BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214101

SHARON ANN STONE,
EMPLOYEE CLAIMANT

DOLLAR GENERAL STORE,
SELF-INSURED EMPLOYER RESPONDENT

OPINION FILED JULY 21, 2005

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

Claimant represented by the HONORABLE RICHARD A. REID, Attorney at Law, Blytheville, Arkansas.

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

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The Arkansas Court of Appeals has reversed the Full Commission in the above-styled matter and has remanded for additional findings. Stone v. Dollar General Stores, CA04-1194 (June 8, 2005). The Court of Appeals has determined that the Commission "failed to consider surgical and post-surgical reports that appear to be material to the claim[.]" After again reviewing the entire record *de novo*, and pursuant to the Court's remand, the Full Commission affirms an administrative law judge's opinion that the claimant

proved she was entitled to surgery from Dr. Barrett-Tuck. We also affirm the administrative law judge's opinion that the claimant proved she was entitled to temporary total disability compensation.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury on February 28, 2002. The claimant testified that she was dragged by the neck while being assaulted and robbed in front of her place of employment. Emergency department nursing notes on March 1, 2002 indicated that the claimant reported being hit in the head with an unknown object, that the claimant had been struck with force in her right orbit, and that she had been choked. The claimant reported pain in her throat and difficulty swallowing. A physician diagnosed contusion to the claimant's head and face, and neck strain.

A CT of the claimant's cervical spine with contrast taken on April 11, 2002 showed small disc herniations, primarily on the left, at C5-C6 and C6-C7. The claimant testified that the respondent terminated her employment on

April 15, 2002. An MRI of the cervical spine without contrast was taken on April 24, 2002:

> C3-C4 small focal posterior central HNP which is mildly indenting the anterior thecal sac. Spinal cord as well as nerve roots appear to exit this disc space level without compromise. C4-C5 posterior central small focal HNP which is mildly indenting the anterior thecal sac. Spinal cord as well as nerve roots exit this disc space level without compromise. C5-C6 left posterior paracentral broad-based small HNP which is mildly indenting the anterior thecal sac. Spinal cord as well as nerve roots appear to exit this disc space level without compromise....

Dr. Lamb eventually referred the claimant to Dr. Rebecca Barrett-Tuck, who provided a neurosurgical consultation on June 17, 2002:

> This is a pleasant 45-year-old lady who relates that on February 28th she was locking up at the Dollar Store where she worked when she was accosted by two men, one of them grabbed her by her neck and drug her around behind the building....She experienced an onset of neck pain shortly thereafter. It has been persistent and severe since then. The pain is in the posterior aspect of the neck radiating into both trapezius areas and both arms. She reports that her arms feel weak, her hands feel dead. She has developed numbness in the ring finger of her hand. She doesn't have numbness in the right hand. Physical therapy apparently worsened her pain....She reports that she has recently been fired by her job because of the fact that she continued to have trouble and was pursuing this pain....

> CT scan of the cervical spine shows osteophytic spurring along with a disc rupture at C5-6 and a disc rupture eccentric to the left at C6-7, which is a bit larger. MRI confirms these findings.
>
> I have recommended to Mrs. Stone ACDF at C5-6 and C6-7 with plating, although I have talked to her in great detail about the fact that her symptoms really go beyond what I would ascribe to her disc ruptures alone and I do not know how much relief she will get from the neck surgery. Certainly she might get complete relief but on the other hand, she may get little relief....

On August 6, 2002, Dr. Barrett-Tuck performed an anterior cervical discectomy and fusion of C5-C6 and C6-C7 using anterior plating. Following are pertinent portions of Dr. Barrett-Tuck's operative report:

> The C5-C6 interspace was first approached....The anterior aspect of the C5-C6 disc space was circumferentiated using a 15 blade knife and discectomy accomplished using curets and pituitary rongeurs....Under loop magnification the remainder of the work at the posterior aspect of the disc space was done which included removal of any remaining marginal osteophytes, bilateral foraminotomies and removal of a free disc fragment slightly excentric (sic) to the left. A posterior longitudinal ligament was opened and resected. The thecal sac and nerve roots were well decompressed....The anterior aspect of of disc space at C6-C7 was then circumferentiated using a #15 blade knife. Discectomy accomplished using curets and pituitary rongeurs. Anterior osteophytes were trimmed using the Leskell rongeur....The canal and neuro foramina were well decompressed. Foraminotomies were performed. A

> free fragment was removed from the left side of the canal....Final intraoperative x-ray showed excellent screw, plate and allograft placement....

Dr. Barrett-Tuck's pre-operative and post-operative diagnoses were "disc herniation C5-C6 and C6-C7 in association with mild spondylosis."

The record also contains a surgical report from the St. Bernards Medical Center Department of Pathology, dated August 6, 2002, which report contains the diagnosis, "Disc, C5-6 and C6-7: Benign fibrillated fibro-cartilaginous connective tissue consistent with herniated nucleus pulposus."

The claimant continued to follow up with Dr. Barrett-Tuck following surgery. Dr. Barrett-Tuck reported on November 8, 2002, "Ms. Stone underwent a myelogram and post-myelogram CT scan of the cervical spine. There is no nerve root compromise, plate and screws are in excellent position. The fusion has not yet completely solidified. Ms. Stone is a smoker and continues to smoke despite strong recommendations that she not smoke. I am sure this is delaying her fusion and I have told her so. She complains of persistent neck pain, bilateral arm pain. She reports

that she is numb from her cheeks down to her mid chest and that both arms are numb on a daily basis whenever she attempts to increase her activities."

Dr. Lamb stated on March 3, 2003, "It is my medical opinion that the nature of Ms. Stones' injury certainly fit with her explanation of the events of 02-28-02. I believe that this was substantiated by the findings of both the CT scan and the MRI."

A pre-hearing order was filed on July 2, 2003. According to the pre-hearing order, the claimant contended that "all of her continued medical problems were directly and causally related to the February 28, 2002, admitted injury; that respondent should be held responsible for all medical and related treatment, including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment; that she is entitled to temporary total disability benefits from the date of the injury and continuing through the present, less credit for any dates that she worked; and that a controverted attorney's fee should attach to any benefits awarded."

The respondent contended that "the claimant's surgery and medical treatment was not reasonably necessary, causally related or authorized medical treatment."

The parties agreed that the primary issue was "whether the claimant's medical problems and disability after her release by Dr. Metcalf are causally related to the February 28, 2002, injury, entitling her to additional benefits."

After a hearing, an administrative law judge filed an opinion on October 1, 2003. The administrative law judge found, in pertinent part:

> 3. The claimant has proven, by a preponderance of the credible evidence, that all of her cervical problems and need for treatment, including cervical surgery performed by Dr. Rebecca Barrett-Tuck are directly and causally related to the February 28, 2002, admitted injury, and were reasonably necessary and are, therefore, the responsibility of the respondent.
> 5. Respondent is responsible for all medical and related treatment for the claimant's cervical injury, including, but not limited to surgery performed by Dr. Rebecca Barrett-Tuck, together with continued, reasonably necessary medical treatment for the cervical complaints.
> 7. The claimant is entitled to temporary total disability beginning March 1, 2002, and continuing through at least March 27, 2003, and until such date that her healing period can be determined which requires further development of the medical evidence.

In an opinion filed August 10, 2004, the Full Commission reversed the opinion of the administrative law judge. The Full Commission found, "the claimant failed to prove that Dr. Barrett-Tuck's surgery was reasonably necessary. We also find that the claimant failed to prove she was entitled to temporary total disability compensation after May 14, 2002."

The claimant appealed to the Arkansas Court of Appeals. The Court of Appeals determined, "Because the Commission failed to consider surgical and post-surgical reports that appear to be material to the claim, we reverse and remand for additional findings." The Court stated:

> Appellant identifies the opinions of Drs. Lamb and Barrett-Tuck as evidence supporting her need for additional medical benefits. Appellee relies heavily on Dr. Metcalf's opinion that no surgery was needed; however, the Commission's opinion did not address Dr. Barrett-Tuck's surgical report or St. Bernard's post-surgical diagnosis. These reports may be objective evidence linking appellant's injuries to the robbery....Because the Commission's opinion does not address the surgical report or post-surgical diagnosis, we reverse their opinion and remand this case for additional findings.

II. <u>ADJUDICATION</u>

A. <u>Medical Treatment</u>

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 employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. 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 Full Commission affirms the administrative law judge's finding that the claimant proved she was entitled to surgical treatment provided by Dr. Barrett-Tuck. The parties stipulated that the claimant sustained a compensable injury on February 28, 2002. The claimant testified that she was choked, hit, repeatedly dragged, and picked up by an assailant in front of the claimant's place of employment on that date. The claimant was diagnosed with neck strain, and subsequent diagnostic testing revealed multi-level abnormalities in the claimant's

cervical spine. The record does not show that the claimant had a prior history of neck problems. In August 2002, Dr. Barrett-Tuck performed an anterior cervical discectomy and fusion of C5-C6 and C6-C7 using anterior plating.

The Court of Appeals has directed the Commission to address Dr. Barrett-Tuck's surgical report and the St. Bernards post-surgical diagnosis. In this regard, the Full Commission notes from Dr. Barrett-Tuck's August 6, 2002 operative report that there were indeed disc abnormalities at C5-C6 and C6-C7. Dr. Barrett-Tuck's pre-operative and post-operative diagnoses were "disc herniation C5-C6 and C6-C7 in association with mild spondylosis." A surgical report from the St. Bernards Medical Center Department of Pathology, dated August 6, 2002, contained the diagnosis, "Disc, C5-6 and C6-7: Benign fibrillated fibro-cartilaginous tissue consistent with herniated nucleus pulposus." The Full Commission also notes Dr. Lamb's March 2003 letter, stating, "It is my medical opinion that the nature of Ms. Stones' injury certainly fit (sic) with her explanation of the events of 02-28-02. I believe that this was

substantiated by the findings of both the CT scan and the MRI."

The Full Commission therefore finds that the claimant proved treatment from Dr. Barrett-Tuck was reasonably necessary in connection with the claimant's compensable injury. We therefore affirm the decision of the administrative law judge.

B. Temporary Disability

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. American Greetings Corp. v. Garey, 61 Ark. App. 18, 963 S.W.2d 613 (1998).

In the present matter, the claimant sustained a compensable injury on February 28, 2002. The claimant testified that she was thereafter unable to perform her work duties for the respondents. The claimant's employment was terminated on April 15, 2002. The claimant underwent surgery from Dr. Barrett-Tuck in August 2002, which treatment the Commission has now determined was reasonably necessary in connection with the claimant's compensable injury. Dr. Barrett-Tuck subsequently noted, based on post-

surgical diagnostic testing, that the claimant's cervical fusion had not solidified. There are no reports before the Commission indicating that the claimant's fusion had solidified, and there were no opinions of record from Dr. Barrett-Tuck indicating that the claimant had reached the end of her healing period. The claimant testified at hearing that she had significant physical restrictions, and that she had not been released by Dr. Tuck. The Full Commission finds that the claimant entered a healing period for her compensable injury and was totally incapacitated to earn wages beginning March 1, 2002 until a date yet to be determined. The decision of the administrative law judge is affirmed.

Based on our *de novo* review of the entire record, and the remand from the Court of Appeals, the Full Commission affirms the administrative law judge's finding that the claimant proved she was entitled to medical treatment provided by Dr. Barrett-Tuck. We also affirm the administrative law judge's finding that the claimant proved she was entitled to temporary total disability beginning March 1, 2002 "and continuing through at least March 27,

2003, and until such date that her healing period can be determined which requires further development of the medical evidence." The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars ($500.00), pursuant to Ark. Code Ann. §11-9-715(b)(2)(Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.