

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407219

ROY RAINEY,
EMPLOYEE

CLAIMANT

ARKANSAS DEPARTMENT OF CORRECTION,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 10, 2007

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

Claimant represented by the HONORABLE EMILY PAUL and
HONORABLE STEVEN MCNEELY, Attorneys at Law, Little Rock,
Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's
opinion filed September 26, 2006. The administrative law
judge found that the claimant did not prove he was entitled
to additional temporary total disability compensation for
the claimant's compensable left ankle injury. The
administrative law judge found that the claimant did not

prove he sustained a compensable injury to his left knee or back. The administrative law judge found that the claimant did not prove he was entitled to additional medical treatment. After reviewing the entire record *de novo*, the Full Commission affirms the opinion of the administrative law judge.

I. HISTORY

Roy Rainey, age 54, testified that he began working at the Arkansas Department of Correction in September 1978. The parties stipulated that Mr. Rainey sustained a compensable ankle injury on January 21, 2004. The claimant testified that he tripped on a rug after leaving his desk to inspect a vehicle: "I fell down - I fell over to the side - on my left side. And which I injured by my left leg - my whole leg....I got caught on the wheelchair ramp, and that's where I broke my ankle and hurt my left side and back and all."

Dr. Paul Whipple noted on January 22, 2004, "Pt. states that while at work he just got his foot caught in a rug and twisted his ankle. He cannot bear wt. on it now." Dr. Whipple assessed, "Sprain to the Left Ankle."

The claimant testified that he did not return to work after the compensable injury. The parties stipulated that

temporary total disability was paid beginning January 23, 2004.

Dr. Charles A. Clark reported on February 25, 2004, "I have looked at his radiographs today and these appear to have a medial malleolar fx, buckle type....My impression is that he had an ankle sprain on the L, probably Grade II, and that he had an associated buckle fx of the medial malleolus that appears to be healing in anatomic position and alignment." Dr. Clark treated the claimant conservatively.

Dr. Clark noted on March 16, 2004, "CT scan confirmed there are no fx present. What we felt initially was a buckle fx probably turned out to be just residual from growth plate." Dr. Clark diagnosed, "Grade 2 ankle sprain with secondary reflex sympathetic dystrophy, early. Hallmarks include at this point hypesthetic pain, persistent swelling and discomfort, and coolness. He has good distal pulses."

Dr. Clark noted on April 6, 2004 that the claimant complained of posterior tibial pain. Dr. Clark noted on April 6, 2004, "We know he has no fx's present. CT scan confirmed this. They show no evidence of any damage to the joint....I think this is basically a sympathetic nerve-

mediated pain. Basically, the only treatment for this is PT."

Dr. Clark noted on April 27, 2004 that physical therapy seemed to be helping the claimant.

Dr. Clark noted on May 25, 2004, "Roy is a f/u for reflex sympathetic dystrophy, L ankle, following an ankle sprain. He is in the process of doing PT now and he is making some slow but steady progress....He is to continue his current work status." Dr. Clark diagnosed, "Reflex sympathetic dystrophy, L ankle."

The claimant testified that his employment was terminated on May 28, 2004.

Dr. Clark reported on September 2, 2004:

This is f/u for RSD, L ankle, following an ankle sprain. He continues to make gradual improvements.

EXAM: Today there is no swelling and no discoloration. His pain is markedly better today where I can actually examine the ankle vigorously and I can do an a/p drawer w/o significant discomfort....I think he is to a point where we could release him to RTW if the FCE indicates he has adequate strength.

He has a secondary complaint today with pain and soreness in the L knee. He wanted to know if this was related to his ankle injury.

X-RAY: L knee - I have taken radiographs which show a Grade III OA and I do not think this is related. I think it is coincidental.

EXAM: L knee - PE did not reveal any mechanical derangements, i.e., negative McMurray's, minimal joint line tenderness, no effusion, and no v/v instability. Pain with palpation of the medial joint line and the patellofemoral joint. Negative a/p drawer.

Dr. Clark's plan included a Functional Capacity Evaluation and continued conservative treatment, including a left knee injection.

Dr. Clark noted on October 14, 2004, "We tried to get an FCE, but his BP was so high they could not safely run one....With respect to his L knee where he has grade III OA of the medial compartment, the injection helped it quite a bit with his pain and swelling last time. We are going to repeat it for him for a second time today....I will see him back here in 6 wks for routine evaluation of the ankle. In all likelihood, as soon as we get the hypertension under control, we will be able to get an FCE and assign a final partial permanent impairment rating."

A left knee MRI was taken on October 22, 2004, with the following impression: "Small horizontal signal focus in the medial meniscus and prominent new joint effusion noted but with no frank meniscus tear identified."

Dr. Clark reported on January 6, 2005:

Roy is f/u for RSD, L ankle, following a sprain. He says he is much better now. He never did keep

his appts, however, for his FCEs. He never checked in to make them. We have scheduled it for today and he is going to have it done at 1:00. If this is normal or within 70% of normal, I am going to release his ankle and let him RTW.

He is also concerned about his L knee, where we have a confirmed medial meniscus tear. He says it is related to the original injury. We will go ahead and treat this. We will have to make a decision on whether this is Workers Compensation related or not.

EXAM: With respect to his ankle, there is no swelling, no discoloration. His motion is excellent. I think that his clinical exam is basically normal....I did inject the knee today with 1 cc of Dexamethasone, as he also has rather marked, antecedent arthritis in the medial compartment. This has all been confirmed by an MRI.

The parties stipulated that temporary total disability compensation was paid through January 16, 2005.

The claimant testified, "I got cleared to go to Dr. Baskin, I believe, it was - I think it was November - the first part of November in '05....In the report that I received from workers' comp it stated that I had a change of physicians." Dr. Barry D. Baskin began treating the claimant on November 1, 2005. Dr. Baskin planned to get a triple phase bone scan, and he gave the claimant medication for high blood pressure.

A three-phase bone scan of feet was taken on November 7, 2005, with the following impression:

1. Allowing for limitations of the study, no abnormal 3-phase activity correlating to the ankles or feet.
2. Delayed feet and ankle activity suggest degenerative and/or post-traumatic changes.
3. If there is a discrepancy in the early phases of imaging, the region of the left ankle is more photogenic, this may relate to soft tissue swelling.
4. Suspected degenerative changes in the left knee.

The claimant followed up with Dr. Baskin on November 15, 2005:

The triple phase bone scan reveals him to have some degenerative or post traumatic changes in the left ankle. There is no evidence of sympathetic pain. He has degenerative changes, it appears, in the left knee. He still complains of left knee pain and all he has had is an injection in the knee previously. The knee needs definitive treatment. His ankle would benefit from a look by another orthopedic foot specialist such as Dr. Steve Kulik....

Mr. Rainey's case needs a little bit more work. He needs to have an MRI, again, of his left knee to ascertain whether he still has cartilage damage. He has pain in the knee and the ankle. He needs a referral to Dr. Kulik to better evaluate the ankle....

I am going to make these referrals and we will get approval through the Worker's Comp Commission. Once the MRI has been done of the knee if he does not have anything that requires discectomy or arthroscopic procedure I will reinject his knee with some steroid and I think he would benefit from good aggressive rehab. The ankle needs to be evaluate (sic) further as well. He has degenerative changes there. He needs to be an (sic) on anti-inflammatory but unfortunately with his blood pressure as high as it is, an anti-

inflammatory would drive it even high (sic) and I am afraid he will have a stroke....

The claimant followed up with Dr. Baskin on November 29, 2005:

Since I saw Roy last, we did get an MRI of the left knee. This MRI shows him to have a severe intrasubstance degenerative change to the posterior horn of the medial meniscus. There was what appeared to be gross tear of the meniscus. There is a moderate size joint effusion without gross synovial thickening or loose body. There was a partial tear or strain of the anterior medial bundle of the anterior cruciate ligament. There was grade II to III chondromalacia to the weight bearing surface of the femoral condyle of the patella without gross full thickness defect identified. Roy is still having pain in the knee. He still has pain in the ankle but the Oxycontin has helped him quite a bit....He has crepitus in the knee, although the effusion seems to be down somewhat....Mr. Rainey needs to be seen for another opinion regarding the left ankle. I think that he was given maximum medical improvement on the ankle probably sooner than he was ready to go back to work and I also feel like based on his history that he injured the knee at the same time that he injured the ankle....It would appear that the knee and the ankle injury were at the same time....Mr. Rainey needs to be seen by an orthopedic foot specialist and I would suggest Dr. Steve Kulik and also he need (sic) to be seen by an orthopedic knee surgeon and I would refer him to the same group where he could see Dr. Gordon Newbern or Dr. Lowry Barnes, both excellent orthopedists pertaining to knee problems. I am going to make that referral and have discussed this again with Mr. Davis and he will pursue a hearing regarding continued maintenance of Mr. Rainey's case and medical treatments....

Dr. Baskin signed a Physician's Statement on December 6, 2005 and wrote, "I do not feel he is healed from his ankle or knee injuries." Dr. Baskin also wrote, "He could work Lt duty. No prolonged standing or walking. May need FCE to determine abilities."

Dr. Baskin noted on January 16, 2006:

Roy is in for follow up today. He is out of his pain medication. He is scheduled to see the doctors at Arkansas Specialty Orthopedics for his knee and his ankle in October. He is still having significant pain in the left ankle. He has a cold left foot. His blood pressure medicine has run out from the samples that I gave him and his blood pressure today is 118/110....

His left foot is dusky colored and I cannot palpate pulses....

Mr. Rainey has severe problems with his left knee and a moderate size joint effusion was noted today. Partial tear of the ACL, grade II to III chondromalacia. Tear of the posterior horn of the medial meniscus on the left and persistent left ankle pain. Elevated blood pressure....

I have referred him to the Star City County Health Clinic. I have told him that we needed to get ankle brachial indices to see if he has a vascular problem in the left leg. We will get that set up today....

Dr. C. Lowry Barnes examined the claimant on February 17, 2006:

On examination today, he has only a 25-degree arc of motion in his left knee. There is a mild effusion. His quadriceps are intact. There is atrophy of his quadriceps.

Radiographs do not show acute bone abnormality and only mild demineralization of the periarticular region.

I do not have a good explanation for his symptoms. Even with his documented MRI findings, he should be able to bend his knee. This may be related to reflex sympathetic dystrophy.

We are going to obtain a triple phase bone scan of his left knee and make further recommendations to him.

The claimant followed up with Dr. Baskin on March 9, 2006:

He saw Dr. Lowry Barnes on referral for me to evaluate me (sic) to evaluate his knee. Dr. Barnes ordered a triple phase bone scan. I do not have the results of that. He has further suggested referral to Dr. Reginald Rutherford and has made that referral. The ankle brachial indices were inconclusive....

His left knee still has crepitus. He has pain with any active or passive range of motion. The left leg and foot are both cold....

Mr. Rainey is a difficult case. He had an injury to his ankle with a severe sprain verses (sic) a fracture. He also injured his knee. He has continued to have problems with the knee and foot. He possibly has reflex sympathetic dystrophy. He does have a meniscal tear in the left knee and also a partial tear of the anterior cruciate ligament and grade II to III chondromalacia. His knee will probably need to be at least scoped. Mr. Rainey is still off work....

Dr. Reginald J. Rutherford provided a Consultation Report on March 16, 2006:

Mr. Rainey is seen regarding possible RSD left leg....

Clinical examination revealed the legs to be normal in appearance. There was no swelling or deformity either knee or either ankle. There was no contactual hypersensitivity, altered temperature to touch, altered hair or nail growth or altered sweat pattern noted left lower extremity....There was mild atrophy noted of the left thigh muscle. Manual muscle testing revealed giveaway pattern weakness all muscle groups left lower extremity....

Mr. Rainey's clinical picture does not suggest RSD. Imaging to this point reveals evidence for degenerative change left knee. Neurological examination demonstrates evidence for functional overlay. EMG/Nerve Conduction Study of the lower extremities and MRI imaging of the lumbar spine is recommended to insure that there is no evidence for lumbar radiculopathy contributory to present complaints masked by functional overlay as described above. This will be left to Dr. Baskin's hands. Follow up with myself is not required in that there is no evidence for RSD.

A pre-hearing order was filed on April 10, 2006. The parties stipulated that "medical benefits were paid." The claimant contended that "on January 21, 2004, he sustained compensable injuries to his left leg while performing duties for respondent employer. Claimant contends he is entitled to reasonable and necessary medical treatment for his knee injury and is entitled to reasonable and necessary continued medical treatment for his ankle injury. Claimant contends that he is still in a healing period and totally disabled from work and is entitled to temporary total disability benefits for the knee injury, as well as additional TTD

benefits for the ankle injury. Claimant contends that respondents have controverted this claim in its entirety and that claimant's attorney is entitled to a controverted attorney's fee."

The respondents contended that they had "not controverted the compensability of the claim for the ankle injury and that all TTD benefits and medical benefits to which claimant is entitled have been paid for that injury, as claimant's healing period ended on January 17, 2005. Respondents, however, do controvert the compensability of any alleged knee injury having occurred on January 21, 2004."

The parties agreed to litigate the following issues: "Claimant's entitlement to additional benefits for the ankle injury, as well as compensability of an alleged knee injury that claimant alleges also occurred on January 21, 2004, and claimant's entitlement to benefits for that injury."

Dr. Baskin noted on April 18, 2006, "His left leg is without temperature change compared to the right side. There is crepitus in the knee. He has motion in the knee and what appears to be meniscal instability with McMurray's testing. He has very minimal swelling around the left knee....He walks with a cane....Mr. Rainey has severe left

knee and left ankle pain. Questionably some neuropathic pain versus radicular pain. He denies significant back pain....I think an MRI of the lumbar spine is reasonable and I will order that."

An MRI of the claimant's lumbar spine without contrast was taken on April 25, 2006: "53-year-old male with low back pain radiating into the bilateral lower extremities left greater than right. No history of trauma or surgery given."

...

IMPRESSION:

1. Grade I-II anterolisthesis of L5 on S1 secondary to bilateral pars defects, as above. There is severe foraminal narrowing bilaterally at the L5-S1 level with patent central canal.
2. Moderate central stenosis from eccentric annular bulge and osteophytic ridging to the left at the L2-3 level. Mild to moderate foraminal narrowing is seen bilaterally.
3. Small central to right paramedian disc protrusion with mild stenosis at the L1-2 level. The foramen are patent.
4. Mild eccentric bulge to the right with mild stenosis at the 3-4 level.
5. Motion-compromised examination.

Dr. Baskin gave the following impression on May 16, 2006: "Mr. Rainey has had a work related injury with a fall and subsequent left leg pain and some back pain. It is my impression that his problems are due to his work injury....I am going to set him up for some epidural steroid in the L5-

S1 level. In addition, I am going to get him in to see Dr. Saer, Bruffett, Peak, McCarthy. I will see him back in follow up once that evaluation is done."

Dr. Baskin signed another Physician's Statement on June 14, 2006. Dr. Baskin indicated that the healing period for the left ankle injury ended on May 16, 2006. Dr. Baskin indicated that the claimant had sustained a 21% permanent impairment rating for the left ankle/foot.

Dr. Baskin also signed a Physician's Statement pertaining to the claimant's left knee. Dr. Baskin wrote that the claimant "will likely need surgery. MMI will be after surgery on L knee." Dr. Baskin opined that the claimant had sustained a 27% permanent impairment rating for the left knee/lower extremity. Dr. Baskin checked "Yes" with regard to the statement, *"Within a reasonable degree of medical certainty, the Major Cause (51% or more) of Roy Rainey's left knee injury on 1/21/04 is his work related accident."*

A hearing was held on June 28, 2006. At that time, the parties agreed to stipulate that the respondents accepted the impairment rating for the claimant's left ankle assigned by Dr. Baskin.

The claimant testified:

Q. What is wrong with you today?

A. Today what is wrong with me, my ankle is paining. It's hurting real bad. It stays swollen all the time. My feet stays cold. My knee is swollen - the cartilage in it....

Q. And you believe that on the day of injury you hurt your ankle and your knee; is that correct?

A. Right. My ankle, my knee and also my back....And I filled out a report to that effect....

Q. Do you think you are able to return to work today?

A. No, ma'am. I'm not.

Q. And why is that?

A. Because of my injuries that I have to my ankle, my knee and also my back....

Q. Did anybody at the Arkansas Department of Correction ever offer you any kind of light duty work?

A. No, ma'am. I was terminated before I was offered any type of work.

The administrative law judge found, in pertinent part:

3. Claimant sustained a compensable injury to his left ankle on January 21, 2004.

4. Claimant has been paid all benefits to which he is entitled in connection with the compensable injury to his left ankle on January 21, 2004, including temporary total disability benefits through January 17, 2005 (the end of claimant's healing period), reasonable and necessary medical expenses, and permanent partial disability

benefits based on the impairment rating of 21% to the left ankle which has not been controverted by the respondents.

5. Claimant has failed to establish by a preponderance of the evidence that he had a compensable injury to his left knee or back on January 21, 2004.

6. Claimant has failed to establish by a preponderance of the evidence that he is entitled to additional temporary total disability or medical benefits in connection with his compensable injury to his left ankle on January 21, 2004.

The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Temporary Disability

An employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability compensation during his healing period or until he returns to work. See, Ark. Code Ann. §11-9-521(a); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). Whether an employee's healing period has ended is a question of fact for the Commission. *Armstrong, supra*, citing *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

In the present matter, the administrative law judge found that the claimant failed to prove he was entitled to

additional temporary total disability compensation. The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable ankle injury on January 21, 2004. Dr. Whipple and Dr. Clark determined that the claimant had sustained a left ankle sprain. The respondents began paying temporary total disability compensation on January 23, 2004. Dr. Clark at first thought that the claimant may have sustained a medial malleolar fracture, but Dr. Clark noted on March 16, 2004 that a CT scan confirmed there was not a fracture. Dr. Clark treated the claimant conservatively and subsequently noted that physical therapy was improving the claimant's condition. Dr. Clark opined that the claimant may have sustained a reflex sympathetic dystrophy as a result of the left ankle sprain.

The claimant testified that he was terminated from his employment on May 28, 2004. Dr. Clark reported on January 6, 2005 that the claimant was "much better now." Dr. Clark found no swelling and no discoloration with respect to the claimant's ankle and stated, "I think that his clinical exam is basically normal." The respondents paid temporary total disability through January 16, 2005.

The Full Commission finds that the claimant reached maximum medical improvement for his compensable left ankle injury no later than January 6, 2005, on which date Dr. Clark found that the claimant's clinical examination was normal. We recognize Dr. Baskin's opinion in November 2005 that the claimant "was given maximum medical improvement on the ankle probably sooner that he was ready to go back to work...." 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). It is within the Commission's province to determine what medical evidence is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

In the present matter, the Full Commission finds that the opinions of Dr. Clark are entitled to greater weight than the opinions of Dr. Baskin. Dr. Clark, the treating orthopaedic specialist, determined on January 6, 2005 that the claimant's clinical examination was normal. Dr. Barnes noted in February 2006 that radiographs showed no bony acute abnormality, and Dr. Barnes could not explain the claimant's symptoms. Although Dr. Baskin had determined in January 2006 that the claimant's left foot was cold, Dr. Rutherford

examined the claimant in March 2006 and found both of the claimant's legs to be normal, with no swelling or altered temperature. Dr. Rutherford could find no basis for reflex sympathetic dystrophy in the claimant's left lower extremity but did find neurological evidence for functional overlay. By April 2006, Dr. Baskin was unable to find any temperature change in the claimant's left leg.

The Full Commission finds that the claimant reached the end of his healing period for the compensable left ankle injury no later than January 6, 2005, the date that Dr. Clark found the claimant's clinical examination to be normal. The respondents continued to pay temporary total disability compensation through January 16, 2005. Since the evidence demonstrates that the claimant reached the end of his healing period no later than January 6, 2005, the claimant did not prove he was entitled to additional temporary total disability. *Armstrong, supra*. The decision of the administrative law judge is affirmed.

B. Compensability

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which

requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16).

The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In the present matter, the administrative law judge found that the claimant did not prove he sustained a compensable injury to his left knee or back on January 21, 2004. The Full Commission affirms this finding.

The parties stipulated that the claimant sustained a compensable ankle injury on January 21, 2004. The claimant testified that he tripped on a rug and fell on his left side. The claimant testified, "I broke my ankle and hurt my left side and back and all." The medical evidence does not corroborate the claimant's testimony that he injured his

left knee and back on January 21, 2004. Dr. Whipple noted on January 22, 2004 that the claimant had twisted his ankle. According to Dr. Whipple's notes, the claimant did not report an injury to any anatomic region other than the ankle. Dr. Whipple assessed a sprain to the claimant's left ankle.

The claimant began treating with Dr. Clark on February 25, 2004. Dr. Clark determined that the claimant had sustained an ankle sprain. Dr. Clark, like Dr. Whipple, did not state that the claimant had injured his knee or back. On September 2, 2004, nearly eight months after the compensable left ankle injury, the claimant informed Dr. Clark for the first time that the claimant was experiencing pain and soreness in his left knee. An x-ray showed osteoarthritis in the claimant's left knee which Dr. Clark found to be "coincidental." The Full Commission recognizes that Dr. Clark reported a medial meniscus tear in the claimant's left knee. Nevertheless, Dr. Clark did not find there was a causal connection between the meniscus tear and the claimant's January 21, 2004 ankle sprain. Nor is there any other evidence of record establishing such a causal connection.

The Full Commission finds that the claimant did not prove he sustained any physical harm to his left knee as a result of the January 21, 2004 compensable injury to the claimant's left ankle. Nor did the claimant establish a compensable injury to his left knee by medical evidence supported by objective findings.

The Full Commission also finds that the claimant did not prove he sustained a compensable injury to his back. The parties stipulated that the claimant sustained a compensable ankle injury on January 21, 2004. There is no probative evidence of record demonstrating that the claimant also injured his back on that date. The record does not corroborate the claimant's testimony that he injured his back on January 21, 2004. On April 18, 2006, Dr. Baskin recommended an MRI of the claimant's lumbar spine, even though the claimant denied significant back pain. It was noted when the MRI was taken on April 25, 2006, "53-year-old male with low back pain radiating into lower extremities left greater than right. No history of trauma or surgery given." There was no indication at that time that the claimant had sustained any physical harm to his back.

The impression from the lumbar MRI showed anterolisthesis and foraminal narrowing at L5-S1; central

stenosis from an annular bulge and osteophytic ridging at L2-3; a small central to right paramedian disc protrusion with mild stenosis at L1-2; and a mild eccentric bulge to the right with mild stenosis at the 3-4 level." The preponderance of evidence does not demonstrate that any of these conditions shown on MRI were causally related to an accidental injury to the claimant's back on January 21, 2004. There are otherwise no objective medical records establishing a compensable injury to the claimant's back. Nor does the record show that the claimant sustained any physical harm to his back as a result of the January 21, 2004 injury to his left ankle.

C. 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).

In the present matter, the administrative law judge found that the claimant did not prove he was entitled to additional medical treatment. The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable ankle injury on January 21, 2004. We have determined *supra* that the claimant did not sustain a compensable injury to his knee or back. Dr. Whipple found on January 22, 2004 that the claimant has sustained a sprain to the left ankle. Dr. Clark treated the claimant for a Grade II ankle sprain and noted from a CT scan that the claimant had not sustained an ankle fracture. Dr. Clark treated the claimant conservatively and the claimant's treatment included physical therapy. By January 6, 2005, nearly one year after the compensable injury, Dr. Clark noted that there was no swelling or discoloration with respect to the claimant's ankle. Ankle motion was excellent and the clinical examination was normal.

The Full Commission has determined *supra* that the claimant reached the end of his healing period no later than January 6, 2005. The claimant began treating with Dr. Baskin on November 1, 2005. The claimant testified that he obtained a change of physician to Dr. Baskin. Dr. Baskin initiated a new course of medical treatment, but the record

does not demonstrate that the treatment arranged by Dr. Baskin was reasonably necessary in connection with the claimant's compensable injury. The record does not support Dr. Baskin's statement in November 2005 that the claimant had not yet reached maximum medical improvement. The Full Commission finds that the opinion of Dr. Clark, that the claimant had reached maximum medical improvement, is entitled to more weight than the opinion of Dr. Baskin.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he was entitled to any additional temporary total disability compensation for the compensable left ankle injury. The Full Commission finds that the claimant did not prove he sustained a compensable injury to his left knee or back. We find that the claimant did not prove he was entitled to additional medical treatment. The Full Commission therefore affirms the findings of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion, which finds that the claimant failed to show that he sustained a compensable back or knee injury and that the claimant is not entitled to additional medical or temporary total disability benefits in relation to his admittedly compensable ankle injury. After a de novo review of the record, I find that the Majority errs as a matter of law with regard to their findings regarding whether the claimant is entitled to additional temporary total disability benefits or medical benefits. I further find that the claimant has met his burden of proof in showing he sustained compensable injuries to his knee and back. Accordingly, I must respectfully dissent.

The claimant, who had worked for the respondent employer for 26 years, testified that his injury occurred when he tripped over a rug, causing him to strike the left side of his body. No one witnessed the incident, but the claimant, due to his injury, was unable to walk. Another officer saw the claimant laying

on the floor and they sent assistance for the claimant. The claimant continued to work until a relief worker could be located. At that time he was transported to the hospital.

On January 22, 2004, Paul Whipple, D.O. treated the claimant. The claimant complained of pain in his left ankle and swelling, especially with weight bearing. Whipple noted the claimant only had minimal edema over the medial and lateral malleolus of the left ankle. X-rays were taken and the claimant was diagnosed with having an ankle sprain. The claimant was fitted for an air gel stirrup splint and given pain medication. He was also advised to use crutches until he could bear weight with no pain. He was also noted to have mildly elevated blood pressure and told to return so his blood pressure could be monitored. Finally, he was instructed to return if he did not improve.

On February 25, 2004, the claimant was treated by Dr. Charles A. Clark. The claimant continued to complain of swelling and pain. Dr. Clark indicated, "I have looked at his radiographs today and these appear to have a medial malleolar fx, buckle type." He further opined, "My impression is that he had an ankle sprain on

the L, probably Grade II, and that he had an associated buckle fx of the medial malleolus that appears to be healing in anatomic position and alignment." Dr. Clark placed the claimant in a 3-D cast brace and recommended he have a CT scan. He also instructed the claimant to return in three weeks.

On March 16, 2004, the claimant returned to Dr. Clark and reported ongoing swelling. Dr. Clark indicated that the CT returned as negative for a fracture. He opined that the claimant appeared to be developing secondary RSD. He also placed the claimant in an air splint and referred him for therapy for ankle rehabilitation. He noted, "Hallmarks include at this point hypesthetic pain, persistent swelling and discomfort, and coolness. He has good distal pulses."

On April 6, 2004, Dr. Clark noted that the claimant continued to present with symptoms, including posterior tibial pain. He noted the claimant was still wearing his 3-D cast and noted the claimant had not attended therapy. He gave the claimant injections to control the pain and inflammation of his ankle and referred the claimant for physical therapy. On April 27, 2004, the claimant was noted to have ongoing

complaints of swelling and pain. Dr. Clark indicated that at the time no swelling was observed, but that his foot was moist and cool compared to the other foot. He also indicated that physical therapy appeared to be helping and referred the claimant for intensified physical therapy. He also placed the claimant in an air splint and instructed him to return in three weeks.

On May 25, 2004, Dr. Clark indicated the claimant was improving and ordered the claimant into an air shoe. He also referred the claimant for additional physical therapy. He noted that he was placing the claimant on Neurontin, "for his persistent sympathetic hypersensitivity in the L leg. . .". He instructed the claimant to return in three weeks. On June 15, 2004, Dr. Clark indicated the claimant's swelling had gone down. He indicated the claimant was having side effects from the Neurontin and placed him on Bextra. He also indicated that the claimant was to continue therapy for strengthening and that he had improved about 50%.

On September 2, 2004, Dr. Clark indicated the claimant was markedly better and that the claimant believed he could return to work if the FCE indicated he had enough strength. He also noted the claimant had

knee pain and opined that the claimant's radiographs showed grade 3 osteoarthritis which he did not believe to be related. He injected the claimant's knee with Dexamethasone and continued his Bextra. He also indicated the claimant was to be fitted for custom shoes and that he was arranging for an FCE.

On October 14, 2004, the claimant returned. Dr. Clark noted the claimant had been unable to have a FCE because of high blood pressure. He indicated that he was going to inject the claimant's left knee again. He also noted, "He also is becoming fairly deconditioned on the L side. He still has some stiffness on exam, especially in dorsiflexion. He still has hypersensitivity. He still walks with a pretty good limp due to the ankle." He referred the claimant for additional therapy for, "strengthening, motion and modalities over the next 6 weeks." He also indicated that he was going to refer the claimant for an MRI of his knee and have him make an appointment for evaluation of his blood pressure. He also indicated that he anticipated being able to assign an impairment rating after he had an FCE.

The claimant returned again on November 29, 2004, and was noted to be wearing his air splint. Dr. Clark indicated the claimant's strength had returned and indicated that the claimant's ankle appeared to be stable. Dr. Clark referred the claimant for FCE testing and indicated he would need to return. On October 22, 2004, an MRI was performed and revealed, "Small horizontal signal focus in the medial meniscus and prominent new joint effusion noted but with no frank meniscus tear identified."

On January 6, 2005, Dr. Clark noted that the claimant returned wearing his air splint. He noted the claimant had not kept his appointments for his FCE. The claimant was scheduled one for that day at 1:00 and Dr. Clark opined that if the claimant's ankle was at 70% of normal, he would be released and returned to work. Dr. Clark also noted the claimant had a confirmed meniscal tear in his knee and indicated that he injected the knee again. He also indicated the claimant had arthritis in the medial compartment of the knee.

The claimant testified that he had never suffered from high blood pressure prior to his injury. He indicated that he had previously attempted to go to

all scheduled FCEs and that his blood pressure was too high. He also said that Dr. Clark told him that his blood pressure elevation was due to pain but that the claimant sought treatment from Dr. Atkins for his blood pressure. He said that on January 6, 2005, he presented for an FCE and was told that his blood pressure was too high. He was also apparently told that they had been using too small a cuff while taking his blood pressure, thus causing it to elevate. The claimant said that he attempted to return for another FCE but that he had been cut off from benefits at that time.

The claimant was denied subsequent benefits and requested and was granted a change of physician to Dr. Barry Baskin. On November 1, 2005, Dr. Barry Baskin noted that the claimant's left foot and leg were cold up to the knee. He also noted the claimant had decreased range of motion in his left ankle and that his left knee was swollen along the medial joint line. He further indicated the claimant had, "some dystrophic nails," and that he had hyperesthesias over the medial left ankle and walked with an antalgic gait. He further noted the claimant had high blood pressure for which he could not be treated due to a lack of insurance and money. Dr.

Baskin gave the claimant samples of blood pressure medication and referred the claimant to have a triple phase bone scan. He told the claimant to return in two to three weeks.

The bone scan was performed and revealed, "Delayed feet and ankle activity suggest degenerative and/or post traumatic change." The report further indicated, if there is a discrepancy in the early phases of imaging, the region of the left ankle is more photopenic, this may relate to soft tissue swelling." Finally, degenerative changes and increased signal activity were noted in the left knee.

The claimant returned on November 15, 2005 and Dr. Baskin indicated that the claimant's bone scan showed degenerative and post traumatic changes in the ankle and degenerative changes in the knee. He further opined the claimant needed to see an orthopedic foot specialist regarding his ankle. He further noted the claimant continued to have high blood pressure. He recommended the claimant have an MRI of the knee and indicated that the claimant would need to have additional evaluation for the ankle. He opined the claimant would benefit from aggressive therapy of his

foot and instructed the claimant to return in two to three weeks.

On November 29, 2005, Dr. Baskin indicated,

There is a moderate size joint effusion without gross synovial thickening or loose body. There was a partial tear or strain of the anterior medial bundle of the anterior cruciate ligament. There was grade II to III chondromalacia to the weight bearing surface of the femoral condyle of the patella without gross synovial thickening or loose body. There was a partial tear or strain of the anterior medial bundle of the anterior cruciate ligament. There was grade II to III chondromalacia to the weight bearing surface of the femoral condyle of the patella without gross full thickness defect identified.

He further indicated,

Mr. Rainey needs to be seen for another opinion regarding the left ankle. I think that he was given maximum medical improvement on the ankle probably sooner than he was ready to go back to work and I also feel like based on his history that he injured the knee at the same time that he injured the ankle.

Finally, Dr. Baskin indicated that the claimant's elevated blood pressure appeared, at least in part, to be due to severe pain in his lower left extremity.

On December 2, 2005, Dr. Baskin indicated that the claimant had not fully healed from his ankle or knee injury and released him to light duty work. Dr. Baskin treated the claimant on January 16, 2006 and noted, "His left foot is dusky colored and I cannot palpate pulses. I did not get a good dorsalis pedis pulse or a posterior tibial pulse." The claimant was also noted to have a cold foot.

On February 17, 2006, Dr. Lowry Barnes treated the claimant and noted mild effusion of the knee, loss of range of motion, and atrophy in the quadriceps. He indicated that despite the findings of the claimant's MRI, he should be able to bend his knee. He indicated the claimant's problems might be related to RSD.

On March 9, 2006, the claimant returned to Dr. Baskin and was noted to still have crepitus in his left foot and a cold left leg and foot. Dr. Baskin indicated that the claimant suffered from a meniscal tear in his knee and a partial tear of his ACL and grade II to III chondromalacia. He indicated the claimant's knee would likely need to be scoped and that the claimant was off work.

On March 16, 2006, the claimant was treated by Dr. Rutherford. He indicated that the claimant appeared to be negative for RSD and recommended the claimant have an MRI of his lumbar spine to see if there was evidence of lumbar radiculopathy related to the claimant's symptoms. The claimant returned to Dr. Baskin, who indicated the claimant still had crepitus of the knee and decreased range of motion in his ankle. He agreed that Dr. Rutherford's recommendation for the MRI was reasonable.

The MRI was performed and gave the following impression,

1. Grade I-II anterolisthesis of L5 on S1 secondary to bilateral pars defects, as above. There is severe foraminal narrowing bilaterally at the L5-S1 level with patent central canal.
2. Moderate central stenosis from eccentric annular bulge and osteophytic ridging to the left at the L2-3 level. Mild to moderate foraminal narrowing is seen bilaterally.
3. Small central to right paramedian disc protrusion with mild stenosis at the L1-2 level. The foramen are patent.
4. Mild eccentric bulge to the right with mild stenosis at the 3-4 level.

On May 16, 2006, the claimant presented for treatment again with Dr. Baskin. Dr. Baskin indicated that while the claimant was initially diagnosed with RSD, his symptoms appeared to be related to the defects in the claimant's spine and nerve root compression. Dr. Baskin opined that the claimant's injuries were related to his work injury. He further referred the claimant for epidural steroid shots. On June 14, 2006, Dr. Baskin opined that the claimant's injuries were related to his work accident and indicated that he could give a tentative rating for the claimant's ankle and knee, but that he could not be placed at MMI until his knee had been treated surgically.

The Majority denies the claimant temporary total disability benefits on the basis that he reached the end of his healing period as of January 6, 2005. In supporting this argument, the Majority finds that the claimant's ankle was "basically normal" on that date. They also assert that the opinion of Dr. Clark is entitled to more weight than that of Dr. Baskin and note that when Dr. Rutherford examined the claimant in March 2006 the claimant's foot appeared to be normal. In my

opinion, the Majority has erred as a matter of fact and law in their analysis.

In Castleberry v. Elite Lamp Company, 69 Ark. App. 359 (2000), 13 S.W.3d 211, the Court of Appeals stated,

The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. Id. Whether an employee's healing period has ended is a factual determination to be made by the Commission. Ketcher Roofing Co. v. Johnson, 50 Ark. App. 63, 901 S.W.2d 25 (1995). However, we do not require objective evidence that the healing period continues. Graham, supra.

The Majority finds that the claimant's healing period ended as of January 6, 2005, because the claimant's ankle was noted to be "basically normal" at that time and because Dr. Rutherford noted no abnormalities. I find that the Majority has erred in finding that the claimant is required to show ongoing objective findings of an injury to remain in his healing

period. I find that these conclusions are in direct contrast with the findings of Castleberry and Graham, which explicitly indicate that objective findings are not needed in order for a healing period to continue.

Second, I disagree with the Majority's finding that the claimant's ankle was normal on January 6, 2005. With regard to the January 6, 2005, doctor's visit, I note that Dr. Clark indicated that the claimant's ankle was, "basically normal"; however, Dr. Clark still recommended the claimant have an FCE to see if the claimant's ankle strength had returned. Certainly this is indicative that Dr. Clark believed the claimant needed an FCE to see if he had healed to the fullest extent possible.

Additionally, I find that the Majority's reliance on the physical findings of Dr. Clark on January 6, 2005 and the one visit with Dr. Rutherford to be misplaced as they are being considered in a vacuum. While the claimant is not required to show objective findings as evidence that his healing period continues, the claimant continued to present with objective signs as noted by Dr. Baskin and as shown by the bone scan.

Specifically, I note that on January 16, 2006, Dr. Baskin noted the claimant's foot was dusky colored and that he could not palpate pulses. He also noted the claimant had a cold left foot. Dr. Baskin again noted objective findings on March 9, 2006, when indicating that the claimant's foot and leg were cold. Additionally, the claimant's bone scan showed delayed feet and ankle activity that would be consistent with post traumatic change and swelling. I also note the claimant was repeatedly noted to have reduced range of motion in his ankle. Furthermore, I note that even though Dr. Rutherford did not note such abnormalities, even he noted that the claimant had atrophy in his thigh. Certainly, these findings are consistent with an ankle that has not gained full strength or range of motion.

Furthermore, I find that the Majority errs in substituting its own opinion that the claimant healed as of January 6, 2005, when, in fact, Dr. Clark had not released the claimant at that time. It appears that the Majority is finding that Dr. Clark intended to release the claimant as being at MMI on January 6, 2005. That is not correct. Rather, Dr. Clark had indicated that

the claimant would need to have an FCE to see if his condition and strength were improved up to 70%. However, due to having high blood pressure, which appears to be due to the claimant's pain, he was unable to have the test. This was complicated by the respondent's refusal to continue treating the claimant. Due to the respondent's prematurity in cutting him off, the claimant had to seek additional care after getting a change of physician. In December 2005, Dr. Baskin specifically opined that the claimant's ankle was not fully healed and that he would benefit from aggressive therapy. Furthermore, additional testing was performed regarding the claimant's RSD to see if he needed additional treatment.

Furthermore, the Majority errs in asserting its own opinion in place of that of the two other treating physicians in the record. Dr. Clark indicated the claimant needed an FCE to determine if he had gained enough strength before being released. Likewise, Dr. Baskin subsequently noted objective findings to the claimant's ankle and recommended additional treatment. Yet, the Majority asserts its own opinion that the claimant had reached MMI. While certainly the

Commission has the ability to weigh medical evidence, the Courts have previously indicated that they cannot arbitrarily ignore medical evidence or the testimony of any witness. Crow v. Weyerhauser Co., 46 Ark. App. 295, 880 S.W.2d 320 (1994). I believe that the Majority has arbitrarily ignored the opinion of Dr. Baskin and improperly assesses the opinion of Dr. Clark. I also do not believe the Commission has provided any justifiable reason to assign the claimant a MMI date in contradiction to that of his two treating physicians.

In my opinion, this case is similar to that of Bingle v. Quality Inn, Ark. App. 10-11-06 (CA 04-1142). In Bingle, the Court of Appeals indicated that the Commission cannot use a "constructive release" to place a claimant at the end of their healing period. In Bingle, the claimant underwent surgery on her knee on September 4, 2001. The medical records indicated that her healing period was expected to be four to six weeks long and relied on testimony from a doctor that the time period of July 13, 2001 to August 14, 2001 would closely correspond to that period of time. In reversing the decision of the Commission, the Court of Appeals noted that Dr. Bryant had issued an opinion that the claimant

did not reach MMI until April 15, 2003, and indicated that the Commission erred in dismissing that opinion. The Court further noted the claimant was still symptomatic after July 13, 2001, and that there was a delay in her treatment due to the respondent's failure to timely pay her medical bills. Finally, the Court indicated that,

Neither the Commission nor this court has the authority to extend or limit that coverage by finding a constructive release when the statute specifically requires a medical opinion regarding impairment and compensability to be within a reasonable degree of medical certainty. Without this authority the Commission's substitution of the medical opinion with its own finding of a constructive release was arbitrary.

In this instance, it is clear that the Majority effectively found that Dr. Clark's last visit was tantamount to a constructive release. This was in error. Dr. Clark repeatedly indicated the claimant would be released if his FCE showed his strength had returned to 70%. The claimant was also instructed to return to Dr. Clark after that test to see if he could be returned to work. Certainly, the claimant's release was predicated on the results of that test, which were

never performed due to his high blood pressure, which was due, at least in part, to his injury.

Just as in Bingle, the claimant in the present case was not subject to any medical opinion indicating he was out of his healing period. Furthermore, just as in Bingle, the claimant continued he remained symptomatic and continued receiving treatment after the respondents stopped paying for treatment. The medical records corroborate the claimant's testimony that he was symptomatic, in that he was noted to have coldness and discoloration of his left foot. He was also noted to have a decreased range of motion and to need aggressive therapy of his ankle. Furthermore, the only medical opinion in the record that actually indicates when the claimant reached MMI is that of Dr. Baskin, who issued a note that the claimant reached MMI on May 16, 2006. Just as in Bingle, I find that to dismiss the opinion of Dr. Baskin and assume the claimant would have been released by Dr. Clark after his FCE would be in error. Likewise, as previously discussed, the Majority simply has no legal basis to find that the claimant is required to show objective findings to remain in his healing period, much less to declare the claimant at MMI when

the claimant, did, in fact, continue to present with objective signs of his injury and ongoing need for treatment.

Finally, I also find that this case is similar to the case of Gansky v. Hi-Tech Eng'g, 325 Ark. 163, 924 S.W.2d 790 (1996). In Gansky, the claimant was 34 years old. He had a prior injury to his low back which resulted in a 5% impairment rating. The claimant then began working for the respondent and was injured. He underwent an MRI which revealed that he had bulging discs. Dr. Gansky indicated the claimant had a cervical and lumbar herniated disc with nerve root compression, but later indicated that the claimant did not have a "significant disc herniation." He was referred to a neurosurgeon and prescribed physical therapy. The physical therapist released the claimant from care, indicating that the claimant's symptoms had resolved except for a, "minimal amount of soreness in the lumbar region" and a "minimal headache." The claimant also underwent other testing which his neurosurgeon described to be "suspected cervical strain syndrome." The neurosurgeon also noted the claimant's condition was not resolving satisfactorily at his last visit. The

claimant returned to work but developed neck and back pain. In February 1993, the claimant returned to the neurosurgeon, who recommended he undergo an FCE. At that point the respondents cut the claimant off from further treatment.

On appeal, the claimant argued that the Commission and the Court of Appeals erred in finding he was not entitled to additional medical or temporary total disability benefits. In reversing the Court of Appeals and the Commission, the Supreme Court of Arkansas indicated that the Commission erroneously discounted the neurologist's opinion that the claimant needed an FCE. The Court further noted that Dr. Gocio's opinion was based on a final assessment from that FCE. Finally, the Court also noted that the Commission had erroneously failed to give appropriate weight to the claimant's ongoing symptomology. Id.

Likewise, in the present case, it is evident that the claimant's release was contingent on the results of his FCE. That was never performed, therefore, the claimant's healing period did not end. Furthermore, the claimant continued to report that he was symptomatic and receive treatment and even continued

to show objective signs of his injury. Therefore, it is clear that under the rationale of Gansky, the claimant has shown that his healing period extended past January 6, 2005.

Next, I address the claimant's entitlement to additional medical benefits for his ankle. The Majority finds that the claimant is not entitled to additional medical benefits. This is based on the finding that the claimant's ankle was allegedly normal on January 6, 2005. It appears that this finding is also in contradiction to the well established law on this issue.

Under Arkansas Workers' Compensation law, 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 also, Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d.

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., ___ Ark App. ___ ; ___ S.W. 3d ___, (2004), citing Pippin, supra. 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 Majority errs in denying the claimant additional medical treatment based on the erroneous finding he had reached MMI. This ignores the evidence to the contrary and fails to even consider the possibility that he might be entitled to medical treatment even if he had exited his healing period. It also fails to acknowledge that the claimant is not required to show ongoing objective signs to continue receiving medical benefits. Furthermore, it is evident

that the claimant remained in need of medical treatment after January 6, 2005.

The parties stipulated that the respondents paid for the claimant's medical treatment until January 16, 2005. At that point, Dr. Clark had not released the claimant from care. Furthermore, the claimant received a change of physician and Dr. Baskin recommended additional treatment. As the claimant has continued to present with pain, swelling, and other objective signs of injury to his ankle and his treating physician, Dr. Baskin indicated he needed additional care, the claimant's need for treatment was both reasonable and necessary to treat his admittedly compensable injury.

While the Majority finds that the claimant reached MMI as of January 6, 2005, it is evident that Dr. Clark believed the claimant needed an FCE to see how his ankle was healing. Additionally, Dr. Baskin continued to provide medical treatment for the claimant's ankle. Notably, that treatment was consistent with that previously prescribed by Dr. Clark. Additionally, I note that while the Majority finds that the claimant's ankle was "normal" by January 2005, his bone scan revealed degenerative or post traumatic

changes to the claimant's ankle which would be consistent with soft tissue swelling. This is consistent with the claimant's need for ongoing treatment.

Additionally, pursuant to the rationale of Gansky, the claimant would be entitled to additional treatment as his release was predicated on the results of the FCE. As previously discussed, the claimant's symptoms never subsided and his release was only constructive. Furthermore, Dr. Clark still had the claimant on medication in relation to his ankle. When considered in conjunction with Dr. Baskin's recommendations that the claimant continue to receive treatment, it is evident the claimant needed additional treatment and that the treatment received was both reasonable and necessary to treat the claimant's ankle.

Finally, I note that there is no evidence to suggest that Dr. Baskin's treatment was not reasonable and necessary to treat the claimant's admittedly compensable injury. When considering the swelling and lack of range of motion shown by the claimant's physical exams and bone scan, it is apparent that the claimant was still symptomatic due to his compensable injury. As

previously noted, one does not have to remain in their healing period to receive additional medical treatment. Therefore, I find that even if the claimant had exited his healing period, he would still be entitled to the requested medical benefits.

The Majority further finds the claimant has not shown that he sustained compensable back or knee injuries. I disagree. There is no evidence the claimant had ever suffered from knee or back injuries prior to tripping at work. He also credibly testified he immediately presented with left sided injuries after that point. Finally, I note that Dr. Baskin opined that both injuries were directly due to the claimant's fall at work.

First, I find that the claimant has shown that he sustained a compensable knee injury. The claimant testified that from the onset of his injury he complained of problems with his knee, ankle, and back. He also testified that he had no previous problems with his knee, ankle, or back. I found that this testimony was credible. There is no evidence to support a finding that the claimant had ever been treated for his back or knee prior to this incident. While the medical records

do not provide explicit complaints of pain regarding the knee until September 2, 2004, the medical records prior to that do note the claimant's symptoms regarding his entire left leg. Specifically, I note that the claimant was noted to have tibial complaints on April 6, 2004. Likewise, the claimant was noted to have hypersensitivity to his left leg on May 25, 2004. Additionally, I note that the claimant's ankle injury was quite severe and the physicians had difficulty in diagnosing it. As such, it stands to reason that the physicians were primarily concerned with treating the claimant's ankle rather than his knee or back.

Furthermore, I found that Dr. Baskin's opinion that the claimant's injury caused his knee injury to be more reliable than that of Dr. Clark. Dr. Baskin, after reviewing the claimant's medical records, indicated that the claimant's ankle injury and knee injury appeared to have occurred at the same time. This seems to be more consistent with the claimant's MRI than the opinion proposed by Dr. Clark.

The claimant's MRI from October 22, 2004, indicates that the claimant had a small area of low signal focus in the distal femoral shaft, moderate knee

joint effusion with fluid extending into the suprapatellar bursa, and a small area of signal extending horizontally from the free margin of the medial meniscus. The report further provides, "IMPRESSION: Small horizontal signal focus in the medial meniscus and prominent new joint effusion noted but with no frank meniscus tear identified." In my opinion, the presence of a "prominent new joint effusion", is evidence that the claimant sustained an injury to his knee when he tripped over the rug. While I note that Dr. Clark opined the claimant had degenerative conditions not related to the work accident, I reject this opinion. The claimant had never suffered from knee pain prior to this and there is no evidence that he had ever suffered from degeneration in his knee prior to this. Some ten months passed from the time of the claimant's injury to the MRI, thus allowing the claimant's injury to deteriorate. Furthermore, even if the claimant had pre-existing arthritis prior to this incident, I note that he was diagnosed with a meniscal tear and with a partial tear of the ACL. Additionally, the MRI noted that he had a "prominent new joint effusion." As the claimant suffered from new joint

effusion and was off work after his injury, it would appear that the claimant's condition was somehow aggravated by the work-related incident. Therefore, I find that the claimant sustained a compensable knee injury and should be entitled to the requested medical and temporary total disability benefits related to that injury.

Finally, I address the compensability of the claimant's back. I find the claimant has met his burden of proof in showing a compensable back injury. While it is evident that the claimant did not initially complain of back pain, it is clear that he had pain and swelling in his leg which would be consistent with a back injury. This is evidenced by Dr. Rutherford's notation that the claimant suffered from atrophy in his left thigh, weakness in his muscle groups, and diminution of pinprick sensation in his left leg.

I further find that the claimant's MRI of the lumbar spine shows that he suffered from a back injury. This is evidenced by the fact that the claimant suffered from defects of the lumbar spine, including a herniation, which were specifically identified by Dr. Baskin to be related to the claimant tripping over the

rug. Specifically, Dr. Baskin noted the claimant had suffered from pain in the left leg, weakness in the quadriceps and weakness in the dorsi and plantar flexors. He indicated that those things, "may be due to a nerve root compression", and ordered epidural steroid injections. While it is apparent that at least some of the claimant's residual ankle complaints are related to his ankle swelling and from loss of range of motion or strength, it is also clear that the symptoms identified by Dr. Baskin are related to the claimant's back. As the claimant testified that he had never suffered from back problems prior to this incident and Dr. Baskin opined that the claimant's problems were due to the work-related injury, I find that the claimant has also shown that he sustained a compensable back injury and is entitled to related medical benefits.

In sum, I find that the Majority errs in finding that the claimant must show ongoing objective physical signs of injury to be awarded additional temporary total disability or medical benefits. Their findings with regard to these issues are particularly disturbing since the respondents' own physician, Dr. Clark never assigned the claimant an impairment rating

or released the claimant from care, and since the claimant continued to have objective proof of his ongoing healing and need for treatment. Furthermore, I find that the claimant sustained compensable injuries to his back and knee as supported by the opinion of Dr. Baskin.

For the aforementioned reasons, I respectfully dissent.

PHILIP A. HOOD, Commissioner