

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311958

JOAN STUARD,
EMPLOYEE

CLAIMANT

HOPE SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JANUARY 18, 2007

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

Claimant represented by the HONORABLE HOWARD GOODE, Attorney
at Law, Texarkana, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed June 6, 2006. The administrative law judge
found, among other things, that the claimant proved she was
entitled to additional medical treatment. After reviewing
the entire record *de novo*, the Full Commission reverses the
opinion of the administrative law judge. We find that the
claimant did not prove she was entitled to additional
medical treatment after April 2, 2004.

I. HISTORY

The record indicates that Joan Smith Stuard, age 57, began treating with Dr. Charles A. Vermont in April 1998. Dr. Vermont assessed "History of hyperparathyroidism and parathyroidectomy."

The parties stipulated that Ms. Stuard sustained a compensable injury on May 16, 2003. The claimant testified:

Q. Now, directing your attention to May of 1993, there was a graduation....Was there an accident then?

A. Yes, there was. I was knocked to ground and trampled....We hold the graduation on the football field in Hope unless there is a threat of rain, in which case we move inside to the gym and to the auditorium, both of which are always set up each graduation....It was icy cold rain that came down. As soon as the rain started hitting, the crowd started screaming and running....I got shoved, recovered, shoved again, and couldn't recover....

Dr. George Garrett, Jr. noted the following on May 20, 2003:

Ms. Stuard was walking out of the graduation ceremonies Friday night during the storm. There was a stampede of people and she was knocked down and actually kicked in the head. She had several other injuries. She has quite a bit of pain on her right temple area. Also a pretty significant abrasion of her right elbow....She has a large abrasion just above the right elbow with what appears to be some secondary infection....

Dr. Garrett assessed "Fall with probable concussion and numerous other injuries, including abrasions, particularly to her right elbow."

A radiology report on May 21, 2003 identified no significant bone or soft tissue abnormalities in the claimant's right elbow. The impression from a CT of the claimant's brain on May 21, 2003 was "1. Normal pre-contrast CT of the brain."

On May 22, 2003, the claimant filled out a Form AR-N, Employee's Notice Of Injury. The claimant wrote that the following parts of her body were injured: "head, abdomen, both knees, both elbows, groin, whole body trauma."

Dr. Garrett noted on May 29, 2003:

This patient is doing very well with the chiropractic therapy. Neck is much better. Still having some headaches but they are continuing to improve, mainly where she had the blow to her head. She has a normal neurological exam. The abrasion on her right arm is essentially healed. She is alert and oriented. At this point I will simply see her back on a prn basis.

In July 2003, the claimant complained to Dr. Garrett of such symptoms as increased confusion, blurred vision, and neck and lower back pain. Dr. Garrett arranged additional diagnostic testing.

Dr. Vermont reported on July 3, 2003, "She had significant paravertebral muscle spasm and had limited ROM of the neck....X-ray of the C spine revealed significant muscle spasm, we could not get a good odontoid view."

An MRI of the claimant's brain on July 8, 2003 was negative.

The claimant visited Dr. C.E. Soeller on July 11, 2003: "X-rays, which she brought with her, were reviewed, which did not show any significant abnormalities other than some diffuse osteoarthritis." Dr. Soeller assessed "Cervical Strain" and treated the claimant conservatively.

The claimant returned to Dr. Soeller on July 25, 2003: "Upon her return today, she reports that her neck stiffness has greatly resolved. She is not having near the problems she was before. She still has some chest pain and tenderness but most of her complaints have resolved....Therefore, we are not going to need to follow her up any further, and she will continue with therapy and return to see us on a p.r.n. basis."

The claimant continued to follow up with Dr. Vermont.

In December 2003, Dr. Soeller assessed "Multiple complaints without evidence of medical findings to support them."

An MRI of the claimant's cervical spine was taken in December 2003, with the following impression:

1. Moderate disk bulge/osteophyte complex at C5-6 causing mild canal stenosis and narrowing of the neural foramen.
2. Small subligamentous disk bulge/osteophyte complex in the right paracentral region at C3-4 minimally effacing the thecal sac without canal stenosis or neural foraminal narrowing.

And an MRI of the claimant's thoracic spine was taken in December 2003, with the following impression:

1. Probable small bronchogenic cyst within the paraspinous soft tissues on the right at C5-6.
2. Left renal cyst.
3. Unremarkable MRI of the thoracic spine.

Dr. Vermont referred the claimant to Dr. Scott M. Schlesinger. Dr. Schlesinger examined the claimant in January 2004:

Ms. Stuard is a 54-year-old female who presents with a multitude of complaints. She had an injury eight months ago while working when she was trampled in a crowd. She says she has had continued cognitive difficulties, tremulousness, nervousness, and pain throughout her spine....

I have carefully reviewed the multiple images of the MRI of the cervical and thoracic spine independent of the radiologist and have requested

and compared this to the radiologist's interpretation. These studies show a minor bulge at the C5-6 level with no evidence of significant disc herniation, nerve root compression, spinal stenosis or foraminal stenosis. My findings are in agreement with the radiologist's interpretation. She has had a CT scan of the brain, which she did not bring along with her, but the report is negative as well. I have discussed in detail the radiologic findings with the patient.

Charles, she presents with a challenging problem. She has longstanding complaints without any objective abnormalities. Certainly she is not a candidate for surgical intervention. You may want to get her into a chronic pain management program, neuropsychological evaluation and/or psychiatric help with some of her symptoms. You may also want her to see a neurologist. I will release her from further neurosurgical care....

Dr. Vermont referred the claimant for more physical therapy in January 2004.

Dr. Vermont stated on March 1, 2004:

I do think she feels that she was let down by the people she works for and the initial physicians who saw her because they did not pursue the injuries aggressively enough in a timely fashion. A case could be made that delay in initiating aggressive physical therapy may in part be responsible for her continued symptoms. I believe she is improved, she is starting to move like she used to in terms of general body habitus and seems less oppressed by pain. This is a result of aggressive physical therapy over several months, which should have been initiated right after her injury to prevent the problems associated with chronic muscle spasm which can be set up by an injury that was not attended to....

Dr. Vermont assessed "Muscle spasm, chronic pain."

The claimant began more physical therapy beginning March 2, 2004.

The parties stipulated that the claimant "was granted her one-time change of physician by the Commission on March 19, 2004, to Dr. Charles Vermont."

Dr. Vermont referred the claimant to Dr. Bradley S. Boop, who examined the claimant in June 2004:

Historically, she may have had a closed head injury. She now has significant cognitive complaints. She has a normal neurological examination and little objectively abnormal on assessment of cognition with brief bedside tests. I remain concerned that there has been some ongoing stress and depression. She does have ongoing pain....I have recommended Neurontin in gradually increasing doses for pain. We may need to increase her Zoloft further as well. I would like to obtain some screening laboratory and I have discussed formal neuropsychiatric testing, which she has agreed to, which will help me sort through what role depression vs true organic change is at play....

Dr. Renee Magiera-Planey reported in July 2004:

Ms. Stuard is a 54-year-old female who is referred by Dr. Bradley Boop for a neuropsychological evaluation....Ms. Stuard's overall pattern of cognitive functioning as assessed by the General Neuropsychological Deficit Scale is in the minimally to mildly impaired range. Ms. Stuard performed within normal limits with the exception of mild to moderate difficulties in her executive functions including concept formation and novel

and complex problem solving abilities. Ms. Stuard may be experiencing a great deal of emotional distress following her fall and sustaining physical injuries. Ms. Stuard may benefit from personal adjustment counseling to help develop coping strategies and provide emotional support during this period. Ms. Stuard is taking Zoloft and it is recommend (sic) that she continue with this medication. Ms. Stuard is discharged from Psychological Services.

Dr. Boop gave the following impression in August 2004:

She had probable concussion and I suspect is suffering from a mild form of posttraumatic stress. She is on a good medical regimen now and I think that she can improve, but her school year will likely tell the tale. I would like to see her in October, after she has been teaching for a time, to see how things are going.

Depending on your level of concern, you may consider having her see a psychiatrist as well. I would not perform any other neurological testing at this point, but I have told her in the future if we are convinced she is worsening we would pursue other diagnoses.

The claimant continued to follow up with Dr. Vermont.

Dr. Edward W. Tobey examined the claimant in February 2005 and assessed the following:

Axis I: Major depressive illness.
Axis II: Obsessive-compulsive personality traits.
Axis III: Chronic pain. Past history of hyperparathyroidism, cognitive disorder NOS.
Axis IV: Moderate to severe stressors.
Axis V: Global Assessment of Functioning currently at 60.

The claimant continued to follow up with Dr. Vermont.

After a Sleep Study Interpretation in April 2005, a physician's impression was that the claimant had Obstructive Sleep Apnea Syndrome.

A pre-hearing order was filed on July 18, 2005. The claimant contended, among other things, that she was entitled to permanent partial disability and "payment of her medical expenses." The respondents contended that the claimant had been provided "all appropriate benefits to which she is entitled; that they have paid the claimant's authorized medical expenses; that they have denied treatment the claimant has received from unauthorized providers; and that they have not received any medical bills since March 2004."

The parties deposed Dr. Vermont on November 2, 2005. Dr. Vermont testified that he detected "a mental status change" in the claimant following the compensable injury. The respondents' attorney questioned Dr. Vermont:

Q. As we sit here today, what is your diagnosis for Ms. Stuard?

A. Well, I think she had trauma exacerbation of her osteoarthritis and disc disease in terms of symptoms, symptomatic pain. I think she had a

concussion and Dr. Boop lists that. He also states in one of his letters that he thought she might have post traumatic stress disorder....May have had post traumatic syndrome, probably depression as a result of all this pain issues which may be in part preexisting but exacerbated by this. She, in my mind, had a mental status change. Part of it might have been hypothyroidism but it might have also been related to the concussion and all of the other issues....What's a concussion? It's a bruise to the brain....

Q. As far as the exacerbation of her disc disease, what objective findings did you identify that indicate an exacerbation of her disc disease?

A. Well, she had a lot of muscle spasm....

A hearing was held on March 9, 2006. Dr. Vermont testified, "I think that she sustained a concussion and a moderate to severe neck and upper back sprain and that it was undertreated and she has developed a chronic pain situation out of that."

The administrative law judge found, in pertinent part:

3. The claimant has proven by a preponderance of the evidence that the medical treatment rendered by and at the referral of Dr. Vermont, Dr. Schlesinger, Dr. Boop, and Dr. Tobey, for the claimant's neck, back, concussion, depression, and mental status changes, has been reasonably necessary in connection with the compensable injury.

4. The claimant has proven ... that additional medical treatment remains reasonably necessary in connection with the compensable injury.

5. The claimant has failed to prove ... that she is entitled to permanent partial disability benefits.

The respondents appeal to the Full Commission.

II. ADJUDICATION

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 she 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 Full Commission finds that the claimant did not prove she was entitled to additional medical treatment after April 2, 2004. The parties stipulated that the claimant sustained a compensable injury on May 16, 2003. The claimant testified that she was knocked to the ground and trampled. The first medical report of record, entered by Dr. Garrett on May 20, 2003, indicated that the claimant sustained an abrasion above her

right elbow. We recognize Dr. Garrett's assessment, to wit: "Fall with probable concussion and numerous other injuries, including abrasions, particularly to her right elbow." Nevertheless, Dr. Garrett's assessment of "probable concussion" and "numerous other injuries" was based on the claimant's history rather than the claimant's demonstrated medical condition.

No abnormalities were shown after a CT of the claimant's brain on May 21, 2003. Additionally, an MRI of the claimant's brain in July 2003 was negative. These diagnostic studies belie any notion that the claimant sustained any sort of brain injury. Nor is there any evidence before the Commission indicating that the claimant sustained an injury to her head or skull. The record also support the claimant's statement on the Form AR-N that she had sustained "whole body trauma." Dr. Garrett noted in May 2003 that the claimant's condition had improved. The claimant had undergone chiropractic therapy, her neck was better, and the abrasion on her right arm had healed. Dr. Garrett released the claimant and stated she could return as needed.

Rather than returning to Dr. Garrett, the claimant began treating with Dr. Vermont in July 2003. Dr. Garrett reported that he had seen "significant muscle spasm" on an X-ray of the claimant's cervical spine. We assign minimal weight to Dr. Garrett's report in this regard and instead attach greater weight to Dr. Soeller's July 2003, report, "X-rays, which she brought with her, were reviewed, which did not show any significant abnormalities other than some diffuse osteoarthritis." Dr. Soeller did not indicate that the claimant's osteoarthritis was the result of the compensable injury and the record does not otherwise show that this degenerative condition was caused by the injury. Dr. Soeller treated the claimant conservatively for "cervical strain" and subsequently released the claimant after she reported an improvement in her symptoms. In December 2003, Dr. Soeller assessed "Multiple complaints without evidence of medical findings to support them."

An MRI of the claimant's cervical spine showed degenerative bulging and osteophyte formations at C5-6 and C3-4. An MRI of the claimant's thoracic spine in December 2003 showed a cyst at C5-6, otherwise unremarkable MRI of the thoracic spine. Dr. Schlesinger reported in January

2004 that these studies showed "a minor bulge at the C5-6 level with no evidence of significant disc herniation, nerve root compression, spinal stenosis or foraminal stenosis. My findings are in agreement with the radiologist's interpretation." Dr. Schlesinger also stated, "She has longstanding complaints without any objective abnormalities." Dr. Schlesinger released the claimant from further neurosurgical care.

The respondents argue on appeal that medical treatment rendered to the claimant after March 2004 was not reasonably necessary. The claimant was granted a change of physician to Dr. Vermont on March 19, 2004. This change of physician did not obligate the respondents to continue a series of treatment and referrals from Dr. Vermont. Rather, the respondents were required to pay for an initial visit to the new physician in order to provide adequate medical services 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). The record shows that the claimant returned to Dr. Vermont on April 2, 2004. Pursuant to *Brown*, the respondents were required to pay for the claimant's visit to Dr. Vermont on April 2, 2004.

In any event, Dr. Vermont referred the claimant to Dr. Boop. Dr. Boop stated in June 2004, "Historically, she may have had a closed head injury." The Full Commission again states that the record does not demonstrate a closed head injury in this case. The claimant subsequently treated with Dr. Boop, Dr. Magiera-Planey, and Dr. Tobey. None of these physicians' findings indicated that the claimant remained symptomatic from her May 2003 compensable injury.

Dr. Vermont testified at hearing, "I think that she sustained a concussion and a moderate to severe neck and upper back strain and that it was undertreated and she has developed a chronic pain situation out of that." The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, the Full Commission attaches minimal weight to Dr. Vermont's opinion and testimony that the claimant had sustained a "chronic pain situation" as the result of a concussion and undertreated severe strain. The preponderance of evidence instead demonstrates that the respondents provided prompt reasonably necessary medical treatment following the May 16, 2003

compensable injury. The Full Commission finds that the claimant did not prove she was entitled to additional medical treatment after visiting with Dr. Vermont on April 2, 2004. The administrative law judge's award of continued medical treatment in the present matter is not supported by any probative evidence of record.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she was entitled to additional medical treatment at the respondents' expense after April 2, 2004. The decision of the administrative law judge is reversed, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

_____The respondents appeal the June 6, 2006, decision finding that the claimant has shown that additional treatment related to her back, concussion, depression, and

mental status changes, are reasonably necessary in connection with the compensable injury. The Majority finds that the claimant has not shown that her need for treatment is not related to her admittedly compensable injury. However, in my opinion, a review of the medical records and Dr. Vermont's testimony indicates that the claimant's compensable injury and her resultant need for treatment is shown by her ongoing muscle spasms, her decreased cognitive abilities, and her diagnosis of depression and posttraumatic stress disorder. Accordingly, I must respectfully dissent.

On May 20, 2003, the claimant first received medical attention for the injuries she sustained after being trampled. The progress note from that date indicates that the claimant was knocked down and kicked in the head. The note provides the claimant presented with pain in her right temple, a headache, nausea, and "aches and pains from where she fell and was hit." The claimant was also noted to have, "a pretty significant abrasion of her right elbow." The claimant was diagnosed with, "Fall with probable concussion and numerous other injuries, including abrasions, particularly to her right elbow." The claimant was given a tetanus shot and was tentatively scheduled for a CT scan.

The doctor noted the claimant was allergic to contrast so a CT without contrast was ordered.

The following day the CT was performed and returned as normal. The claimant continued to present for treatment and complained of pain in her neck and shoulders. She also continued to present with headaches. On May 29, 2003, Dr. Garrett released the claimant to return as needed, but noted the claimant was having ongoing headaches.

The claimant also received treatment in the form of chiropractic treatment. She presented with ongoing complaints of stiffness and pain in her neck, shoulders, and back, and having headaches. A June 13, 2003, note provides, "Feels pretty good but neck still cracks when turning from side to side and shoulders tight." On July 1, 2003, Dr. Garrett noted that the claimant complained of, "increased confusion, difficulty making words, writing words, visual disturbances, blurred vision, and having a lot of pain in her neck and going down into her lower back." The physician indicated that the claimant had, in fact, suffered a concussion and recommended the claimant have an MRI. He also referred her to Dr. Soeller for evaluation.

During a conversation with the claimant about her mother's care, Dr. Vermont became concerned that the claimant needed treatment. As such, he told her to come in and see him for treatment. On July 3, 2003, Dr. Vermont treated the claimant. She reported with symptoms of numbness in her arms, pain and stiffness in her neck and back. Dr. Vermont performed x-rays and noted that the claimant's, "C spine revealed significant muscle spasm." He also noted that the claimant's "X-rays of the low back and midback revealed possible osteoporosis, osteoarthritic changes, no definite compression fractures." Dr. Vermont noted that he obtained the claimant's permission to discuss the case with Dr. Garrett, and he indicated that he, "went through the case with him as I saw it." Dr. Vermont indicated that all of the cervical spine could not be viewed and recommended the claimant have a CT scan and an MRI.

On July 9, 2003, the MRI was performed and returned as normal. On July 11, 2003, the claimant's chiropractor indicated that the claimant reported feeling worse since not coming in. The claimant was scheduled to begin physical therapy on July 14, 2003.

On July 11, 2003, the claimant was treated by Dr. Soeller. Dr. Soeller indicated that he had obtained the claimant's x-rays and that they, ". . . did not show any significant abnormalities other than some diffuse osteoarthritis." He further indicated that the claimant did not have abnormalities in her spine and that the radiologist had confirmed those findings. Dr. Soeller prescribed the claimant a soft cervical collar and recommended the claimant begin physical therapy. He further told her to apply nonsteroidal creams three to four times a day and diagnosed the claimant with a cervical strain.

On July 14, 2003, the claimant was noted to be taking pain medication and muscle relaxers. She was specifically noted to have "spasm palpable (L) upper rhomboid; (R) C paraspinal at 4-5 area." As of July 24, 2003, the claimant was still noted to have spasms in her cervical and lumbar regions. A report from that date indicates that the claimant would continue physical therapy three times a week to decrease her pain and muscle spasms in her shoulder and back.

Despite the recommendation from the physical therapist and the report from the therapist indicating the

claimant had ongoing complaints as shown by objective findings in the form of spasms, the following day Dr. Soeller opined the claimant had greatly improved. A report from Dr. Soeller dated July 25, 2003, indicates that the claimant reported her, "neck stiffness has greatly resolved. She is not having near the problems she was before. She still has some chest pain and tenderness but most of her complaints have resolved." He further indicated that the claimant would not need to follow up, but that she could continue therapy and return on an as needed basis. Notably, Dr. Soeller never treated the claimant's headaches or change in mental status.

Pursuant to the orders of Dr. Soeller, the claimant continued with physical therapy. On August 12, 2003, Dr. Vermont treated the claimant for a follow up on hypothyroidism. He indicated that her TSH had returned as elevated and recommended she have a thyroid panel and further testing. He further indicated the claimant had not undergone an MRI but that her physical therapy was ongoing.

On August 20, 2003, the claimant submitted to a thyroid uptake scan. It revealed that she had, "BORDERLINE LOW UPTAKE VALUES". On September 8, 2003, x-rays were

performed of the claimant's thoracolumbar spine. They revealed,

- 1) Minimal upper lumbar levoscoliosis and mild hyperlordosis.
- 2) Mild relative narrowing of L1 through L4 intervertebral disc spaces, with moderate osteophyte formation and an attempt at osseous bridging of the L2-L3 level.
- 3) The lumbosacral spines are otherwise negative for demonstrable pathology, including no evidence of fracture, subluxation, posterior defects or bony lesions.
- 4) Multiple hemiclips are identified in the pelvis from status post pelvic surgery.

The claimant continued with her physical therapy.

On September 19, 2003, Dr. Vermont issued a new prescription for the claimant to continue with her physical therapy.

On September 25, 2003, the claimant received treatment in the form of physical therapy. She was noted to have no spasms in her rhomboids but was noted to have spasming in her left upper trapezius muscle. On September 30, 2003, Dr. Randolph, the endocrinologist, diagnosed the claimant with hypothyroidism and prescribed her synthroid.

On October 30, 2003, Dr. Vermont noted that he did not have records of the claimant's brain MRI. He further indicated that the claimant had stopped physical therapy

around one month before, when the prescription from Dr. Garrett ran out. The claimant was diagnosed with depression and muscle spasms. Dr. Vermont indicated that it appeared workers' compensation had stopped paying for treatment and noted the claimant had never stopped having pain since the time of her injury. He recommended that the claimant be seen by a neurosurgeon because of her prolonged complaints. He also prescribed her Zoloft and apparently prescribed another round of physical therapy.

On November 13, 2003, Dr. Vermont noted the claimant continued to have, "significant muscle spasms up and down her neck." He further indicated,

She seems to have benefitted from the physical therapy that was reinstated and probably was not given long enough, in the summer when she was initially injured. I have advised her that her best course is to see a neurosurgeon in Little Rock with or without an MRI prior to going and that I would discuss this with a neurosurgeon. Neurologically she seems relatively intact, but she describes pain with vibration like a car, burning pain. I spoke with her physical therapist who said they were impressed with her findings and degree of spasm and felt she has some underlying significant injury.

Likewise, on November 14, 2003, the claimant's physical therapist indicated that the claimant would benefit to have a neurological consultation and an MRI to rule out impingement. Accordingly, the physical therapist recommended the claimant stop physical therapy until she had a consult with a neurologist or neurosurgeon.

The claimant returned to Dr. Soeller on December 15, 2003, with what Dr. Soeller described as, "numerous vague complaints." Dr. Soeller indicated that the claimant had been to four separate physical therapists and had been informed she had a posture problem. He further indicated the claimant had complaints of headaches, chest pain, and "decreased sensibility throughout her upper and lower extremities which moves from place to place." Finally, he noted she complained of occasional hand tremors. Dr. Soeller did not take x-rays or perform diagnostic testing, but nonetheless concluded the claimant suffered from, "Multiple complaints without evidence of medical findings to support them." Finally, he released the claimant to return on an as needed basis.

On December 18, 2003, Dr. Vermont indicated the claimant was still having chronic muscle spasms and was

suffering from paresthesias when lifting her arms above her head. The claimant also complained of "difficulty thinking." Dr. Vermont concluded that the claimant's post concussive syndrome should have resolved, but indicated that because the claimant was hypothyroid he would investigate further. He also indicated that he would order her additional physical therapy because it had previously been successful. He also indicated that he would obtain an MRI of the claimant's cervical and thoracic spine and then refer her to a neurosurgeon. Finally, he gave the claimant a refill of her Darvocet and Flexeril.

An MRI was performed on December 26, 2003, and revealed that the claimant had,

1. MODERATE DISK BULGE/OSTEOPHYTE COMPLEX AT C5-6 CAUSING MILD STENOSIS AND NARROWING OF THE NEURAL FORAMEN.
2. SMALL SUBLIGAMENOUS DISK BULGE/OSTEOPHYTE COMPLEX IN THE RIGHT PARACENTRAL REGION AT C3-4 MINIMALLY EFFACING THE THECAL SAC WITHOUT CANAL STENOSIS OR NEURAL FORAMINAL NARROWING.

On January 12, 2004, Dr. Schlesinger, as a result of a referral from Dr. Vermont, treated the claimant and indicated that the claimant was not a surgical candidate and appeared to have longstanding complaints with no objective

abnormalities. He indicated, "You may want to get her into a chronic pain management program, neuropsychological evaluation and/or psychiatric help with some of her symptoms. You may also want her to see a neurologist. I will release her from further neurosurgical care."

On June 1, 2004, Dr. Brad Boop reviewed the claimant and indicated that the claimant had little objectively wrong with her, but indicated that he remained concerned that the claimant had ongoing stress and depression. He recommended the claimant have Neurontin and that her Zoloft dosage be increased. He also indicated that he wanted formal neuropsychiatric testing to, "help me sort through what role depression vs true organic change is at play."

On July 5, 2004, the claimant was seen for a psychological evaluation. The physician concluded,

Stuard's overall pattern of cognitive functioning as assessed by the General Neuropsychological Deficit Scale is in the minimally to mildly impaired range. Ms Stuard performed within normal limits with the exception of mild to moderate difficulties in her executive functions including concept formation and novel and complex problem solving abilities. Ms. Stuard may be experiencing a great deal of emotional distress following her

fall and sustaining physical injuries. Ms. Stuard may benefit from personal adjustment counseling to help develop coping strategies and provide emotional support during this period. Ms. Stuard is taking Zoloft and it is recommend (sic) that she continue with this medication.

Based on the results of this testing, on August 16, 2004, Dr. Boop concluded that the claimant was suffering from a mild form of posttraumatic stress. He recommended she return in October to see if she improved. He also opined that it would be proper to consider psychiatric treatment, depending on the level of concern. On December 6, 2004, Dr. Vermont indicated that he felt it would be appropriate for the claimant to have psychiatric treatment.

On February 2, 2005, the claimant was assessed with,

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| Axis I: | Major depressive illness. |
| Axis II: | Obsessive-compulsive personality traits. |
| Axis III: | Chronic pain. Past history of hyperparathyroidism, cognitive disorder NOS. |
| Axis IV: | Moderate to severe stressors. |
| Axis V: | Global Assessment of Functioning at 60. |

The claimant's Zoloft was decreased and she was given Wellbutrin to control her depression and to help with focus and concentration. The claimant's level of Neurontin was also increased.

After a de novo review of the record, I find that the claimant's need for additional medical benefits are directly related to her admittedly compensable. Specifically, I find that while the claimant suffered from some pre-existing medical conditions, they were aggravated by her admittedly compensable injury. In making this finding I rely on the opinions of Dr. Vermont, Dr. Boop, and Dr. Tobey, each of which have expressed opinions that the claimant's compensable injury caused her need for treatment. Accordingly, I would have affirmed the decision of the Administrative Law Judge.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). What constitutes reasonable and necessary medical treatment is a question of fact. Ark. Dept. of Correction v. Holybee, 46 Ark. App. 232, 878 S.W.2d 420 (1994). The Commission is authorized to accept or reject medical opinion and is

authorized to determine its medical soundness and probative force. McClain v. Texaco, Inc., 29 Ark. App. 218, 780 S.W.2d 34 (1989). Moreover, we are not authorized to arbitrarily disregard the testimony of any witness. Crow v. Weyerhaeuser Co., 46 Ark. App. 295, 880 S.W.2d 320 (1994).

In this instance, there are varying medical opinions regarding whether the claimant needed ongoing treatment for her admittedly compensable injuries. The Majority essentially finds that the claimant is not entitled to additional medical treatment because of a lack of a causal connection. They further opine that Dr. Vermont's opinion is entitled to little weight. However, these findings ignore the multitude of medical records indicating that the claimant's need for treatment is directly related to being trampled. The Majority fails to provide any explanation as to why they are rejecting the opinion of Dr. Vermont. Additionally, they fail to recognize or consider the opinions of Dr. Tobey, Dr. Boop, which establish causation. As such, I find that the Majority commits reversible error by arbitrarily disregarding the medical opinions of Dr. Vermont, Dr. Tobey, and Dr. Boop.

The respondents and presumably the Majority, essentially rely on the opinions of Dr. Soeller and Dr. Schlesinger, arguing that the claimant had no objective injury for which she needed ongoing treatment. In contrast, the claimant relies on the diagnostic testing indicating that she had spasming, degenerative changes, stenosis, and a bulging disc in her cervical spine. Additionally, the claimant relies on the opinions of the claimant's various physical therapists, Dr. Vermont, Dr. Boop, and Dr. Tobey, each of whom indicated that the claimant suffered from ongoing complaints that were a result of her admittedly compensable injury. After reviewing the opinions of each physician, I find that the opinions of Dr. Soeller and Dr. Schlesinger should be given little weight. Additionally, I find that the medical record support a finding that the claimant's request for additional medical treatment is reasonably necessary to treat the injuries she sustained during the trampling incident.

I find that the claimant has shown that her need for medical treatment is directly related to the trampling incident. While the claimant admittedly had various medical problems prior to the incident in question, there is no

doubt that she also sustained injuries due to being trampled. Immediately after the accident the claimant presented with, "Fall with probable concussion and numerous other injuries, including abrasions, particularly to her right elbow." After that time the claimant presented with spasming in her back and decreased cognitive abilities. The claimant's spasms were noted repeatedly by physical therapists and physicians. Likewise, the claimant's depression and decreased cognitive abilities were diagnosed by multiple doctors. More importantly, Dr. Vermont directly related the claimant's symptoms to her admittedly compensable injury. Additionally, Dr. Vermont, Dr. Boop, and Dr. Tobey opined that the claimant's need for psychological treatment was directly related to the admittedly compensable injury. Accordingly, I find that the Administrative Law Judge's finding regarding causation should be affirmed.

I also find that the opinions of Dr. Soeller and Dr. Schlesinger should be given little weight. I will first address the credibility of Dr. Soeller. On July 11 the claimant saw Dr. Soeller. Dr. Soeller opined,

She has also seen Dr. Vermont who obtained spine films, which I have obtained the reports as well as the x-rays and reviewed them myself. They do not show any abnormalities of her cervical, thoracic, or lumbar spine. This was also affirmed by the radiologist who read the films.

I note that this statement is actually in contradiction to the x-ray report. The radiologist, in fact, observed abnormalities in the form of degenerative changes, lordosis of the spine, and a straightening of the lordotic curve of the cervical spine, which was presumed to be consistent with muscle spasms. The spasms were also specifically noted by both Dr. Vermont and throughout the course of the claimant's physical therapy. Yet, Dr. Soeller mentioned nothing in his report about the claimant's muscle spasms much less the other objective findings in the claimant's spine. Accordingly, I find that his opinion should be given no weight.

The respondents also rely on the opinion of Dr. Schlesinger. However, I find that his opinion is also entitled to little weight. MRI scans performed at the direction of Dr. Vermont indicated the claimant had a, "moderate disk bulge/osteophyte complex at C5-6 causing mild

canal stenosis," and a "small" bulge at C3-4. Dr. Schlesinger read the films as showing no significant herniation and no stenosis. Yet, Dr. Schlesinger asserted the radiologist agreed with his interpretation, despite the fact that the radiologist explicitly opined that the bulge at C5-6 was causing mild stenosis. Ironically, despite the supposed lack of objective findings, Dr. Schlesinger recommended a chronic pain management program, as well as evaluations by a neurologist and a psychiatrist, indicating that even he believed the claimant needed ongoing medical treatment.

In contrast, Dr. Vermont testified to the claimant's various medical conditions and her need for treatment. He specifically indicated that he had been treating the claimant for a number of years, and that despite her pre-existing conditions, he believed she was in need of treatment as a direct result of her compensable injury. As Dr. Vermont was familiar with the claimant's condition both before and after her admittedly compensable injury, I find that he is the physician best equipped to assess her need for treatment and the reason for her need for treatment.

In relying on the opinion of Dr. Vermont, I note that he specifically testified that while the claimant has pre-existing problems, her admittedly compensable injury was a contributing factor to her symptoms. With regard to her mental status changes, he testified,

A I think it was triggered by this accident and the fact that her situation was not acknowledged by her treating physicians or employer or the workman's comp system and she was ignored and treated like a malingerer. If you take someone who has been married and is in her fifties, who has children, who is a school teacher, and not some trash, but you treat them like trash, they might get depressed.

Q Dr. Vermont, do you have any other opinions regarding this case?

A No, that is my opinion, I do think Ms. Demory has certain points but I don't think any of them compare to the larger picture.

Q The larger picture being?

A That she had an accident that was damaging, a concussion, a significant injury to her neck and back, and some acute pain which then became chronic, and she was simply ignored and put between a rock and a hard place because workman's comp would not acknowledge the need for her treatment.

The opinion expressed by Dr. Vermont, was essentially corroborated by Dr. Boop, who indicated that the

claimant should have medication and undergo neuropsychiatric treatment. The testing revealed the claimant's cognitive functioning was "minimally to mildly impaired." Dr. Boop read the test results as showing the claimant to be, "suffering from some degree of posttraumatic stress disorder." He further opined, "There were some cognitive abnormalities on testing and so we will have to follow her for change over time, but overall I think that most of this is a reaction to concussion and the stress she went through."

Dr. Boop's opinion was corroborated by Dr. Tobey, who diagnosed the claimant with "major depressive illness", in accordance with the DSM-IV. Likewise, he recommended medication changes, after which the claimant's symptoms improved. Accordingly, I find that the claimant is entitled to medical rendered by and at the referral of Dr. Vermont, Dr. Schlesinger, Dr. Boop, and Dr. Tobey, for the claimant's back, neck, concussion, depression, and mental status changes. I further find that the claimant has shown that such treatment remains reasonably necessary in treating those conditions.

For the aforementioned reasons, I would have affirmed the decision of the Administrative Law Judge and must now respectfully dissent.

PHILIP A. HOOD, Commissioner