accident of January 29, 2004. Further, there is no doubt that she was still under treatment for her back condition in June 2004, the time in which the Majority is ending her entitlement to medical and disability benefits. In my opinion, the claimant was still undergoing active treatment with Dr. Buono on and after this date, establishing that she was still within her healing period for this condition. Therefore, in addition to medical treatment, I would award the claimant temporary total disability benefits from June 8, 2004 to a date yet to be determined.

I believe that the medical evidence and the testimony of the claimant is sufficient to establish her entitlement to the requested benefits. I, therefore, respectfully dissent from the Majority's Opinion.

SHELBY W. TURNER, Commissioner