

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605356

JOHN R. PINE, EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK,  
A SELF-INSURED EMPLOYER

RESPONDENT

**OPINION FILED OCTOBER 8, 2007**

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

Claimant is not represented by counsel, but appears *pro se*.

Respondent represented by HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the Administrative Law Judge filed January 24, 2007.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. There was a March 17, 2006, specific incident.
2. The temporary total disability rate is based on an average weekly wage of \$441.

3. The claimant has proven by a preponderance of the evidence that he sustained a compensable back strain on March 17, 2006.

4. Respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued from Concentra, Dr. William Joseph, and Dr. John Wilson through June 28, 2006.

5. The claimant is solely responsible for medical treatment after June 28, 2006.

6. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and was totally unable to earn wages after June 28, 2006.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

This claim comes before the Commission on the claimant's appeal of the January 24, 2007, opinion of the Administrative Law Judge which found that the claimant sustained a compensable back strain. The Administrative Law Judge awarded medical treatment and temporary total disability benefits to the date of June 28, 2006, but denied all subsequent benefits. The Majority now affirms and adopts the decision of the Administrative Law Judge as their own.

On appeal, the claimant contends that he is entitled to medical benefits and temporary total disability benefits beyond that date. After a de novo review of the record, I find that the claimant should be awarded temporary total disability benefits through August 16, 2006. I further find that he is entitled to medical treatment for the entire requested time period. For the reasons set forth below, I must respectfully dissent.

The claimant was employed as a construction worker for the respondent employer. He was injured on March 17, 2006, when he fell some 10 to 15 feet from a ladder. The claimant landed directly on his feet and reported the incident to management. The claimant subsequently suffered from a shin and calf injury for which the respondents accepted responsibility. The claimant also suffered from back pain related to the fall.

The claimant sought medical treatment and was diagnosed with a back strain and right shin abrasions. The claimant was given medication in the form of Toradol and Celebrex and prescribed physical therapy. The claimant

continued receiving treatment and on April 11, 2006, a CT was performed and returned as normal. However, the claimant remained symptomatic and continued to receive treatment in the form of medication and physical therapy. The respondents controverted treatment, but the claimant continued to receive care from Dr. John Wilson.

Dr. Wilson diagnosed the claimant with a strain and continued to treat the claimant. On June 14, 2006, Dr. Wilson explicitly noted the claimant had muscle spasms in his low back. On the same date, Dr. Wilson instructed the claimant to return in two weeks and prescribed the claimant exercises and Robaxin.

On June 28, 2006, Dr. Wilson noted that the claimant continued to suffer from back pain and numbness in his legs. However, despite these complaints, Dr. Wilson instructed the claimant he could return to work. Dr. Wilson further indicated that the claimant had a normal examination and that he did not have an operative problem. He noted the claimant wanted to have a second opinion. In a note issued the following day, Dr. Wilson essentially reiterated his

opinion that the claimant did not have objective findings and that he was consequently going to release the claimant from his care. Dr. Wilson also indicated that he was referring the claimant to Dr. Sprinkle for a "second opinion."

The claimant was first treated by Dr. Sprinkle on July 5, 2006. Dr. Sprinkle noted the claimant suffered from ongoing low back pain and recommended the claimant have an MRI. He also diagnosed the claimant with a degenerative lumbar spine and a lumbar strain. Dr. Sprinkle placed the claimant on Flexeril and Celebrex. The MRI revealed degenerative changes in the claimant's spine. The claimant returned to Dr. Sprinkle on July 19, 2006, and recommended the claimant undergo physical therapy and an EMG. He renewed the claimant's medications and also prescribed Neurontin.

On August 16, 2006, Dr. Sprinkle indicated that the claimant's condition had improved. Dr. Sprinkle indicated that the claimant had no pain, was "doing great" and that his therapy had been successful. Dr. Sprinkle opined that the claimant had returned to a baseline level

and noted the claimant had weaned himself off medications. Finally, Dr. Sprinkle indicated that they would wait to perform the EMG to see if the claimant's symptoms had permanently subsided. The claimant returned to Dr. Sprinkle on September 25, 2006, and reported that he was still suffering from stiffness and occasional thoracic pain. Dr. Sprinkle renewed the claimant's medications and instructed the claimant to return on an as-needed basis.

At the time of the hearing, the claimant testified that he remains symptomatic and unable to return to work. The claimant further testified that he has not worked since the end of June and that despite being released to return to work by Dr. Wilson, he has not due to pain. The claimant and the respondent's witness, Delbert Dawson, testified that after the time of the injury, the claimant had attendance problems related to his injury. Dawson indicated that the claimant was eventually discharged for failing to give doctor's notes for his absences. With respect to Dr. Sprinkle, the claimant testified that he had already been discharged at the time he began treatment, and that

therefore, he was unsurprised that he was not given a work release.

The Administrative Law Judge has previously indicated that the claimant's injury is compensable and that he is entitled to benefits through June 28, 2006. These findings were not appealed and the medical evidence in the record indicates that the claimant's condition and symptoms did not resolve. Furthermore, when Dr. Sprinkle began treating the claimant he recommended additional treatment, which was documented to have helped the claimant's symptoms. In fact, by August 16, 2006, the claimant reported he had no pain and Dr. Sprinkle noted the claimant had returned to "baseline" level. While the claimant has required ongoing medications to treat his admittedly compensable injury, it appears that the medications are in the form of maintenance medication. Accordingly, I would award the claimant all requested additional medical benefits. However, as it appears that the claimant exited his healing period as of August 16, 2006, I would award temporary total disability benefits through that date.

Arkansas Workers' Compensation law requires that the employer 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).

Reasonably necessary medical 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).

There is no dispute that the claimant sustained a compensable back injury. Rather, the real question is whether the treatment given by Dr. Sprinkle was reasonably necessary in treating that condition. In my opinion, the evidence shows that the claimant had a degenerative back which was aggravated. He also sustained a strain to his back. The sole reason the Majority denies benefits beyond June 28, 2006, appears to be because by that time, Dr. Wilson and Dr. Joseph had opined the claimant's neurological evaluation had returned as normal. However, the claimant continued to remain symptomatic and was still suffering from numbness in his legs. In fact, it was only after the claimant was treated by Dr. Sprinkle that he received some relief from the pain related to his compensable injury. As there was no lapse in the claimant's symptoms, the claimant had no history of back problems, and his treatment has been successful, I find that the treatment

requested by the claimant is reasonably necessary to treat his admittedly compensable injury.

In my opinion, the Majority has erred in multiple ways. First, they have committed error in concluding that the claimant is required to have ongoing objective signs of an injury to receive additional benefits. They have also failed to acknowledge that the treatment received by Dr. Sprinkle was necessary in diagnosing the nature and extent of the claimant's injury. Likewise, she fails to acknowledge that while the claimant has not had a total resolution of his symptoms, the treatment given by Dr. Sprinkle has, at least to some extent, been successful.

It appears that the Majority's most serious error is in finding that because the claimant's objective signs of injury had dissipated by June 28, he should be cut off at that time. However, it is simply error to agree with this conclusion. Notably, though Dr. Wilson indicated the claimant no longer presented with objective signs of an injury, he did not explicitly indicate that the claimant would need no further treatment for his back. While

Dr. Wilson did indicate that he had "little else to offer the claimant", he did not explicitly indicate that the claimant would no longer need medication or that he would not require treatment in the future. In fact, he felt it was appropriate for the claimant to seek a second opinion with Dr. Sprinkle.

Furthermore, when reviewing the claimant's treatment with Dr. Sprinkle, it becomes more obvious that the claimant's condition had not resolved as of June 28, 2006. In fact, the claimant continued to be symptomatic and only improved after seeing Dr. Sprinkle. Furthermore, without the benefit of the diagnostic testing ordered by Dr. Sprinkle, the true objective nature of the claimant's injury would have been unverified.

As noted by the Majority, the claimant did sustain a sprain. Likewise, the claimant had objective physical findings in the form of muscle spasms. Such objective findings are commonly associated with bulging or herniated discs. Likewise, EMGs and MRIs are the usual course of ruling out such conditions when someone has been diagnosed

with a strain. Since, in this instance, the claimant had been diagnosed with a strain, it was not resolving, and the claimant had ongoing objective spasms and other subjective symptoms, it was both reasonable and necessary for the claimant to seek treatment from Dr. Sprinkle. Furthermore, it is evident when reviewing the record that the treatment from Dr. Sprinkle was, at least to some extent, successful.

It is well established that success of a treatment is a relevant factor to be considered in determining whether a treatment was reasonably necessary. Winslow v. D&B Mechanical Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000). However, the Courts have also indicated that a claimant must not show a 100% success rate in order for medical treatment to reasonably necessary to treat their condition. White Consolidated Industries v. Galloway, 74 Ark. App. 13, 45 S.W.3d 396 (2001).

Furthermore, the Court of Appeals has noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's compensable

injury. See, Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W. 3d 31 (2004); Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Additionally, a claimant does not have to support a continued need for medical treatment with objective findings. Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

The facts in the instant case show that while the claimant has not had total resolution of his symptoms, his condition has improved. Likewise, every physician that has treated the claimant previously recommended medications similar to those prescribed by Dr. Sprinkle. Accordingly, I find that the claimant has shown that the claimant has shown that he is entitled to the medical treatment prescribed by Dr. Sprinkle.

I further find that the claimant should have been awarded temporary total disability benefits through August 16, 2006. In my opinion, that would be the time period at which the claimant exited his healing period. Though the claimant has required ongoing treatment, that is

the date that Dr. Sprinkle indicated he had returned to "baseline". Furthermore, it is evident that since that time the claimant's treatment has been designed to maintain or alleviate his stabilized condition. Accordingly, I find that the claimant should be entitled to temporary total disability benefits through August 16, 2007.

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).

A claimant who has been released to light duty work but has not returned to work may be entitled temporary total disability benefits where there is insufficient evidence that the claimant has the capacity to earn the same or any part of the wages that he was receiving at the time

of the injury. Breshears, supra; Sanyo Manufacturing Corp. v. Leisure, 12 Ark. App. 274 (1984).

In the past, the Arkansas Courts have determined that, if, during the healing period, an employee is unable to perform remunerative labor with reasonable consistency and without pain and discomfort, her temporary disability is deemed total. See, Farmers Cooperative v. Biles, 77 Ark. App. 1, 69 S.W.3d 899 (2002). Furthermore, this Commission has previously held that an unsuccessful attempt at work does not affect eligibility for temporary total disability benefits. Morgan v. Quick Lay Pipe, Full Workers' Compensation Commission Opinion filed June 16, 2006, (F409390). Furthermore, an "off work" slip is not required to show a claimant is unable to work. Biles, supra.

In this instance the claimant was apparently denied temporary total disability benefits on the basis that he did not have an "off work" slip and because the objective signs of his injury were not explicitly noted. I will first address whether the claimant remained in his healing period.

From the time of the injury onward the claimant complained of back problems. While he was released to return to work by Dr. Wilson, when he sought treatment from Dr. Sprinkle, the claimant was advised that he needed additional medical treatment, including diagnostic treatment, physical therapy, and medication. During this same time period the claimant's condition was so bad that he had to use all his sick time and vacation time, and was ultimately discharged for his inability to work. As the claimant was diagnosed to need additional diagnostic treatment, it is apparent that the claimant had not yet reached the end of his healing period. Likewise, the claimant was also prescribed additional medication and physical therapy, both of which were designed to help his condition. Each of these factors show the claimant remained in his healing period.

In my opinion, the claimant remained in his healing period until August 16, 2006. The August 16, 2006, note of Dr. Sprinkle explicitly provides that the claimant's therapy was working, that he had no further pain, and that

the claimant was at "baseline". Therefore, it is evident that prior to that time the claimant had not reached MMI. Furthermore, when one considers that a claimant is not required to show objective signs of an injury in order to prove they remain in their healing period, I find that the claimant remained in his healing period until August 16, 2006. At that time the claimant exited his healing period and the focus of his treatment was focused on maintenance.

Finally, I find that the claimant has proven by a preponderance of the evidence that he was unable to work until August 16, 2006. While the claimant did not have doctor's notes after June 28, 2006, that is of no consequence. As I have previously discussed, there is no requirement that the claimant have a doctor's note in order to be unable to work. Additionally, I find that it is important to note that by the time the claimant was seeking treatment from Dr. Sprinkle, he had separated from the respondent employer. It is also evident that the claimant's pain was so severe at that time that he was unable to work and ultimately discharged from his job. Furthermore, as the

claimant was not employed, it would simply not make any sense for him to request an "off work" slip from Dr. Sprinkle.

In sum, I find that the claimant has met his burden of proof in showing that he is entitled to additional medical and temporary total disability benefits beyond June 28, 2006. Specifically, I find that the claimant is entitled to both medical benefits and temporary total disability benefits until August 16, 2006. At that time the claimant exited his healing period but continued to require medication and treatment which was reasonably necessary to treat his admittedly compensable back injury.

Accordingly, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner