BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603172

HONG NGUYEN,
EMPLOYEE CLAIMANT

RIVERSIDE FURNITURE,
SELF-INSURED EMPLOYER RESPONDENT

OPINION FILED DECEMBER 20, 2007

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed in part as modified; reversed in part.

OPINION AND ORDER

The respondent appeals and the claimant cross-appeals an administrative law judge's opinion filed March 12, 2007. The administrative law judge found that certain treatment provided the claimant was unauthorized pursuant to Ark. Code Ann. §11-9-514. The administrative law judge found that the claimant was entitled to temporary total disability from March 28, 2006 through a date yet to be determined. After reviewing the entire record *de novo*, the Full Commission

finds that treatment and referrals provided by Dr. Hoang after March 14, 2006 were unauthorized; however, the claimant proved she was entitled to at least a one-time visit with Dr. Hoang following the December 6, 2006 change of physician order. The Full Commission finds that the claimant did not prove she was entitled to any additional temporary total disability compensation.

I. HISTORY

Hong Thi Nguyen, age 53, began working for Riverside Furniture in July 1986. The record indicates that the claimant began treating with Dr. N. Van Hoang for various complaints beginning in September 1986. The claimant was assessed with "Arthritis, recurrent in sacrum" in March 1987. Progress notes in January 1988 indicated that the claimant had hurt her back in the lumbar area.

In September 1989, the claimant complained of neck pain following a motor vehicle accident. The claimant was diagnosed with cervical strain. An x-ray was taken in September 1989, with the impression, "Reversal of the normal cervical lordosis which may be positional may be muscle spasm. Exam is otherwise normal."

The claimant continued to occasionally seek medical treatment for complaints relating to her cervical, thoracic, and lumbar spine regions. An x-ray of the claimant's thoracic spine in October 1989 was felt to be within normal limits. An x-ray of the lumbar spine was also taken in October 1989, with the impression, "Minimal wedging of L2, 3, and 4 vertebral bodies with degenerative change at L5."

Dr. Michael W. Callaway reported in May 1996 that the claimant had been struck by a forklift while working for Riverside Furniture Corporation and had sustained a closed head injury. Dr. Callaway's impression was "Closed head injury" along with "History of dizziness." Dr. Tonya L. Phillips subsequently reported in May 1996 that the claimant's physical examination was normal.

An MRI of the claimant's lumbar spine was taken in July 1996, with the impression, "1. Diminished signal at L4-5 and 5-S1 with small area of annular rent in the midline at L4-5. Small midline disk bulges or protrusions also at L4-5 and 5-1." Dr. Callaway reviewed the MRI and treated the claimant conservatively.

Dr. Callaway reported in October 1997, "She actually has a lot of pain in her left elbow and epicondylar area.

She has a job where she has to put a lot of effort and elbow tension on her elbow." Dr. Callaway's impression was "Left lateral epicondylitis."

In January 1998, a Disability Certificate from Roberts Chiropractic Center indicated that the claimant had been in a car accident, and the claimant was taken off work for a number of months.

In March 1998, Dr. John Swicegood diagnosed "Posterior cephalalgia and left upper extremity pain," and administered a C5-6 epidural steroid injection.

Dr. Roberts returned the claimant to work in March 1998.

The claimant subsequently sought medical treatment for complaints involving her left shoulder.

The claimant informed Dr. Philip Roberts, D.C., that she had been involved in another motor vehicle accident in October 2003. The claimant complained of pain in her neck and back.

Dr. Doran L. Nicholson, D.C., gave the following impression based on an x-ray report in October 2003:

> 1. No radiographic evidence of fracture, osseous pathology, or anomalies that would contraindicate treatment.

> 2. Multiple levels of segmental dysfunction during cervical motion.
> 3. Hypolordotic cervical spine with limitation of motion.
> 4. Localized cervical dextroscoliosis.
> 5. Thoracic disc wedging.
> 6. Thoracic hypokyphosis with severe lumbar hypolordosis and posterior weight bearing.
> 7. Lumbopelvic tilt to the left.
> 8. Retrolisthesis of L5.
> 9. Early spondylosis....The biomechanical changes are suggesting soft tissue injury and muscle spasms....

The record indicates that the claimant began a regular series of chiropractic visits.

An x-ray of the claimant's left shoulder was taken in December 2003: "No fracture, dislocation or AC separation. There is a small calcific density adjacent the posterior aspect of the greater tuberosity consistent with calcific tendinitis of the rotator cuff." An x-ray of the claimant's lumbar spine was also taken in December 2003, with the impression, "1. No bony lumbar spine injury evident. Minimal degenerative marginal spondylosis at multiple levels."

The claimant occasionally returned to Dr. Hoang for treatment.

The parties stipulated that the claimant "sustained compensable injuries in an employment-related fall" on

January 4, 2006. The claimant testified on direct examination:

> Q. Will you tell us how you got hurt on January 4, 2006.
>
> A. I fell down in the year 2005.
>
> Q. Now, there was some question at the deposition in regard to whether your accident was actually the latter part of December of 2005 or the first part of January 2006.
>
> A. I don't remember the exact date, but I am positive that it was in late 2005.
>
> Q. Tell us about the accident that you believe happened at the end of 2005.
>
> A. I was standing beneath a large vat or container approximately 3 ½ feet wide and I was standing next to a conveyor line down beneath that vat, and this large vat or cabinet went down the conveyor belt and it began to turn over and I had to go along with it because I was down below it on the line.
>
> Q. And then what happened?
>
> A. I fell down and I couldn't realize what was happening, and the person who worked on the line next to me was a man by the name of Steve and he saw me lying there and he said, "Do not move."
>
> Q. Did you realize that you were hurt at that point?
>
> A. At that point I was just afraid and I just froze in fear. I didn't know what happened....On that day someone helped me and they took me to the office.

> Q. Did you realize you were hurt when you went to the office?
>
> A. I was afraid and I knew I had some numbness in my hip, but I didn't know I had been injured at that point.
>
> Q. When did you realize you were injured?
>
> A. When I went to see Mr. Wickloff I noticed that the left side of my head (pointing on left side on top of head) was swollen.

Evan Breedlove, director of human resources for Riverside Furniture, testified that the claimant reported an accident to him on January 4, 2006: "I visited with her and I was concerned about the head injury because that was my information, that she had hit her head on the floor. And I asked her if she had any dizziness, observed her walking, if she had any headache, and she said her head was hurting a little bit and we visited, but then she began to tell me of multiple complaints and stated that her neck and shoulders had been bothering her for quite some time....I scheduled her to see Dr. Clark on January the 10th for followup with her."

A Riverside Furniture Corp. Health Service Case Record contained the following notation dated January 4, 2006: "Complaining of pain & numbness in shoulder & arm, down into hand. To see Dr. Clark."

The respondent-employer's Case Record indicates that the claimant began treating with Dr. Clark on January 10, 2006. The claimant testified that she did not benefit from medication prescribed by Dr. Clark.

An MRI of the claimant's cervical spine was taken on January 27, 2006:

> Craniocervical junction normal. No signal abnormality of the cervical or thoracic cord. C2-3 normal.
>
> C3-4, there is spurring and moderate central bulge, probable small central disc protrusion, mild impression on the ventral aspect of the cord. At C4-5, there is central right paracentral disc protrusion with some impression on the ventral aspect of the cord. AP dimension of the canal about 11 mm at lower normal limits.
>
> At C5-6, there is an annular fissure with small central disc protrusion and mild impression on the ventral thecal aspect of the thecal sac just slightly abutting the ventral aspect of the cord.
>
> At C6-7, there is moderate midline bulge. At C7-T1, T1-2, T2-3, T3-4 levels normal.
>
> IMPRESSION:
> Multilevel central disc protrusions from 3-4 through 5-6 with some impression on the ventral aspect of the cord particularly at 4-5 and to a lesser degree 3-4.
> Mild central bulge at 6-7. No canal stenosis.

Brady D. McCollum, DPT, examined the claimant on or about March 6, 2006 and reported the following:

> Pt reports symptoms for approx 3-4 months that consist of bilateral hand numbness and pain up to elbows in the back of her forearms. She also reports severe neck and shoulder pain. She says she experiences these symptoms in the day and her sleep is disturbed by them at night. She reports that her symptoms are worse on the left. The pt denies a history of DM, denies the use of a pacemaker, and denies the use of blood thinners....
>
> The NCV/EMG findings are consistent with:
> • The evidence found in the left UE and corresponding cervical paraspinals most strongly correlates with a severe lesion of the C7 nerve root.
> • The evidence found in the right UE and corresponding cervical paraspinals most strongly correlates with a severe lesion of the C7 nerve root.
> • The evidence was more severe on the left.
> • Secondary to the overlapping innervation of the paraspinal musculature it is possible that other nerve roots (C5-T1) are less severely compromised.
> • There is evidence of a mild compromise of the bilateral median nerves across the wrist affecting the sensory branches to digit 1 bilaterally and the amplitude to the APB on the left.
>
> Notes: Findings should be correlated with other clinical findings and diagnostics.

Evan Breedlove's testimony indicated that the claimant stopped working on or about March 13, 2006.

The record contains a Form AR-N, Employee's Notice Of Injury, signed by the claimant on March 14, 2006. According

to the Form AR-N, the claimant reported that she had injured her neck, shoulder, and back.

The claimant testified, "I began to have more pain and finally on my own I just went to see Dr. Hoang." Dr. Hoang saw the claimant on March 14, 2006 and his handwritten notes appear to show the following assessment: "paresthesia in both hands/fingers bilateral - not traumatic secondary to head/neck injuries. - persistent back pain/shoulder pain bilateral." Dr. Hoang further wrote, "sick leave granted from 3-14 - 3/21/06 - put her on light duty on return."

Dr. Joseph W. Queeney examined the claimant on March 21, 2006:

> Cervical range of motion is full in all three planes. She does not really have any palpable spasm and no significant tenderness....
>
> I had the opportunity of reviewing some plain films performed at the Centers of Excellence including flexion and extension views. This is essentially normal. I have also reviewed an MRI scan performed of the cervical spine without contrast at the Cooper Clinic on 3/16/06. This shows minimal disc protrusion but otherwise is negative. I also reviewed some sort of electrodiagnostic performed by a Brady T. McCollum, DPT. This had some very significant findings. These certainly do not correlate with the patient's examination.

Dr. Queeney's impression was "Cervical sprain....I had a very long discussion with the patient regarding her

findings. I informed her that she does not have to have surgery done. I do not really think that her findings are consistent with a radiculopathy. I will refer her back to occupational medicine for further nonsurgical management."

The respondent's Health Service Case Record contains a notation dated March 22, 2006, apparently by Dr. Clark, indicating that the claimant was able to perform her job without danger of exacerbating her symptoms. Evan Breedlove testified that Dr. Clark returned the claimant to work on March 27, 2006, but that the claimant did not return to work on that date. The parties stipulated that there was "no dispute over benefits accruing through March 27, 2006, both for medical services and temporary disability."

The claimant returned to Dr. Hoang on March 28, 2006. Dr. Hoang's assessment appeared to be cervical radiculopathy and severe lower back pain. Dr. Hoang's notes indicated that he placed the claimant on sick leave from March 27, 2006 until April 27, 2006, and that the claimant should be on light duty when she returned to work on April 27, 2006.

Evan Breedlove testified for the respondent:

> Q. Did you have any conversation with her related to giving her some extra time?

> A. Yes, ma'am. She came to my office on March the 28th and had a note from Dr. Hoang.
>
> Q. Tell my about your conversation with her about giving her more time.
>
> A. I would also like to state that she brought in an interpreter on that date.
>
> Q. Okay.
>
> A. And we talked and I told her that Dr. Clark had released her to return to work and that the job duties that we had for her - her regular job - were probably as least physically demanding as we had in the company. She said that she was unable to work and I told her that Dr. Clark and also Dr. Sweeney had released her from treatment, had nothing more to offer her. I told her that I would not accept Dr. Hoang's note, he was not an authorized physician, and that she needed to make up her mind and decide whether she would return to work or not. And I told her I needed to know within the - I would give her another week off and let her decide what she wanted to do.
>
> Q. What happened either during or at the end of that week?
>
> A. I had not heard from her. In fact, it was probably another couple of months before I heard anything back from her.

On April 27, 2006, Dr. Hoang assessed cervical radiculopathy and severe lower back pain. Dr. Hoang signed a Certificate To Return To Work, indicating that the claimant could return to restricted work on May 27, 2006.

Mr. Breedlove testified for the respondent:

> Q. Did she come back into the office a couple of months later?
>
> A. Yes.
>
> Q. Did she have an interpreter with her again?
>
> A. Yes.
>
> Q. Tell me about the conversation when she came back two to three months later after you had given her the week to decide if she wanted to return to work or not.
>
> A. That as far as I was concerned that she had quit and that she would need to find other employment.

Dr. Hoang examined the claimant on June 6, 2006 and assessed bilateral cervical radiculopathy and bilateral carpal tunnel syndrome. A June 6, 2006 notation on Dr. Hoang's letterhead indicated that the claimant's medical records were sent to Dr. Landherr's office. The record indicates that Dr. Hoang referred the claimant to Dr. Landherr for a neurological consultation.

The record indicates that the claimant was seen at Accidents, Injuries & Rehabilitation (AIR Healthcare) on June 9, 2006, at which time she was assessed with cervical radiculopathy.

Dr. John Landherr, AIR Healthcare, examined the claimant on October 6, 2006 and diagnosed "1) R/O Mild Cervical Radiculopathy."

A pre-hearing order was filed on October 11, 2006. The claimant contended that she "sustained multiple injuries as a result of a job related accident on January 4, 2006. She contends that her primary injury was to her cervical spine." The claimant contended that she was entitled to temporary total disability "from March 28, 2006 until a date yet to be determined and reasonably necessary medical treatment."

The respondent contended that it "accepted claimant's injury as compensable and paid appropriate benefits. Claimant continued to work following the injury until March 13, 2006. She was released to return to work March 22, 2006. Claimant had substantial preexisting problems and treatment prior to January 4, 2006, related to her neck, back, and shoulders and respondent contends that her current condition is related to her preexisting problems."

The parties agreed to litigate the following issues:

> 1. The claimant's entitlement to the payment of expenses incurred for medical services after March 27, 2006, including whether those services represent unauthorized medical services.

> 2. The claimant's entitlement to continued temporary total disability benefits after March 27, 2006.
> 3. Appropriate attorney's fees.

The claimant's last recorded visit at Accidents, Injuries & Rehabilitation took place on November 21, 2006.

On December 6, 2006, Pat Capps Hannah signed a Change of Physician Order: "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Hong T. Nguyen to change from Dr. Terry Clark to Dr. N. Van Hoang[.]"

A hearing was held on December 12, 2006. The claimant testified at that time that she had constant pain in her neck and back. The claimant also testified that her hands were numb.

The administrative law judge filed an opinion on March 12, 2007 and found, in pertinent part:

> 5. All of the medical services provided to the claimant by and at the direction of physicians other than Dr. Clark and Dr. Queeney, represent "unauthorized medical services" within the meaning of Ark. Code Ann. §11-9-514. Specifically, such services do not represent emergency medical services and were not authorized by either the respondents or this Commission. Therefore, pursuant to the provisions of Ark. Code Ann. §11-9-514, the respondents cannot be held liable for the expense of such services.
> 6. The claimant has been rendered temporarily totally disabled as the result of the effects of

> her compensable injury, for the period of March 28, 2006 through a date yet to be determined, but no later than November 21, 2006. Specifically, the claimant has proven by the greater weight of the credible evidence that for this period of time, she has continued within her healing period from the effects of her compensable injury and has been rendered totally disabled by the effects of the compensable injury.

The administrative law judge filed an amended opinion on March 19, 2007:

> The Order portion of the prior Opinion, dated March 12, 2007, should have read the respondents shall pay to the claimant temporary total disability benefits for the period beginning on March 28, 2006, and continuing until a date yet to be determined, but no sooner than November 21, 2006.

The respondent appeals to the Full Commission and the claimant cross-appeals.

II. ADJUDICATION

A. Unauthorized Treatment

Arkansas law regarding change of physician is set forth in Ark. Code Ann. §11-9-514. Ark. Code Ann. §11-9-514 provides:

> (b) Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing, except emergency treatment, shall be at the claimant's expense.
> (c)(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a

> notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities concerning change of physician.
> (2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.
> (3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

The administrative law judge found in the present matter that "All of the medical services provided to the claimant by and at the direction of physicians other than Dr. Clark and Dr. Queeney, represent 'unauthorized medical services' within the meaning of Ark. Code Ann. §11-9-514." The Full Commission affirms this finding as modified. The parties stipulated that the claimant sustained a compensable injury on January 4, 2006. The respondent-employer directed the claimant to treat with Dr. Clark, and Dr. Clark referred the claimant for treatment with Dr. Queeney.

On March 14, 2006, the claimant signed a Form AR-N, Employee's Notice Of Injury. The Form AR-N contained language directly above the claimant's signature, to wit: "My signature also indicates that I have been provided with my rights regarding change-of-physician." The Full Commission finds that the respondent-employer properly notified the claimant of her rights and responsibilities

concerning change of physician pursuant to Ark. Code Ann. §11-9-514(c)(1). *See, Sharp v. Lewis Ford, Inc.*, 78 Ark. App. 164, 78 S.W.3d 746 (2002). The claimant saw Dr. Hoang beginning on March 14, 2006, and the claimant recognized in her testimony that she saw Dr. Hoang "on my own." The Full Commission finds that the claimant's treatment with Dr. Hoang beginning on March 14, 2006 was unauthorized pursuant to the statutory change of physician rules. The claimant's treatment with AIR Healthcare beginning June 9, 2006 was unauthorized, and the claimant's visits with Dr. Landherr beginning on October 6, 2006 were also unauthorized. None of the unauthorized treatment of record shall be the responsibility of the respondent. *See,* Ark. Code Ann. §11-9-514(c)(3), *supra*.

However, on December 6, 2006, a representative of the Commission's Medical Cost Containment Division granted the claimant a change of physician to Dr. Hoang. The respondent must pay for an initial visit to Dr. Hoang in order to fulfill its obligation to provide reasonably necessary medical treatment pursuant to Ark. Code Ann. §11-9-508(a). *See, Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003).

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 an employee'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).

In the present matter, the administrative law judge found that the claimant proved she was entitled to temporary total disability compensation beginning March 28, 2006 through a date yet to be determined, but no sooner than November 21, 2006. The Full Commission reverses this finding.

The parties stipulated that the claimant "sustained compensable injuries in an employment-related fall" on January 4, 2006. The claimant testified that she actually fell sometime in 2005. In any event, the claimant testified that as a result of the fall she had swelling in her head and numbness in her hip. The record does not corroborate

the claimant's testimony that her head was swollen falling the accident. Nor does the record show that the claimant sustained a hip injury. The initial report from the respondent-employer indicated that the claimant complained of pain and numbness in her shoulder, arm, and hand. The claimant began treating with Dr. Clark on or about January 10, 2006.

An MRI on January 27, 2006 showed multilevel disc protrusions from C3-4 through 5-6 and a mild central bulge at 6-7. There is no evidence before the Commission demonstrating that these conditions were a causal result of the January 4, 2006 fall at work. Mr. McCollum, apparently a "Doctor of Physical Therapy," stated in March 2006 that electro-diagnostic testing showed "severe lesion" at C7. This report is entitled to minimal weight; the cervical MRI of January 2006 did not show a "severe lesion" at C7. Dr. Queeney subsequently opined that the claimant's diagnostic testing was "essentially normal. I have also reviewed an MRI scan performed of the cervical spine without contrast at the Cooper Clinic on 3/16/06. This shows minimal disc protrusion but otherwise is negative." Dr. Queeney

determined that the findings of Mr. McCullum "do not correlate with the patient's examination."

Dr. Queeney's impression was "cervical sprain." Dr. Queeney stated that the claimant would not need surgery, and he referred the claimant "back to occupational medicine for further nonsurgical management." A notation from Dr. Clark dated March 22, 2006 indicated that the claimant was able to return to work. Mr. Breedlove testified that Dr. Clark returned the claimant to work on March 27, 2006. The parties stipulated that temporary total disability was paid through March 27, 2006.

The Full Commission finds that the claimant did not prove she was entitled to additional temporary total disability after March 27, 2006. The evidence does not show that the claimant's healing period for her cervical strain extended beyond March 27, 2006. There were no medical opinions of record indicating that the claimant continued to suffer from cervical strain after March 27, 2006. We recognize Dr. Hoang's March 28, 2006 assessment of cervical radiculopathy and severe lower back pain. The record does not indicate that the claimant injured her lower back as a result of the January 4, 2006 compensable injury. Further,

Dorland's *Illustrated* Medical Dictionary, 28th Ed., defines "radiculopathy" as "disease of the nerve roots." There is not a scintilla of evidence of record demonstrating that the claimant sustained radiculopathy or disease of the nerve roots as a result of the January 4, 2006 accident. We also note Dr. Queeney's expert opinion on March 21, 2006, "I do not really think that her findings are consistent with a radiculopathy."

The Full Commission finds that the claimant reached the end of her healing period for the cervical strain no later than March 27, 2006. An employee is not entitled to temporary total disability after the end of her healing period. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002). Yet even if the claimant's healing period did continue after March 27, 2006, the Full Commission finds that the claimant did not prove she was totally incapacitated from earning wages. Dr. Clark opined on March 22, 2006 that the claimant was able to perform her job without danger of exacerbating her symptoms. We must assign minimal weight to the claimant's testimony that she was unable to use her hands to sand furniture at work. We

also assign minimal weight to Dr. Hoang's assignment of light work duty on March 27, 2006.

Based on our *de novo* review of the entire record, the Full Commission finds that treatment and referrals provided by Dr. Hoang beginning March 14, 2006 were unauthorized and not the responsibility of the respondent-employer. Pursuant to the change of physician order of December 6, 2006, however, the respondent must pay for at least an initial visit for the claimant with Dr. Hoang, on or after December 6, 2006. The claimant did not prove that she was entitled to any additional temporary total disability compensation after March 27, 2006.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

The Majority is affirming an Administrative Law Judge's finding that the respondent is not liable for certain medical treatment because it was

unauthorized. They are reversing the Administrative Law Judge's decision to award the claimant additional total disability benefits. In my opinion, the Majority is incorrect on both aspects of their decision. Accordingly, for the reasons set out below, I must respectfully dissent from the Majority's Opinion.

The first issue concerns the respondent's liability for the medical treatment which the Majority deems to be unauthorized. This medical treatment was furnished by, or at the direction of, Dr. Van Hoang, a general practitioner in Fort Smith, Arkansas. The claimant admitted that she sought treatment from Dr. Hoang on her own. However, she took that action only after the physicians to whom the respondent had referred her were no longer providing her meaningful treatment. According to the claimant's testimony, these doctors were merely giving her medication and telling her to return to work. None of them seemed interested in taking any particular action to treat the cause of her ongoing pain. In this regard, I note that the Workers' Compensation Act specifically provides that it is the employer's duty to provide the claimant adequate medical

treatment. There is no evidence that the respondent took any action to do so when the company doctors were simply not providing the claimant any further treatment.

While it is true that the claimant was furnished an AR-N, it is also true that it unlikely that she fully understood this document. The claimant is not an English speaker, and she testified that her ability to read is very limited. In fact, in order for her to communicate at the hearing, it was necessary to retain the services of an interpreter. Her inability to communicate well in English was mentioned by her doctor and acknowledged by the respondent. Also, I find it significant that in order to meet with a representative of the respondent regarding her case, she had to bring a translator with her, at the request of the respondent.

When the respondent’s duty to provide the claimant adequate medical treatment is considered along with the claimant’s lack of understanding English, I believe that the respondent should be ordered to provide the claimant the medical treatment she was seeking. In fact, I note that after retaining the services of an attorney, the claimant did make a request to change

physicians to Dr. Hoang and that change was granted. I have no doubt that had the claimant more fully understood her rights of changing physicians, she would have done so prior to seeking treatment from Dr. Hoang, her personal physician. Since this change would have been granted, had it been made at an earlier time, I do not see how the respondent would have been prejudiced if they were to be found liable for medical treatment from, or at the direction of, Dr. Hoang.

I also dissent from the Majority's reversal of the Administrative Law Judge's award of temporary total disability benefits. The basis of this referral was the Majority's finding that the claimant reached the end of her healing period on or about March 27, 2006. On that basis, the Majority then concluded that the claimant would not be entitled to any disability benefits beyond that date, even though Dr. Hoang specifically directed that the claimant remain off work or be in a light duty status after that time. I disagree with the Majority's determination because there is simply no medical evidence indicating the claimant was not in her healing period and in need of medical treatment at that time.

The only medical evidence cited by the respondent is a report from Dr. Joseph Queeney, a Fort Smith neurosurgeon and a handwritten notation from Dr. Terry Clark, the respondent's company physician. I do not find that either of those medical records support the Majority's finding.

Dr. Queeney saw the claimant for a surgical consultation on March 21, 2006. In his report of that date, he summarizes the claimant's condition and notes that she is complaining of constant neck pain, which is exacerbated by activity. He also acknowledges that her cervical MRI scan did show some disc protrusion. He diagnosed her from suffering from a cervical strain and stated that he did not believe that she needed surgery. However, he did state that he was going to refer her back to Occupational Medicine for further nonsurgical management.

Nowhere in Dr. Queeney's report did he ever state that the claimant is at the end of her healing period. Nor, did he ever state that she would not benefit from further treatment. To the contrary, he states that he is referring her back for further medical

management. It appears to me that, at most, Dr. Queeney's report could be cited to support the proposition that the claimant does not need surgery. However, I do not think that it is a clear indication that the claimant is at the end of her healing period or is not in need of further medical treatment.

The other basis for the Majority's decision is a brief handwritten note from Dr. Clark, dated March 22, 2006. The note, after mentioning that Dr. Queeney is not recommending the claimant undergo surgery, states that Dr. Clark had discussed this case with Evan Breedlove, the Personnel Manager of the respondent employer. The note goes on to state that Mr. Breedlove described the claimant's job to him and then concludes with the following statement: "It is my medical judgment that patient can perform her job without danger of exacerbating her symptoms." Once again, this evidence does not state, or even suggest that the claimant is at the end of her healing period. It does demonstrate that Dr. Clark is subject to being influenced by the respondent.

In contrast, the claimant saw Dr. Hoang on March 14, 2006 and, after noting the presence of paresthesia in her hands and arms, as well as ongoing neck pain, he recommended that she remain off work while he began treating those conditions. Dr. Hoang kept the claimant either on light duty or no work throughout the time he was treating her for this condition. Particularly significant is a nerve conduction test performed on the claimant at Dr. Hoang's direction on March 6, 2006. According to Dr. Randy McCulloun, the claimant was suffering from axonal loss and a severe lesion at C-7.

Obviously, the claimant remained under the care and treatment of Dr. Hoang and was off work at this expressed direction. Even if Dr. Hoang were not an authorized physician, he was plainly treating the claimant for the symptoms related to an admittedly compensable injury. It also can be noted that as of December 2006, Dr. Hoang became the claimant's authorized treating physician pursuant to an Order from this Commission. Therefore, I do not believe that there could be any question that the treatment was reasonable

and necessary and is appropriate for the claimant's condition.

Having reviewed all of the medical evidence in this case, as well as the testimony of the claimant and Mr. Breedlove, I find that the claimant has established that she was in need of further medical treatment in March 2006, and that her seeking medical treatment from her authorized physician is justified and should be the responsibility of the respondent. I further believe that pursuant to the directions of Dr. Hoang, who is now the claimant's authorized treating physician, she was still within her healing period and was totally disabled at all times since March 2006. Accordingly, I believe the respondent should be ordered to pay her temporary total disability benefits from March 27, 2006, the date they terminated such benefits, to a date yet to be determined. Since the Majority has reached the contrary result on these issues, I must respectfully dissent from their opinion.

PHILIP A. HOOD, Commissioner