

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204762

HELEN M. ISAAC,  
EMPLOYEE

CLAIMANT

TWIN LAKES NURSING & REHAB CENTER,  
EMPLOYER

RESPONDENT

PACIFIC EMPLOYERS INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 13, 2005

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

Claimant represented by HONORABLE FREDERICK SPENCER,  
Attorney at Law, Mountain Home, Arkansas.

Respondents represented by HONORABLE CURTIS NEBBEN, Attorney  
at Law, Fayetteville, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed October 15, 2003. The administrative law judge found that the claimant was entitled to temporary total disability compensation from September 3, 2002 to a date to be determined. The administrative law judge also found, "The preponderance of the evidence reflects that the claimant is entitled to reasonably necessary medical treatment for her admittedly compensable right arm injury, including unpaid medical, the medical mileage and future medical treatment from Dr. Don Vowell." After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. We find that the

claimant did not prove she was entitled to additional benefits.

I. HISTORY

Helen Isaac, age 52 (12-31-51), testified that she was diagnosed with breast cancer on the right side in 1999, and that she underwent a mastectomy in 1999. A co-worker, Jane Foster, agreed at hearing that the claimant "had been sick" before the incident in question, and that the claimant "had problems with her right side," including "the arm."

The parties stipulated that the claimant sustained "right arm, bilateral knee, right shoulder, and low back compensable injuries on April 24, 2002." The claimant testified:

Q. Just tell us briefly about what happened.

A. Well, the night that it happened I was at work passing my routine med. pass down A hall. And I was finished in one room and was getting ready to push the cart to the, to my next patient. And the wheels gave way on the cart and the cart began to topple forward on me. And I reached forward with my arm and the cart just kept coming because of the validity, validity -

Q. - Velocity?

A. - velocity of the weight coming. And it, I reached out with my arm and the cart come down my right side and began to pin me against the wall. And -

A. Did it, when it hit your side, did it push you up against the wall?

Q. Yes, sir, it did. My back began, became impinged at the lumbar area at the railing that goes down, the hand rail of the wall....And it also hit my knee, both knees, but the right one worse than the left.

The claimant's attorney examined a co-worker, Cheryl Ramsey:

Q. And did you see Helen when it fell over on her?

A. I didn't see her in the hall. I heard the crash and went around the corner.

Q. What did you find when you got there?

A. I found her standing in the middle of the hall trying to hold the cart up where it wouldn't continue to fall over. And there was water, I mean, everything she had on top of the cart was in the floor. And she was holding the cart. The drawers were open. You know, she was trying to keep it from falling on over.

The respondents' attorney stated at hearing that the claimant began receiving temporary total disability compensation beginning April 25, 2002.

The record indicates that the claimant presented to Dr. Rolland Lee Bailey on April 26, 2002. The notes from that visit indicate that the claimant "was passing meds @ NH & the wheel gave out & it fell on her back, knee shoulder pain had her up against the wall." The Doctor Notes appear to indicate that the claimant complained of pain in her shoulder, arm, both knees, and low back.

An orthopedist, Dr. Don R. Vowell, reported on May 7, 2002:

Helen is a 50 y/o female seen today at the request of Dr. Bailey for right knee and ankle and back and right shoulder pain....She was on the job on 4/24/02 when a medicine cart that she was pushing broke, and a wheel apparently came off the cart, and the cart fell forward and landed on her. She's been using a cane to walk. She's had a previous back injury with a herniated disc in the 1970's after they were rear-ended in a MVA. She has had another injury to her back in the early 1990's after a car accident when her car slid on ice. She had another incident with her back in 1993 when she lifted a lady while working at a nursing home and strained her lower back. She apparently injured her back in 1995 again lifting a patient at a nursing home in \_\_\_\_, MO. She was diagnosed with two herniated discs, but had no surgery.

PAST HISTORY: she has had a mastectomy in 1999 for cancer and is currently in radiation treatment. She's had a hysterectomy, cholecystectomy, rib resection, tonsillectomy, and ectopic pregnancy. Her cancer of the breast has recurred in April of this year....

X-RAYS: complete lumbar spine x-rays show no obvious evidence of bone cancer. The pedicles appear to be good. The disc spaces are well maintained. She does have osteoporosis and facet arthritis at L4-5 and L5-S1. X-rays of her right ankle show no fractures. X-rays standing AP of both with lateral and sunset view of her right knee shows joint spaces are normal. There's good alignment. There's no evidence of arthritis or narrowing of the joint. There is some subchondral bone resorption over the medial femoral condyle....

Dr. Vowell's impression was "she had chondromalacia patellae and also has low back sprain with facet arthritis. She has tendonitis of her right shoulder and has an

impingement syndrome of her right ankle." Dr. Vowell treated the claimant conservatively, and he took the claimant off work until a follow-up appointment on May 21, 2002.

Dr. Vowell reported on May 21, 2002 that physical examination showed "some pain with some right shoulder tenderness. there's some trigger points in her back. She's to be at her regular job duty." An addendum from Dr. Vowell on or about May 29, 2002 indicated, "Ms. Isaac retains 0% impairment as a result of her injury."

Dr. Vowell reported on June 21, 2002:

Helen is seen today for right shoulder pain and right knee pain. she's been having some numbness into her right ring and fifth fingers. She struck her right knee at work about 2 weeks ago when she was sitting at a desk and when she stood up she bumped her knee....She's had some numbness in her right arm following her mastectomy....her right mastectomy was performed 2 years ago. She's currently taking radiation treatments....

Dr. Vowell's impression was "this lady has a lot of anxiety probably related to her cancer of the breast. I will go ahead and order NCT's and EMG's on her right arm to rule out a tardy ulnar nerve palsy, and I want her to continue with her neck exercises and knee exercises and let me see her back 3 weeks after I get the results of those tests."

Dr. Vowell returned the claimant to work, regular duty, on June 21, 2002. The claimant's testimony indicated that she returned to work at that time. Counsel for the respondents stated that the claimant was paid temporary total disability compensation through June 21, 2002.

The claimant returned to Dr. Vowell on or about August 21, 2002:

Helen is seen for results of her EMG and NCT's. she's been working at the nursing home. I talked to this lady again about her history. She says that she told me originally that the numbness that she had was in her chest and not into her arm following her mastectomy. She's not had numbness until the medicine cart fell on her arm. The medicine cart apparently fell so that it landed on her wrist and slid up her arm into the axillary area. It twisted her back and injured her elbow and shoulder, and also injured her right knee. her NCT's show right elbow conduction velocity of 44.6 with 58.3 in the forearm and 52.0 across the elbow. there's a 62.5 of the left ulnar nerve at the forearm.

Dr. Vowell's impression was "she has tardy ulnar nerve palsy on the right." Dr. Vowell planned to treat the claimant "with an elbow protector for her tardy ulnar nerve palsy. I've told her that if her palsy worsens it's possible she might need to have a surgical transposition. At this time she's to be careful and not bump it. she is currently working in the nursing home....She does have a tendonitis of her right shoulder which I'm having her exercise. She has a back sprain, which I'm having her

exercise, and has chondromalacia of the right knee, which I'm having her exercise. I'd like to recheck her back on October 18. She's to be at a light duty job with her left hand only until I see her back."

However, Dr. Vowell also included the following addendum: "When Ms. Isaac returns on October 18, I would like her to have repeat EMG and NCT's studies done prior to her visit, to see if her tardy ulnar nerve is getting better or worse. Her work status remains unchanged. She is to be at regular work duties until I see her back on October 18, 2002." Dr. Vowell filled out a form which indicated that the claimant would return to work on August 21, 2002, "Regular Duty f/u Oct 18 @ 10:45."

The claimant testified that she did not work after September 3, 2002. The claimant testified, "I was called into the D-, the new DON's office where they put me on a medical leave. I mean, Doctor Vowell had already told me I shouldn't be working....And I asked them why, and all they said was, you're too sick."

The claimant followed up with Dr. Vowell on October 22, 2002, at which time he noted, "Her insurance company denied her NCT of the ulnar nerve across the elbow. I am pretty much appalled by the insurance company....her exam today shows continued tenderness of the ulnar nerve at the elbow

with a positive Tinel's sign from the ulnar nerve. There's wasting of the first dorsal interosseous muscle. There's numbness in her little finger and along the ulnar side of her ring finger. There is weakness to spreading her fingers." Dr. Vowell's impression was, "she has a tardy ulnar nerve palsy of her right elbow. I have no way of gauging whether this is improving or getting worse without being able to do NCT's. I am going to ask the insurance company to reconsider, and I'd like to recheck her in 6 weeks."

Dr. Vowell noted on or about December 9, 2002, "She continues to have numbness in the ulnar nerve distribution. She's continuing to have forearm aching and pains that cross over her hand even to the first dorsal interosseous. Her insurance company continues to deny her another EMG and NCT. I'm going to go ahead and get those and we'll deal with the cost at a later date. She is scheduled to have a second opinion from Dr. Alice Martinson, and I would like to see her back in about 4 weeks."

The claimant underwent additional electromyography on December 20, 2002. The impression from a licensed physical therapist was "Slow conduction value R ulnar nerve across the elbow, consistent with tardy ulnar palsy." (Counsel for the respondents stated at hearing that the carrier did not

pay for the second nerve conduction study. They apparently paid all other medicals.)

Dr. Vowell noted on December 20, 2002, "I'm going to continue her at her light duty job. She needs to have her ulnar nerve transposed on the right, but she's dealing with some issues with breast cancer right now, and she will keep this in mind and return to have that done if her condition improves....her EMG today shows a slight worsening of her tardy ulnar nerve palsy."

An orthopaedic specialist, Dr. Alice M. Martinson, independently examined the claimant on January 3, 2003:

According to her history and review of Ms. Isaac's records, she was working as an LPN at Twin Lakes Nursing Center on April 24, 2002. At that time she was passing medications from a large cart when a caster wheel broke and the cart fell onto her striking her right arm, the right side of her chest, the anterior aspect of her right knee, and knocking her against the wall....

At the present time she complains of pain in the medial aspect of her elbow with numbness and tingling in the ring and little fingers of her right hand. She says that when she bumps her elbow she gets marked radiation of pain both into her hand and upwards into her axillary area. She says that her right hand remains somewhat weak when she attempts to grip things. Her back has not been bothering her much. She does continue to have some anterior knee discomfort, particularly with squatting and climbing stairs. She denies swelling of the knee....

Her two nerve conduction studies were performed approximately four months apart and the first study was performed approximately four months after the injury in question. These studies show

some sensory abnormalities with delay in conduction of the ulnar nerve across the elbow. There is no evidence of motor innervation and there was no substantial deterioration of electrical function in the nerve between the two studies.

I believe that this woman does have a cubital tunnel syndrome affecting her right ulnar nerve at the elbow. Although her injury, as described, did involve some impact of a heavy object on her right arm, her numbness did not appear by her own accounts until approximately 6-8 weeks after her injury. The cause of cubital tunnel syndromes in most individuals is obscure, although they certainly can develop following direct blow to the medial side of the elbow. Given the timing of onset of this woman's symptoms, I am unable to state with a reasonable degree of probability that her ulnar nerve complaints are a direct result of her April 24, 2002, work injury....

I believe that Ms. Isaac is fit for employment as an LPN in a nursing home, which was the job she held at the time of her injury on April 24, 2002. She should not be required to engage in repetitive squatting or the climbing of stairs and ladders. She should also not be required to engage in repetitive forceful use of her right upper extremity.

The persistent nature of her ulnar nerve symptoms and findings suggests that she would, indeed, profit from an anterior transposition of her ulnar nerve. It has been my experience that this surgical procedure is highly satisfactory for the relief of pain, and I would expect her sensation to be restored at surgery based on the rather mild nature of her electrical abnormalities. Her right knee complaints should be managed symptomatically. In the absence of recurrent episodes of swelling, locking, and giving way additional imaging studies such as an MRI are not recommended, and she does not have any indication for surgical intervention in her right knee at this time.

In summary, I believe that her current knee complaints and findings are a direct result of her

work injury on April 24, 2002. I am unable to state with reasonable medical certainty that her right ulnar nerve complaints and findings are related to that injury....

The parties stipulated that the respondents controverted benefits after March 6, 2003.

Dr. Vowell reported on April 11, 2003, "Helen is continuing to have tardy ulnar nerve symptoms with numbness into her little finger. She has continuous pain in her forearm and has been wearing her elbow protector. Her most recent NCT's show no improvement of her tardy ulnar nerve palsy....I've recommended she have an ulnar nerve transposition. The patient is anxious to have this done. She wants to be sure that her w/c insurance is going to pay for this. we're going to check on the status of her insurance, and once this is arranged we'll set her up to have an ulnar nerve transposition under general anesthesia."

The claimant's testimony indicated that the respondent-carrier would not authorize surgery.

A pre-hearing order was filed on July 8, 2003. The claimant essentially contended that she was entitled to "the treatment that Dr. Vowell has indicated that he wants to do to her."

The parties agreed to litigate the following issues:

(1) Whether the claimant was entitled to temporary total disability compensation from September 3, 2002 to a date to be determined;

- (2) Whether the claimant was entitled to "unpaid medical bills and mileage, plus future medical treatment, including a nerve conduction study, NCV;" and
- (3) Attorney's fees.

Hearing before the Commission was held on September 17, 2003. The claimant testified:

Q. Now, you had, for the record, have a brace, a soft brace over your right elbow; is that correct?

A. Yes, sir.

Q. Is that where the cart ran into you?

A. It came down my whole arm, but, yes, it gave me a good contusion of this arm.

Q. A bruise on the right elbow?

A. At the elbow, yes.

The administrative law judge found that the claimant's average weekly wage was \$490.00; neither party appeals this finding. The administrative law judge found that the claimant was entitled to temporary total disability compensation "from September 3, 2002 to a date to be determined." The administrative law judge found that the claimant was entitled to "reasonably necessary medical treatment for her admittedly compensable right arm injury, including unpaid medical, the medical mileage and future medical treatment from Dr. Don Vowell."

The respondents appeal to the Full Commission.

## II. ADJUDICATION

A. Medical Treatment

An employer must 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. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). 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 primary issue before the Full Commission is whether an ulnar nerve transposition surgery from Dr. Vowell would be reasonably necessary in connection with the claimant's compensable injury. The preponderance of evidence indicates that such surgery would not be reasonably necessary. The parties stipulated that the claimant sustained "right arm, bilateral knee, right shoulder, and low back compensable injuries on April 24, 2002." The administrative law judge awarded medical treatment for the "right arm injury," and the claimant does not argue on appeal that she should receive treatment for any other body part. In any event, the claimant testified that a cart she was pushing on April 24, 2002 fell over,

"impinged" her lumbar area, hit both knees, and "pushed her against a wall." The claimant later testified that the cart "came down my whole arm," purportedly causing contusion and bruising. The Full Commission recognizes the parties' stipulation that the claimant sustained "right arm, bilateral knee, right shoulder, and low back compensable injuries" on April 24, 2002. However, there is no medical evidence of record that the claimant sustained any injury to her right arm on April 24, 2002. The doctor notes found at Claimant's Exhibit One, p. 4, indicate that the claimant "c/c," that is, "complained of," "contusions" to her shoulder, arm, both knees, and low back. Nevertheless, the treating physician did not report any such objective findings in his April 26, 2002 physical examination as reflected in CX One, p. 4. The Full Commission also notes that there was a space on the April 26, 2002 physician's record for the doctor to indicate any "abnormalities" with regard to the claimant's anatomy, including her upper extremities. The physician did not indicate any such abnormalities. Nor is there any other physical or medical evidence of record showing a contusion in the vicinity of the claimant's right upper extremity.

The testimony of Cheryl Ramsey disputed the claimant's account of being "pinned" against a wall. Ms. Ramsey merely

saw the claimant struggling with the cart, "trying to keep it from falling over." The claimant did complain to the company physician of pain in her shoulder, arm, knees, and back on April 26, 2002. On May 7, 2002, however, Dr. Vowell did not report any acute injury to the claimant's right arm. Nor does any other medical report indicate any sort of "aggravation" to any pre-existing condition to which the claimant may have suffered. Dr. Vowell did not report any arm complaints on May 21, 2002. Dr. Vowell assigned "0% impairment" on May 29, 2002.

On June 21, 2002, Dr. Vowell reported, "she's been having some numbness into her right ring and fifth fingers....*She's had some numbness in her right arm following her mastectomy...her right mastectomy was performed 2 years ago* (emphasis supplied)." This report clearly shows that the claimant's right arm numbness in June 2002 was not related to the April 2002 workplace injury. Nor does the evidence show that the claimant's condition was "aggravated" as a result of the April 2002 injury.

On August 21, 2002, Dr. Vowell reported, "She says that she told me originally that the numbness that she had was in her chest and not her arm following her mastectomy. She's not had numbness until the medicine cart fell on her arm." The Commission has the authority to accept or reject medical

opinion and the authority to determine its medical soundness and probative force. Green Bay Packing v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Even if the claimant's revised account of events told to Dr. Vowell was accurate, there is still no probative causal connection between the compensable injury on April 24, 2002 and Dr. Vowell's August 21, 2002 report of "tardy ulnar nerve palsy on the right." On December 20, 2002, a second nerve study showed "slight worsening of her tardy ulnar nerve palsy." Again, causal connection is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. Osrose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992). The basic test is whether there is a causal connection between the two episodes. Air Compressor Equip. v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000). In the present matter, the preponderance of evidence does not demonstrate a causal connection between the claimant compensable injury and subsequent reports of "tardy ulnar nerve palsy" on the right. Finally, Dr. Martinson independently examined the claimant in January 2003. Dr. Martinson recorded the claimant's revised history of the cart "striking her right arm," but again this history does not appear to be accurate based on the record before the Commission. Dr. Martinson

believed that the claimant suffered from "cubital tunnel syndrome affecting her right ulnar nerve at the elbow." However, "Given the timing of onset of this woman's symptoms, I am unable to state with a reasonable degree of probability that her ulnar nerve complaints are a direct result of her April 24, 2002, work injury." Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). Expert opinions based on "could," "may," or "possibly" lack the definiteness required to prove the causal connection. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000). In the present matter, Dr. Martinson explicitly could not state with reasonable probability that the claimant's ulnar nerve complaints were a direct result of the claimant's workplace injury.

The Full Commission reverses the administrative law judge's finding that the claimant proved she was entitled to additional medical treatment from Dr. Vowell.

B. Temporary Disability

An employee with a scheduled injury is entitled to temporary total disability compensation while she is within her healing period and has not returned to work. Ark. Code Ann. §11-9-521(a). Ark. Code Ann. §11-9-102(12) defines "healing period" as "that period for healing of an injury resulting from an accident." The healing period continues until the employee is as far restored as the permanent character of her injury will permit; when the underlying condition causing the disability becomes stable, and when nothing further will improve that condition, the healing period has ended. Roberson v. Waste Management, 58 Ark. App. 11, 944 S.W.2d 528 (1997). The determination of when the healing period ends is a question of fact for the Commission to decide. Carroll General Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996).

In the present matter, the parties stipulated that the claimant sustained a compensable injury to her right arm on April 24, 2002. The respondents began paying temporary total disability compensation on April 25, 2002. The claimant treated with Dr. Bailey and Dr. Vowell. Dr. Vowell stated on May 29, 2002, "Ms. Isaac retains 0% impairment as a result of her injury." Permanent impairment, which is a medical condition, is any permanent functional or anatomical loss remaining *after the healing period has ended*. See,

Johnson v. General Dynamics, 46 Ark. App. 188, 878 S.W.2d 411 (1994). Temporary disability cannot be awarded after the claimant's healing period has ended. Trader v. Single Source Transportation, E507484 (Feb. 12, 1999). Dr. Vowell returned the claimant to regular-duty work on June 21, 2002, and the respondents paid temporary total disability compensation through that date.

The claimant testified that she returned to work, and Dr. Vowell subsequently noted that the claimant had returned to work. After a follow-up visit on or about August 21, 2002, Dr. Vowell again returned the claimant to regular-duty work. The claimant testified that she did not work after September 3, 2002. The claimant testified that she was placed on medical leave. The preponderance of evidence, however, does not indicate that the claimant's medical leave was causally related to her right-arm injury. The Full Commission also finds that the claimant's healing period for her scheduled injury ended no later than May 29, 2002, when Dr. Vowell assigned a zero percent impairment rating. The Full Commission also notes Dr. Martinson's opinion in January 2003 that the claimant was "fit for employment as an LPN in a nursing home."

The Full Commission therefore reverses the administrative law judge's opinion that the claimant was

entitled to temporary total disability compensation from September 3, 2002 until a date to be determined.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she was entitled to additional medical treatment or additional temporary total disability compensation. The Full Commission therefore reverses the opinion of the administrative law judge, and we hereby deny and dismiss this claim.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's decision denying the claimant additional medical expenses and temporary total disability benefits. The claimant suffered from an admittedly compensable injury and the medical records as well as testimony from eye witnesses support a finding the claimant's condition was causally related to her compensable injury on April 24, 2002. Furthermore, the claimant remained in her healing period and did not work after September 2, 2002, indicating she is

entitled to receive temporary total disability benefits from that time until a date yet to be determined.

The Majority determined the claimant did not suffer a compensable injury to her right elbow. This was based on the conclusion that Dr. Bailey failed to note any objective findings on April 26, 2002 and because Ramsey allegedly disputed the claimant's testimony that the cart fell on her. These findings are erroneous. With regards to Dr. Bailey's report, Dr. Bailey noted the claimant complained of contusions and pain in her shoulder and arm. While he did not specifically note any contusions, he did acknowledge the claimant's complaint; therefore, it would be unlikely if the contusion did not exist he would fail to address it. Additionally, the doctor did not note any additional objective findings regarding the claimant's elbow or arm, but the employer stipulated that a compensable injury to the arm occurred on April 26, 2002, indicating it has previously been determined that a compensable injury did occur and therefore, objective findings did exist. It is also indicative that perhaps the doctor simply did not make detailed notations regarding the claimant's contusions; an occurrence that the claimant certainly had no control over.

With regards to Ramsey's testimony, Ramsey testified she approached the claimant after hearing a crash

and then proceeded to see the claimant, "trying to hold the cart up where it wouldn't continue to fall over." She also testified, "And she was holding the cart...You know, she was trying to keep it from falling on over." This indicates that Ramsey did not see the entire incident and also fails to address if the claimant was pinned to the wall. Furthermore her testimony that she was, "trying to keep it from falling on over" seems to imply that the cart did fall on the claimant at least to some extent.

Additionally, Jane Foster testified she saw the cart fall on the claimant and pin her to the wall, which rebuts Ramsey's testimony. It also seems to support a finding that the claimant likely did suffer an injury to her elbow and that the injury occurred as a direct result of the cart falling on her.

The Majority also finds the claimant gave contradictory statements to her doctor regarding when she first experienced numbness in her arms and uses that as a reason for preferring Dr. Martinson's opinion over Dr. Vowell's. The claimant denied telling Dr. Vowell she first experienced numbness after her mastectomy but before the incident on April 26, 2002. Dr. Vowell noted he believed the claimant told him two dates for experiencing the symptoms. Despite this knowledge, he still composed a

letter to the insurance company to pay for further treatment of the claimant's elbow, indicating he considered the claimant's allegedly varying stories and still concluded the claimant's need for additional treatment was due to the April 26, 2002 incident. This would imply that Dr. Vowell had strong conviction regarding the reason for the claimant's injury and that he did not believe it was due to her cancer or treatment of the cancer.

The Majority relied on Dr. Martinson's opinion that she could not conclude the claimant's ulnar nerve palsy was caused by the incident on April 26, 2002. However, Dr. Martinson was not the doctor that was primarily responsible for treating the claimant. Additionally, Dr. Martinson offered no alternative reason as to why the claimant would suffer from ulnar nerve palsy. As the claimant's cancer and subsequent treatment for cancer are the only other explanation offered in the evidence for the claimant's condition, it is reasonable to conclude that if the claimant's injury did not occur as a result of her work injury it would have occurred due to her cancer or treatment of the cancer. Despite being aware of the claimant's history of cancer and subsequent treatment, Dr. Martinson did not address whether the cancer could have resulted in

ulnar palsy. As such, Dr. Vowell's opinion should be preferred.

With regards to the claimant's entitlement to temporary total disability benefits there is no dispute the claimant did not work after September 2, 2002. While the claimant was given an impairment rating of 0% on May 29, 2002 she continued to seek doctor's treatment and Dr. Vowell urged the insurance company to pay for treatment that he indicated was related to the April 26, 2002 incident. The claimant testified she is still being treated and is considering surgery indicating she remains in her healing period and has not returned to work, indicating she is entitled to temporary total disability benefits.

Based on the foregoing, I find that the claimant suffered a compensable injury to her elbow on April 26, 2002 and that treatment from Dr. Vowell is a reasonably necessary medical treatment that is causally related to the injury on April 26, 2002. Additionally, I find the claimant remains in her healing period and has not returned to work since September 2, 2002 indicating she should be entitled to receive temporary total disability benefits. For these reasons, I respectfully dissent.

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SHELBY W. TURNER, Commissioner