

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510342

DAVID BELIEW,  
EMPLOYEE

CLAIMANT

LENNOX INDUSTRIES,  
EMPLOYER

RESPONDENT

ACE AMERICAN INSURANCE,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 24, 2007

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 BETTY J. HARDY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed December 14, 2006. The administrative law judge found that the claimant proved Dr. Chakales' treatment was reasonably necessary. The administrative law judge found that the claimant was entitled to temporary total disability from February 12, 2006 to a date yet to be determined. After reviewing the entire record *de novo*, the

Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant did not prove that Dr. Chakales' treatment was reasonably necessary. We find that the claimant did not prove he was entitled to temporary total disability after February 11, 2006.

I. HISTORY

The parties stipulated that the claimant sustained "a compensable back injury" on July 20, 2005. The record indicates that the respondent-employer authorized treatment for the claimant on July 20, 2005, and that Kim Chastain referred the claimant for medical treatment. An Authorization For Treatment form on July 20, 2005 indicated that a physician diagnosed "lumbar strain." An Encounter Form dated July 20, 2005 indicated that the claimant complained of middle to lower back pain. The claimant was treated conservatively.

The claimant was assessed with "muscular back pain" in September 2005. The claimant was prescribed physical therapy for "LS strain."

On October 3, 2005, Dr. Brent Sprinkle, D.O., evaluated the claimant for a complaint of "Thoracic pain and

intermittent left thigh pain that is not present today....This has been going on since July 20, 2005. He was pushing a heavy unit and steering it....He had three days of therapy with some relief....The x-rays of the cervical and lumbar spine are normal." Dr. Sprinkle gave the following impression: "1. Thoracic strain. 2. Thoracic myofascial pain syndrome." Dr. Sprinkle planned an MRI of the claimant's thoracic spine and a trigger point injection. Dr. Sprinkle also returned the claimant to work "with no lifting over 30 pounds."

An MRI of the claimant's thoracic spine was taken on October 10, 2005, with the following impression: "Mild early degenerative changes, most significant at T11-T12, but no focal disk herniation or significant canal stenosis is seen."

The claimant followed up with Dr. Sprinkle on October 10, 2005:

The thoracic MRI showed a minimal disc herniation at T11-12. I do not think this is all that clinically significant. There were some mild degenerative changes there. This would not be caused by his work injury. He still has left-sided thoracic pain....He has not yet been back to work because the restrictions were too tight....

He will advance his work restrictions to no pushing or pulling greater than 100 pounds, no lifting greater than 50 pounds.

Dr. Sprinkle gave the following impression: "1.Thoracic somatic dysfunction. 2. Thoracic pain."

The claimant continued to follow up with Dr. Sprinkle, who gave the following impression on October 19, 2005: "1. Thoracic degenerative disc disease that is pre-existing. 2. Thoracic myofascial pain syndrome. 3. Thoracic strain....We talked about a thoracic epidural at T11-12. He declined that today....If he does not want to consider the epidural, another treatment option would be a trigger point injection. If he does not want to pursue that, then he will be at maximum medical improvement."

The claimant participated in additional physical therapy.

Dr. Sprinkle reported on November 2, 2005:

5. He can continue his current work restrictions and advance those by 10 pounds per week until full duty. If there are any other more specific return-to-work restrictions that would allow him to put a little less stress on his thoracic paraspinals I would be open to exploring that, but I do not have enough of the details about his job to know what those would be. He says he is going to discuss this with his case

manager Kathy Keary. I can make slight modifications to the work restrictions if needed per Kathy Keary input if received.

6. He is at maximum medical improvement.

7. He has a 0% permanent impairment rating.

Dr. Sprinkle also gave the following impression on November 2, 2005: "1. Preexisting thoracic degenerative disc disease. 2. Thoracic myofascial pain syndrome. 3. Thoracic strain."

The claimant continued to participate in physical therapy through December 2, 2005.

The claimant followed up with Dr. Sprinkle on December 15, 2005:

1. He has tried physical therapy, trigger points, non-steroidals, muscle relaxers, Lidoderm patches, RS stimulator, and manipulation all without sustainable benefit.

The only other treatment option for him would be an epidural steroid injection. He has the most noticeable degenerative changes at T11-12, so I would recommend a T11-12 epidural.

2. He can return to work with no lifting over 35 pounds, no pushing or pulling greater than 50 pounds. He can increase that by 10 pounds per week on both measures starting 2 weeks after his epidural. If it is helpful he can have up to 2 additional injections. If not, he will be at maximum medical improvement.

3. I would conclude a 0% permanent impairment rating.

Dr. Sprinkle gave the following impression on December 15, 2005: "1. Thoracic degenerative disc disease, preexisting. 2. Thoracic myofascial pain syndrome. 3. Thoracic strain."

The claimant followed up with Dr. Sprinkle on January 5, 2006: "The epidural at T11-12 really has not made any difference in his symptoms. This really leads me to believe that this is probably not related to his complaints. There is still left-sided thoracic paraspinal tenderness."

Dr. Sprinkle gave the following impression on January 5, 2006: "1. Thoracic degenerative disc disease. 2. Thoracic myofascial pain syndrome....We reviewed his MRI scan. He did have a hemangioma at T8. These are almost always asymptomatic. It is something that was pre-existing. There is a theoretical possibility that a hemangioma could become symptomatic, and the only way to definitively rule that out is with a bone scan. I recommend we do that there just to make absolutely sure we have explored every possible explanation for his pain."

No abnormality was identified on a whole-body bone scan performed on January 11, 2006.

Dr. Annette P. Meador examined the claimant on February 9, 2006:

Mr. Beliew is a 37-year-old employee of Lenox Industries in Stuttgart. On July 20, 2005, he was at work steering a 30 ton unit on wheels when he felt something give in his left lower back. He was sent to the physician at Lenox who released him from work for a couple of weeks. He tried to go back to work a couple of times, but was unable. He states the last time he went to work was possibly in November....He has seen Dr. Brent Sprinkle who performed trigger point injections for a diagnosis of thoracic myofascial pain and thoracic degenerative disc disease....His initial evaluation of October 3, 2005, indicates that the x-rays of the cervical and lumbar spine are normal. The MRI of the thoracic spine dated 10/10/05 reveals mild early degenerative changes, but no disc herniation or canal stenosis....

David states he spends most of the day on the couch and the bed. He was taught exercises by the physical therapist, but he refuses to do so. His pain is worse with lifting and bending and pushing. He also states that he has pain along the anterior aspect of the left thigh....

#### **IMPRESSION**

1. Myofascial posterior thoracic pain, with minimal physical exam findings, out of proportion to the level of pain which he reports to be a 9.
2. The patient has serious emotional and anger problems. When I performed the straight-leg raise, as noted above, he acted as if I was trying to hurt him.

I asked who he is angry at and he states that he is angry that no one has ever been able to figure out what causes his pain. I explained that I was trying to perform physical examination maneuvers to indeed try to diagnose the pain generator. He then allowed me to continue with my examination.

Dr. Meador returned the claimant "back to work to full duty on 2/10/06 with 0% impairment. I see no reason why he cannot return to gainful employment." The respondents' attorney stated at hearing that the respondents did not pay benefits after February 11, 2006.

Dr. Harold H. Chakales examined the claimant on February 27, 2006:

Mr. David Beliew is a 37-year-old man who presents with complaints of pain as the result of a work related incident which occurred on July 20, 2005. He also had an injury toward the end of 2004. He was working for Lennox Air Conditioning at the time of his injury. He fell with a stack of pallets and injured his low back. He was not treated at that time, and then reinjured his back in July 2005. He began to have low back pain with pain radiating into his hips. He was treated by Dr. Brent Sprinkle at that time, but he has not improved....He states he has persistent and chronic low back pain with pain radiating into the left leg. He last worked in November. He has tried to get a light duty job but none were available....

He had an MRI of the thoracic spine but not the lumbar spine.... Complete x-rays of the lumbar spine show a transitional fifth lumbar vertebrae. There is some degenerative disc disease present....

Dr. Chakales diagnosed the following: "1. Lumbar disc syndrome with left-sided sciatica....We will schedule him for an MRI of the lumbar spine." Dr. Chakales advised the claimant to remain off work for an "undetermined" period.

An MRI of the claimant's lumbar spine was taken on March 22, 2006, with the following impression: "Moderate sized annular tear in the disc at L4-L5. Broad-based bulge but no focal protrusion or disc extrusion. No evidence for mechanical nerve root impingement in the lumbar spine."

A Neurology Procedure Report was done on March 22, 2006, with the following impression:

1. Normal motor and sensory nerve conduction velocity testing of the left leg with no evidence of a peripheral neuropathy.
2. Abnormal EMG needle study due to chronic denervation changes at the left S1 (plus or minus left L5) level. This suggests possible chronic left S1 radiculopathy and \_\_\_ possible left L5 radiculopathy. Correlation with imaging studies is needed.

Dr. Chakales noted on March 27, 2006, "He is symptomatic in his back and is still having trouble. He had

an MRI which is abnormal and showed a moderate-sized tear of the annulus, with a bulging disc at L4-5. There is also some evidence of abnormality at the L5-S1 level. The EMG/NCV is abnormal at L4-5, L5-S1."

Dr. Chakales noted on April 24, 2006, "He is going to have a discogram in 10 days and is still symptomatic. He remains disabled and unable to work."

The claimant saw Dr. Chakales on May 12, 2006:

His discogram was abnormal at L3-4. I felt there were changes at L4-5, L5-S1. He states after the discogram he had increasing pain, but it is easing a little. He has a lumbar disc syndrome at two levels. He has also had abnormal EMG studies.

If he is still having trouble, we might consider a fusion or treat him nonoperatively. He has been sick for almost a year and has positive sciatica. He is unable to work....

Dr. Chakales wrote to the claimant's attorney on August 6, 2006:

I saw Mr. Beliew initially on February 27, 2006. At that time I made a tentative diagnosis of lumbar disc syndrome with left-sided sciatica. Since that time I have seen him on multiple occasions during March, April, May, and June. An MRI was abnormal and showed a tear of the annulus with a bulging disc at the L4-5 level. There was also some abnormality at the

lumbosacral level. An electromyographic study was obtained which showed nerve root irritation, primarily on the left side.

At the time of Mr. Beliew's return visit in April I performed lumbar discography. This was abnormal at L3-4, L4-5, and L5-S1. I felt he was unable to work and indeed was a suitable surgical candidate.

The most recent physical examination shows Mr. Beliew has persistent and chronic low back pain and persistent sciatica. The sciatic stretch is positive. There is no evidence of reflex changes or atrophy.

**IMPRESSION:**

1. Lumbar disc syndrome, L3-4, L4-5, L5-S1, with chronic nerve root irritation, primarily on the left.

Mr. Beliew has failed to respond to nonoperative management. At this time I believe he is a suitable surgical candidate. He has been disabled since approximately July 2005.

A pre-hearing order was filed on August 9, 2006. The claimant contended that he remained symptomatic and that he wished to continue treating with Dr. Chakales at the respondents' expense. The claimant contended that he was entitled to temporary total disability from February 12, 2006 to a date to be determined. The respondents contended,

among other things, that all appropriate benefits had been paid.

The parties agreed to litigate the following issues: "Reasonable and necessary medical treatment; additional temporary total disability benefits; controversion and attorney's fees."

The administrative law judge found, in pertinent part:

2. The claimant has proven by a preponderance of the evidence that Dr. Chakales' treatment is reasonable and necessary and related to the compensable injury.

4. The claimant is entitled to temporary total disability benefits from February 12, 2006 to a date to be determined as he remains in his healing period, unable to work according to Dr. Chakales.

The respondents appeal to the Full Commission.

## II. ADJUDICATION

### A. 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 he 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. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

The administrative law judge found in the present matter, "The claimant has proven by a preponderance of the evidence that Dr. Chakales' treatment is reasonable and necessary and related to the compensable injury." The Full Commission reverses this finding. The parties stipulated that the claimant sustained a compensable back injury on July 20, 2005. The parties disagree on whether the claimant's compensable injury was to his middle back or lower back. The record demonstrates, however, that the claimant received treatment to his middle back and his lower back following the compensable injury. The claimant received a wide array of treatment for his back following the compensable injury.

The record indicates that a physician diagnosed lumbar strain on July 20, 2005, the date of the compensable injury. The record also indicates that the claimant complained of pain to his middle back and lower back on July 20, 2005, and the claimant was subsequently assessed as having "muscular

back pain." Dr. Sprinkle began treating the claimant in October 2005 and noted that an x-ray of the claimant's lumbar spine was normal. Dr. Sprinkle's impression included "thoracic strain." An MRI in October 2005 showed degenerative changes in the claimant's thoracic spine without a focal disk herniation. Dr. Sprinkle stated that there was indeed a disc herniation at T11-12 which was not clinically significant. Dr. Sprinkle noted "mild degenerative changes" in the claimant's thoracic spine.

Dr. Sprinkle noted in December 2005, "He has tried physical therapy, trigger points, non-steroidals, muscle relaxers, Lidoderm patches, RS stimulator, and manipulation all without sustainable benefit. The only other treatment option for him would be an epidural steroid injection." But Dr. Sprinkle reported in January 2006, "The epidural at T11-12 really has not made any difference in his symptoms. This really leads me to believe that this is probably not related to his complaints."

Dr. Meador thoroughly examined the claimant on February 9, 2006. Dr. Meador noted that an x-ray of the claimant's lumbar spine had been normal and that an MRI of the thoracic spine had shown degenerative changes. Dr. Meador's

impression was "myofascial posterior thoracic pain, with minimal physical exam findings." Dr. Meador returned the claimant to work and assigned a zero percent anatomical impairment rating.

The claimant began treating with Dr. Chakales in February 2006. Dr. Chakales noted that there had been a work-related incident in July 2005, and that an x-ray of the lumbar spine showed degenerative disc disease. Dr. Chakales diagnosed "lumbar disc syndrome with left-sided sciatica." The record does not demonstrate, however, that the diagnosis of lumbar disc syndrome was the causal result of the July 20, 2005 compensable injury. An MRI of the claimant's lumbar spine in March 2006 showed a moderate sized annular tear at L4-L5. However, Dr. Chakales did not opine that the claimant had sustained an annular tear as the result of the July 2005 compensable injury. Nor does the evidence otherwise establish a causal connection between the compensable injury and the annular tear. Dr. Chakales subsequently noted that a lumbar discography had shown abnormalities at L3-4, L4-5, and L5-S1. The record before us does not demonstrate that the July 20, 2005 compensable injury caused the abnormalities shown on discography.

Finally, Dr. Chakales informed counsel for the claimant that his impression was "Lumbar disc syndrome, L3-4, L4-5, L5-S1, with chronic nerve irritation, primarily on the left." Dr. Chakales recommended surgery. There is no evidence of record demonstrating that the July 20, 2005 compensable injury was the cause of lumbar disc syndrome as diagnosed by Dr. Chakales. Nor does the record demonstrate that Dr. Chakales' recommended surgical treatment would be reasonably necessary in connection with the July 20, 2005 compensable injury. The decision of the administrative law judge is reversed.

B. 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). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). Whether or not a claimant's healing period has ended is a question of fact for the Commission. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

The administrative law judge found in the present matter, "The claimant is entitled to temporary total disability benefits from February 12, 2006 to a date yet to be determined, unable to work according to Dr. Chakales." The Full Commission reverses this finding. The parties stipulated that the claimant sustained a compensable back injury on July 20, 2005. The claimant was treated conservatively following the compensable injury, and Dr. Sprinkle, the primary treating physician, did not opine that surgery would be required as a result of the injury. The record indicates that the respondents provided some periods of temporary total disability following the compensable injury. Dr. Sprinkle eventually pronounced maximum medical improvement and a zero percent anatomical impairment rating. On February 9, 2006, Dr. Meador thoroughly examined the claimant, released the claimant to return to work, and also assigned a zero percent anatomical impairment rating.

The Full Commission recognizes that Dr. Chakales took the claimant off work beginning February 27, 2006. The Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Green Bay Packaging v. Bartlett*,

67 Ark. App. 332, 999 S.W.2d 695 (1999). In the present matter, the Full Commission finds that the opinions of Dr. Sprinkle and Dr. Meador are entitled to more weight than the opinion of Dr. Chakales. We attach significant weight to the opinions of Dr. Sprinkle and Dr. Meador that the claimant had reached maximum medical improvement, i.e., that the healing period had ended, and that the claimant was able to return to work. Temporary total disability cannot be awarded after the claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The persistence of pain is not sufficient to extend the claimant's healing period. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability after the respondents ceased paying benefits on February 11, 2006.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's award of additional benefits. The Full Commission finds that the claimant did not prove Dr. Chakales' treatment, including the recommendation for surgery, was reasonably necessary in connection with the compensable injury. We

find that the claimant did not prove he was entitled to temporary total disability compensation after the respondents ceased paying benefits on February 11, 2006. This claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's decision finding the claimant did not prove that surgery was reasonable and necessary medical treatment in connection with his compensable injury and denying him temporary total benefits after February 9, 2006. More specifically, the Majority found that the claimant failed to prove that his need for low back treatment was casually related to his employment. Based upon a de novo review of the record in its entirety, I find the claimant suffered a compensable work-related low back injury, supported by objective medical

findings, for which back surgery is reasonable and necessary treatment. As such, I must respectfully dissent.

\_\_\_\_\_The Majority finds that the claimant did not prove that his need for treatment is casually connected to the injury he sustained at work in July 2005. The Majority erroneously gives more weight to the opinions of Dr. Sprinkle and Dr. Meador than that of Dr. Chakales, Dr. Hord, and Dr. Daniel. In fact, the Majority seems to have conveniently forgotten that Dr. Hord and Dr. Daniel originally diagnosed the claimant as having a lumbar strain, which supports the claimant's contention that he sustained a compensable injury. Furthermore, the Majority completely disregards the claimant's testimony that he did not experience back pain until after the July 2005 accident. Given the fact that the claimant remained symptomatic, it is apparent the claimant's need for treatment is directly related to his work injury.

The claimant was sent to Dr. Hord by the respondents on July 20, 2005, after he reported his injury. Kim Chastain, the company nurse, filled out the Authorization For Treatment From Lennox form which

described the injury as "back pain." Dr. Hord noted on the form that the claimant's subjective finding was low back pain, and that his diagnosis was a lumbar strain. Additionally, in Dr. Hord's medical notes, he noted that the claimant had distinct muscle spasm in his left paraspinous muscles in his lumbar spine area. Dr. Hord continued the claimant on Flexeril for muscle spasms, Medrol Dosepack, and Naproxin.

The claimant continued his treatment for his back injury with Dr. Daniels. On September 19, 2005, medical notes on an Authorization For Treatment From Lennox form indicated that the claimant's pain was generally from the T-9 to L2 level. The report also indicated that the pain radiated to his left leg. On September 22, 2005 another Authorization For Treatment From Lennox form indicated a "LS strain" or lumbosacral strain. Dr. Daniels referred the claimant to physical therapy, adding that the claimant was to be treated for a "LS strain."

The claimant began physical therapy on September 26, 2005. On the patient information sheet, the claimant indicated that he suffered from upper left back pain and left leg pain. The physical therapist's

notes, however, indicate that she was treating the claimant for a "L/S strain." The physical therapist also noted that her plan for the claimant was mid to low back strengthening. The claimant did not receive any relief from physical therapy.

Additionally, the claimant treated with Dr. Sprinkle and Dr. Meador, but continued having pain in his back and down his left leg. Dr. Sprinkle only treated the claimant's thoracic spine. Still in pain, the claimant sought treatment from Dr. Chakales on February 27, 2006. Dr. Chakales noted that the claimant injured his low back at work in late 2004, but he was not treated. Subsequently, he re-injured his back at work in July 2005. Dr. Chakales reviewed x-rays which revealed that the lumbar spine had a transitional fifth lumbar vertebra. Dr. Chakales observed that the claimant walked with an antalgic gait and had straightening of the lumbar lordosis. Dr. Chakales diagnosed the claimant as having lumbar disc syndrome with left sided sciatica and ordered an MRI of the lumbar spine and an EMG/NCV of his back and both legs.

The MRI revealed that the claimant suffered from a moderate sized tear of the annulus with a bulging

disk at L4-5 and some abnormality at L5-S1. Dr. Chakales then ordered a discogram, which revealed abnormalities at L3-4, L4-5, and L5-S1. Dr. Chakales also noted that the claimant's EMG test was abnormal. Additionally, Dr. Chakales noted that the claimant had chronic nerve root irritation, and as the claimant has failed to respond to non-operative management, he is a surgical candidate.

Although the Majority finds that there is no casual connection between the claimant's current need for treatment and the injury that he sustained working for the respondents, it is obvious that Dr. Hord, Dr. Daniel, and Dr. Chakales all agree that the claimant sustained a low back injury in July 2005 while in the employment of the respondents. Furthermore, the claimant's own testimony and work history establishes that his back pain began only after the July 2005 accident. The claimant testified that he had a four year perfect attendance record until July 2005. The claimant testified that in July 2005 he was moving a unit around, pushing and pulling it with a tugger to steer the unit, when he felt something pull in his lower back, which caused a burning sensation. The claimant testified that he has been in continuous pain in his back and left leg

since the date of his injury, and the treatment that he has received thus far has not helped his pain. A such, it is evident that the claimant established by a preponderance of the evidence that his low back injury was casually connected to the injury he sustained while in the employment of the respondents.

The Majority further finds that the claimant did not prove that Dr. Chakales' treatment, including the recommendation of surgery, was reasonable and necessary in connection with the compensable injury. Rather, the Majority erroneously places more weight on the opinions of Dr. Sprinkle and Dr. Meador.

Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a) (3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App.

100, 911 S.W.2d 593 (1995); and See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The Majority relies solely on the opinions of Dr. Sprinkle and Dr. Meador. Dr. Daniel referred the claimant to Dr. Sprinkle on October 2, 2005. On his initial history survey with Dr. Sprinkle, the claimant indicated that he suffered from mid back, left side, and left leg pain. Cheryl Johnson, a nurse case manager for the respondents, testified that left leg pain could be indicative of a lumbar injury.

Despite the claimant being diagnosed by Dr. Daniel and Dr. Hord as having a lumbosacral strain, Cheryl Johnson noting that leg pain indicates a lumbar injury, and Dr. Sprinkle's own notation that the claimant had lumbar paraspinal trigger points, Dr. Sprinkle determined that the claimant suffered a thoracic strain. As such, Dr. Sprinkle ordered an MRI of the thoracic spine only. The MRI revealed that the claimant suffered from a posterior disk bulge and mild disk desiccation at T11-T12. However, Dr. Sprinkle completely ignored the claimant's lumbar spine.

Unhappy with Dr. Sprinkle's treatment and still in pain, the claimant sought medical treatment

from Dr. Meador. Dr. Meador saw the claimant on February 9, 2006. On the claimant's pain chart, the claimant indicated that he had pain down the left side of his entire back and down his left leg. Dr. Meador noted that the claimant was very hostile toward her from the moment that she walked into the room, and that he did not want to show her where the pain was because that "got him in trouble with Dr. Sprinkle." Dr. Meador noted that the x-rays of the claimant's cervical and lumbar back were normal, and that the MRI of the thoracic spine were normal. Despite the claimant's indication on the pain chart that he suffered from pain in the lumbar region, Dr. Meador did not order an MRI on the lumbar area. Additionally, she found that the claimant's thoracic pain was out of proportion to the exam findings. Dr. Meador returned the claimant to work as of February 10, 2006.

Interestingly enough, despite complaints of low back pain, neither Dr. Sprinkle nor Dr. Meador ordered an MRI of the lumbar spine. Dr. Sprinkle and Dr. Meador completely failed to even consider the lumbar area as the possible problem area for the claimant. As Dr. Hord and Dr. Daniels had previously diagnosed the

claimant as having a lumbar strain, it was simply illogical for Dr. Sprinkle and Dr. Meador to not even consider the low back as a possibility for an injury. As such, it is evident that Dr. Sprinkle and Dr. Meador mis-diagnosed the claimant's injury. The Majority should not punish the claimant by denying him reasonable and necessary medical treatment simply due to the medical inadequacies of Dr. Sprinkle and Dr. Meador.

Furthermore, the respondents should be barred from asserting that they did not know that the claimant sustained a low back injury. Kim Chastain, the industrial nurse for the respondents testified that the claimant was sent to Dr. Hord and Dr. Daniel at the Stuttgart Medical Clinic on the date of the accident. Dr. Hord diagnosed the claimant as having a low back strain. Chastain testified that she was not surprised that Dr. Hord diagnosed the claimant as having a "low back strain" and that she didn't really pay any attention to the low back part of the Authorization For Treatment Form Lennox form. Chastain also admitted that she did not know why Dr. Sprinkle would only treat the claimant's mid back when he was diagnosed as having a low back strain.

However, Kathy Keary, a senior claims manager, became involved in September 2005, when she noticed that the claimant had been off of work for a considerable amount of time. Keary admitted that the July 20, 2005 Authorization For Treatment From Lennox form which indicated that the claimant suffered a low back strain was never sent to her and that it was not in her file. The only information that Keary was given was via telephone from the claimant. Keary testified that the claimant indicated that he had felt something pull in his left middle of the upper back, as if someone had a foot pressing on his back that was affecting his breathing. Keary also testified that the claimant told her that he hurt his mid to lower back in late 2004 while at work, but that he did not go to the doctor for it. Keary also testified that it was not until Dr. Daniels' referred the claimant to Dr. Sprinkles that she assigned the case to a nurse case manager, Cheryl Johnson. As such, Keary assigned the case without having all of the relevant paperwork.

Cheryl Johnson, a nurse case manager for the respondents, specifically testified that the claimant complained of pain in his thoracic spine and his lower

thoracic spine. However, it appears that she was only forwarded certain documents from Keary, who claimed that she did not possess the medical findings of Dr. Daniel or Dr. Hord. Johnson also testified that left leg pain could be indicative of a lumbar injury, but she was not aware of any left leg pain complaints by the claimant.

It is apparent that Kim Chastain did not forward all of the necessary documents to Kathy Keary. Keary, in turn, did not forward all of the necessary medical documents to Cheryl Johnson. As such, when Dr. Sprinkle received the claimant's paperwork, he was also not provided with copies of all of Dr. Hord's and Dr. Daniel's medical opinions. Although Dr. Sprinkle was aware that there was at least one report of a lumbar strain, he was not provided the initial diagnosis of a lumbar strain. This information was crucial to the claimant's treatment, and the respondents utterly failed to properly communicate this diagnosis to Dr. Sprinkle and Dr. Meador. As such, the Majority should not be so kind as to now allow the respondents to assert that the claimant did not present with complaints of low back pain, as the medical records are clearly evidence to the contrary.

The Majority also found that the claimant failed to prove by a preponderance of the evidence that he was entitled to temporary total disability benefits from February 11, 2006 through a date yet to be determined. Dr. Meador concluded that the claimant was at Maximum Medical Improvement (MMI) with a 0% impairment rating on February 9, 2006. At that point, Dr. Meador released the claimant to go back to work with no restrictions. However, as previously discussed, I find the opinion of Dr. Meador should be given little weight.

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, 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). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. Breshears, supra; J.A.

Riggs Tractor Co. v. Etzkorn, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

Clearly, the claimant was still within his healing period. I note that Dr. Chakales recommended additional treatment for the claimant, indicating that he has not exited his healing period. Additionally, there is no evidence that Dr. Chakales has placed the claimant at maximum medical improvement or that he has released the claimant to return to work.

In conclusion, the Majority errs in reversing the opinion of the Administrative Law Judge in finding that the claimant did not prove that surgery was reasonable and necessary medical treatment and denying him temporary total benefits after February 9, 2006. More specifically, the Majority erred in finding that the claimant failed to prove that he sustained a low back injury that was casually related to his employment.

The evidence indicates the claimant injured his back while at work in July of 2005. This is undisputed. Dr. Hord, Dr. Daniel, and Dr. Chakales have all found that the claimant suffered a low back injury. As the claimant had not experienced back pain prior to his work related injury, it is evident that the

claimant's low back injury was caused at work in July 2005. Furthermore, there is no explanation other than the work related injury for his need for treatment from Dr. Chakales. Therefore, the claimant is entitled to receive all reasonable and necessary treatment proposed by Dr. Chakales. Furthermore, the claimant is entitled to receive temporary total disability from February 9, 2006 to a date yet to be determined.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner