

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405754

CYNTHIA J. TRIMBLE, EMPLOYEE	CLAIMANT
ORTHO ARKANSAS, EMPLOYER	RESPONDENT
CINCINNATI INDEMNITY COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 9, 2007

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

Claimant represented by the HONORABLE TERENCE C. JENSEN,  
Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and  
reversed in part.

OPINION AND ORDER

The claimant appeals and the respondents cross-appeal  
an administrative law judge's opinion filed February 6,  
2006. The administrative law judge found that the claimant  
proved she was entitled to treatment for her low back from  
Dr. Mocek, including, but not limited to, a discogram. The  
administrative law judge found that the claimant failed to  
prove she was entitled to temporary total disability from

October 8, 2004 through September 30, 2005, and that the claimant failed to prove she was entitled to temporary partial disability from October 1, 2005 through a date yet to be determined. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's finding that the claimant proved she was entitled to additional treatment from Dr. Mocek. We find that such treatment was not reasonably necessary in connection with the claimant's compensable injury. We affirm the administrative law judge's finding that the claimant did not prove she was entitled to additional temporary total disability compensation or temporary partial disability compensation.

#### I. HISTORY

The claimant saw Dr. Michael R. Beard in March 1998 and reported that she slipped and fell while roller-blading. X-ray of the coccyx showed "a little lateral fracture line" at S4. Dr. Beard assessed "Coccyx fracture."

In April 2002, Dr. Beard assessed the claimant as having "low back pain, probably from poor mechanics."

The claimant sought emergency treatment in September 2003: "The patient works in the main OR here at the Baptist

Medical Center. Yesterday was lifting a heavy pan of instruments up at her shoulder level when she strained, felt a pop in her mid lower back on the left side." Dr. Frank H. Ma diagnosed "Left lower back strain." Dr. Ma noted on September 15, 2003, "Palpation of her back showed her to have some tenderness and spasm to the thoracolumbar paraspinous muscles with palpation with decreased flexion and extension."

The claimant was treated conservatively.

On April 27, 2004, testified the claimant, she was working as a "scrub tech" for Ortho Arkansas. The claimant described her work: "You prepare the room for the patient, and the doctor would come in, and you'd prepare a sterile field - you have instruments you have to put on the field, you pass the instruments to the physician or you assist the physician. When it's all over, you put the patient on the stretcher and clean up the room and start all over."

The parties stipulated that the claimant sustained a compensable back injury on April 27, 2004. The claimant testified that, while helping to move a patient from a bed to a stretcher, "my right leg came out from underneath me - the floor had been wet from a knee oproscopy (sic) - and my

whole back leg came out from behind me really fast, and I fell onto the OR bed." The claimant testified that she subsequently had pain which "started in my lower back and then it burned all the way down my right leg."

The record indicates that the claimant contacted Dr. Beard's office on April 28, 2004 and complained of lower back strain; medication was prescribed for the claimant.

The claimant testified that she continued her regular work as a surgical technician.

The claimant began a course of physical therapy in May 2004.

An MRI of the claimant's lumbar spine was taken on May 11, 2004, which included the following findings: "At L4-5 there is disc desiccation. There is minimal diffuse annular bulge. No focal disc protrusion is seen." The impression from the MRI was, "Minimal annular bulge at L4-5, otherwise negative examination."

The record indicates that Dr. Beard referred the claimant to Dr. John L. Wilson, who wrote on May 13, 2004:

This nice lady was seen in our office today with pain in her back and right leg. She related she was well until April 27, 2004, when she was helping lift a patient from the operating bed to a gurney and she slipped and fell on the bed. She

had some mild pain in her back at that time that has subsequently gone down her right leg.... Examination reveals a heavy lady with restriction of motion of extension of her back. She has mild muscle spasm. Straight leg raising is negative. Neurological examination is normal.

MRI reveals degenerative disc disease at L4-5. There is mention of a bulging disc at 4-5 on the MRI but if it is there it is certainly tiny; she has a large canal and it is certainly not pressing against any nerve root.

Ms. Trimble has degenerative disc disease with superimposed lumbosacral strain. She is unable to work at the present time. She was placed on daily physical therapy and given Decadron....

Dr. Wilson referred the claimant to Dr. Jim J. Moore.

Dr. Moore examined the claimant on May 27, 2004:

This is a 35 year 11 month right handed white female seen today as requested. I have obtained a history from the patient. She indicates to me that she traumatized herself on or about 4-27-04 when while at work at Ortho Arkansas while assisting on a knee arthroscopy. The procedure was completed and she was assisting moving the patient from the operating table to the stretcher. She was on one side of the table from the stretcher preparing to move the patient to the stretcher and her right foot slipped on some fluid and she slipped falling forward onto the stretcher....Within an hour she developed a burning pain in the back and into the right hip and leg....

REVIEW OF MRI: This study was accomplished on 5-11. This is an essentially unimpressive study. Some mild bulging at L4/5 and some disk dessication at this level as well but certainly no disk herniation. The patient also brings along

with her a 5-11-04 brain MRI which is considered normal.

I believe this patient has sacroiliac sprain/strain, lumbosacral sprain/strain. I do not believe she has a disk herniation or nerve pain. As she is improving I think that her therapy should be continued. I want to supplement this with a TENS unit preferably an EMPI EPIX VT device. Patient should continue to be off work at least for present. If she does return to work it should be progressive initially avoiding any unnecessary lifting or straining. I discussed all of these things with the patient and she seems agreeable. I will see her in follow up in about 10 or so days.

Dr. Moore's diagnosis was, "1. Sacroiliac and lumbosacral sprain/strain. 2. Lumbar DDD."

The claimant continued to follow up with Dr. Moore. The claimant testified that Dr. Moore "was taking really good care of me. I was happy." The claimant testified that the TENS unit gave her "a little bit" of relief. "It helped me some," she testified. The claimant testified that injections did not help.

The claimant testified that the respondent-carrier sent her to Dr. Annette P. Meador. The claimant consulted with Dr. Meador on August 11, 2004. Dr. Meador gave the following impression: "1. Bilateral sacroilitis. 2. Lumbar spondylosis and psoas spasm. 3. Myofascial

lumbosacral pain." Dr. Meador's recommendations for the claimant included injections and "Physical therapy at Baptist Therapy on Bowman Curve where they have particular expertise in treating sacroiliac strain."

In addition to ordering physical therapy, Dr. Meador performed a sacroiliac joint injection on August 11, 2004.

Dr. Meador administered a multiple level paravertebral nerve block on September 10, 2004. Dr. Meador diagnosed "Lumbosacral spondylosis."

On September 16, 2004, Dr. Meador indicated that the claimant could return to light restricted duty effective September 20, 2004.

Dr. Meador noted the following on October 7, 2004:

Cynthia returns today complaining of pain in her mid back, stating her hips are better. She does not complain of any pain down her leg today, although notes by Ann Wilson, RN, indicate that she was complaining to her of burning down to the knee. Her physical therapy notes show that she has had continued complaints and her reports of pain have been inconsistent with her back exam. She states that the last psoas injection increased her pain and did not improve it at all. During the day, she does some light work around the house and then goes out to her friend's house who has horses and "I don't ride them, but I stand around." I have never seen anyone with sacroiliac strain that likes to "stand around" doing anything. She has brought long-term disability papers to me and states she has had a difficult

financial situation....It is noted that she ranked an 8 on the visual analog scale, and on her pain drawing, she drew in the L2-L4 area, axial only, with no radiation to the lower extremity or even into the buttock or hip, a total change from her initial pain drawing of 8/11/04, which showed a sacroiliac pattern.

Dr. Meador examined the claimant's spine and noted, "Iliac crests are even with standing now (they changed). Both PSIS rise symmetrically with lumbar forward flexion. With distraction, the sacroiliac joints are no longer tender."

Dr. Meador gave the following impression: "1. Sacroilitis, resolved. 2. Poor patient motivation." Dr. Meador recommended the following: "1. Return to work tomorrow to full duty. 2. Low impact water aerobics, three times a week for 12 weeks. I think this would improve the flexibility of her spine and encourage independent activities. 3. We will stop the formal physical therapy for now. My first source for water aerobics would be Baptist Rehab Institute since it is close to her work. My second choice would be the Benton Community Center."

The claimant testified that Dr. Meador "was very mean to me. She called me names - she called a druggie (sic)." The claimant testified that an adjuster told her, "[Dr.

Meador] released you to go back to work. Your workman's comp case is over."

The record indicates that the respondents paid temporary total disability compensation through October 7, 2004. The claimant testified that she had been physically unable to return to work. "There was days that I would stay in bed all day," she testified. "It was a terrible back injury." The claimant testified that light-duty work with the respondent-employer was not available.

Dr. Beard referred the claimant to Dr. Christopher K. Mocek. Dr. Mocek examined the claimant on October 19, 2004:

Ms. Cynthia Trimble is a pleasant 36 year old female with a work related injury. She was moving a patient from the OR bed. She states that she has had PT with some relief and no relief from trigger point injections and no relief from two psoas muscle injections. Patient has been unable to work since this work related injury. She felt the pain one hour after the work related injury in the OR.

PAIN FEELS LIKE: Like a knife in the back all the time and sometimes it spasms on the right side from the hip down to the knee....

MRI: LUMBAR SPINE: 5-11-04 was reported as disc desiccation with a bulging disc at L4-5 and was reported as unremarkable. I reviewed the MRI films myself and image 7 shows a right paracentral disc protrusion with the disc adjacent to the right L4 nerve root without compression of this

nerve root. The S1 disc does appear unremarkable....

Patient is having pain consistent with nerve root irritation of the right L4 nerve root that is easily explained by the right paracentral disc protrusion at L4-5. I cannot explain why she is having the right S1 dermatomal pain but there could be an occult annular tear at the L5, S1 disc causing the pain.

Dr. Mocek assessed the following: "1) Radiculopathy of the lower limb. 2) Herniated disc lumbar spine. 3) Degenerative disc disease of the lumbar spine. 4) Pain in the thoracic spine." Dr. Mocek's plan included a lumbar epidural steroid injection, consideration of a right L4 selective nerve root block, and then consideration of discography with possible minimally invasive disc procedure.

Dr. Mocek performed a steroid injection L5-S1 on November 8, 2004. The claimant testified that the epidural injection did not provide any relief.

On November 15, 2004, Dr. Beard noted "Straight, mild lumbar spasm with moderate diffuse tenderness, no masses." Dr. Beard's assessment included Chronic Back Pain, and he planned for the claimant to continue follow-up with Dr. Mocek.

On November 29, 2004, Dr. Mocek performed nerve root blocks at L4 and L5. The claimant testified that this

treatment provided relief. "It relieved my right hip, all the way down through my knee where I had been having my pain."

The claimant returned to Dr. Mocek on December 22, 2004:

I would like to try the patient back in some formal PT and we will avoid traction since she is doing better now after the two steroid injections. We will see her back in followup and if the pain returns or persists in the right leg we will consider percutaneous disc decompression with the PERC DL Probe from Arthrocare of the L4-5 disc only. However, hopefully we will not have to perform anymore interventions on her. We will just get her through the PT and then get her back to work part time with no lifting over about 25 pounds when she returns from therapy. We will advance her work schedule gradually.

Dr. Mocek assessed, "1) Radiculopathy of the lower limb intermittent. 2) Herniated disc lumbar spine L4-5 right contained herniation. 3) Degenerative disc disease of the lumbar spine."

Dr. Mocek signed a note on December 22, 2004 indicating, "Pt. to remain off work until March 17<sup>th</sup> for further spine treatments."

The claimant returned to Dr. Mocek on March 17, 2005:

She is status post one lumbar epidural steroid injection on 11-8-04 and then right L4 and L5 selective nerve root blocks on 11-29-04. Patient

is reporting 90% relief of the right leg pain and still left with no relief of the low back pain. She states it even hurts to do laundry or get up and stand or sit too long....

I suspect patient is having some discogenic related residual back pain. The pain is not localized to the right side or to the left. Although it could be coming from the lumbar facets it appears to be more likely discogenic in nature with sitting intolerance. She has been through some traditional PT and I would like to try the new Cox traction therapy on this L4-5 disc. If she continues to have persistent (sic) intractable back pain we will have to consider discography of the L4-5 disc and if she has discogenic related back pain, possibly some minimally invasive disc procedure to relieve the pain. I am pleased with the patient's response with relief of the right leg pain after the selective nerve root blocks accept (sic) for just occasional pain in the right leg.

Dr. Mocek assessed, "1) Degenerative disc disease of the lumbar spine. 2) Contained herniated disc lumbar spine L4-5. 3) Radiculopathy of the lower limb."

The claimant followed up with Dr. Mocek on May 6, 2005:

She underwent the Cox traction therapy. She had some relief temporarily but the pain returned in the back and right leg....The patient states she has lost her workers comp coverage for this work-related injury. She has an attorney right now currently working with her to get the coverage back. She is having to use her personal medical insurance now for this work-related injury....

[T]he patient continues to have persistent back and right leg pain consistent with nerve root irritation from the disc protrusion on the right

at L4/5. She has had 2 steroid injections in the spine and physical therapy. She continues to have persistent pain. Would recommend proceeding with a lumbar discogram with post-discogram CT. If she has a painful disc with concordant pain she may be a candidate for a new minimally invasive disc procedure to relieve the pain.

Dr. Mocek assessed, "1. Contain herniated disc lumbar spine. 2. Radiculopathy lower limb. 3. Lumbar spine pain. 4. Insomnia."

A pre-hearing order was filed on September 21, 2005. The claimant contended that she was entitled to additional reasonably necessary medical treatment and temporary total disability compensation.

The parties agreed to litigate the following issues:  
"1. Whether the claimant is entitled to additional medical treatment related to her April 27, 2004 compensable injury.  
2. Whether the claimant is entitled to additional TTD from the date of the last TTD payment to a date yet to be determined, plus attorney fees."

The claimant testified on direct:

Q. Now, you're working for - what's the name of this place you're working for now?

A. Caudell Preliminary Profusion Associates.

Q. Okay. And you told me you began that about October 1, 2005?

A. Yes, sir.

Q. What do you do there?

A. We just - I'm an autotransfusionist. We have a small machine that we carry into the rooms - the OR's - I do all my work at Baptist. We recycle the blood that comes out of the patient and give it back to them.

Q. Okay. How many hours a week are you working?

A. It's basically a call job. One week I worked five hours and one week I worked 15 hours. It's just different.

Q. Is it something that requires a lot of lifting?

A. No sir. I just roll a machine into the room....

Q. You don't have to lift anything?

A. Oh, no sir.

Dr. Mocek answered several questions on a form prepared by the claimant's attorney on October 21, 2005. Dr. Mocek indicated that the claimant was still within her healing period from the April 27, 2004 injury, and that the claimant was under work restrictions. Dr. Mocek still recommended a lumbar discogram and post-discogram CT. Dr. Mocek believed "within a reasonable degree of medical certainty" that the claimant's need for medical treatment was a result of the

compensable injury, and that the claimant was in need of additional medical care.

A hearing was held on November 14, 2005. At that time, the respondents' attorney stated that temporary total disability was paid through October 7, 2004. The claimant's attorney stated that the claimant had begun working a part-time job on October 1, 2005. The parties agreed to litigate the claimant's entitlement to temporary total disability from October 8, 2004 until October 1, 2005, and temporary partial disability from October 1, 2005 to a date yet to be determined.

The claimant testified with regard to her symptoms, "My right leg is great." The claimant testified that all of her pain was in the lower back, and that she had back problems "every day." The claimant testified that she liked Dr. Mocek and wanted to continue treating with him.

The administrative law judge found, in pertinent part:

3) The claimant has proven by a preponderance of the evidence that additional medical treatment remains reasonably necessary in connection with the compensable injury. Specifically, the claimant is entitled to the treatment from Dr. Mocek concerning her low back, including, but not limited to, a discogram. However, the respondents are not responsible for the thoracic MRI recommended by Dr. Mocek nor any treatment

related to the claimant's thoracic spine.

4) The claimant has failed to prove by a preponderance of the evidence that she was totally incapacitated to earn wages from October 8, 2004 through September 30, 2005, and therefore is not entitled to temporary total disability benefits for that period.

5) The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary partial disability benefits from October 1, 2005 through a date yet to be determined.

Both parties appeal to the Full Commission.

## II. ADJUDICATION

### A. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant must prove by a preponderance of the evidence that 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).

The administrative law judge found in the present matter, "The claimant has proven ... that additional medical

treatment remains reasonably necessary in connection with the compensable injury. Specifically, the claimant is entitled to the treatment from Dr. Mocek concerning her low back, including, but not limited to, a discogram. However, the respondents are not responsible for the thoracic MRI recommended by Dr. Mocek nor any treatment related to the claimant's thoracic spine."

The Full Commission reverses the administrative law judge's finding that the claimant is entitled to additional treatment from Dr. Mocek. The parties stipulated that the claimant sustained a compensable back injury on April 27, 2004. A subsequent MRI showed degeneration and a minimal bulge at L4-5. The evidence does not demonstrate that these conditions shown on MRI were the result of the compensable injury. Dr. Wilson did not think that the claimant sustained a disc herniation. Dr. Wilson's diagnosis was "degenerative disc disease with superimposed lumbosacral strain."

Dr. Wilson referred the claimant to Dr. Moore because of a possible conflict of interest. Dr. Moore reviewed the MRI and stated, "This is an essentially unimpressive study. Some mild bulging at L4/5 and some disk dessication at this

level as well but *certainly no disk herniation* [emphasis supplied]." Dr. Moore diagnosed degenerative disc disease, and "sacroiliac and lumbosacral sprain/strain."

At this point, an adjuster intervened and steered the claimant to a chronic pain manager, Dr. Meador. Dr. Meador began treating the claimant in August 2004 and diagnosed "bilateral sacroilitis." This diagnosis was substantially similar to Dr. Moore's diagnosis of sacroiliac sprain/strain. Dr. Meador released the claimant on October 7, 2004 with the impression, "Sacroilitis, resolved." We note that this release from a treating physician occurred nearly six months after the claimant's lumbar sprain/strain and after extensive medical treatment and modalities. The record does not indicate that the claimant availed herself of the treatment options outlined by Dr. Meador, i.e., water aerobics at a local pool.

The Full Commission finds that the claimant did not prove the medical treatment provided after October 7, 2004 was reasonably necessary. The Commission has the duty of weighing medical evidence, and if the evidence is conflicting, its resolution is a question of fact for the Commission. *Green Bay Packaging v. Bartlett*, 67 Ark. App.

332, 999 S.W.2d 695 (1999). In the present matter, the Full Commission finds that the opinions of Dr. Wilson, Dr. Moore, and Dr. Meador are entitled to more weight than the opinion of Dr. Mocek. Dr. Mocek was the only physician that determined the claimant had sustained a lumbar disc injury. Nevertheless, Dr. Mocek's opinion is not supported by the diagnostic testing and is not supported by the other treating physicians of record.

The claimant has not asked to resume treatment with Dr. Moore or Dr. Meador. However, the evidence before us does not show that Dr. Mocek's treatment recommendations are reasonably necessary in connection with the compensable injury. The record does not demonstrate that Dr. Mocek's recommended discography treatment is reasonably necessary in connection with the claimant's lumbar or sacroiliac strain. The decision of the administrative law judge is reversed.

B. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages; temporary partial disability is that period within the healing period in which the employee suffers only a decrease in the capacity to earn the wages

she was receiving at the time of the injury. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). The question of when the healing period has ended is a factual determination for the Commission. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

In the present matter, the respondents stopped providing temporary total disability compensation after October 7, 2004. The administrative law judge found that the claimant did not prove she was entitled to temporary total disability from October 8, 2004 through September 30, 2005. The administrative law judge also found that the claimant did not prove she was entitled to temporary partial disability from October 1, 2005 through a date yet to be determined. The Full Commission affirms these findings.

The parties stipulated that the claimant sustained a compensable back injury on April 27, 2004. Dr. Wilson subsequently diagnosed "degenerative disc disease with superimposed lumbosacral strain." Dr. Moore treated the claimant and diagnosed "sacroiliac and lumbosacral

sprain/strain." The claimant eventually began treating with Dr. Meador, who diagnosed "bilateral sacroilitis." On October 7, 2004, Dr. Meador's impression was "Sacroilitis, resolved." We place significant weight on this opinion from a treating physician. The record demonstrates that the claimant reached the end of her healing period no later than October 7, 2004. The preponderance of evidence does not support Dr. Mocek's theory that the claimant required treatment for a herniated disc. Temporary total disability compensation cannot be awarded after the claimant's healing period has ended. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). The issues for determining the claimant's entitlement to temporary total disability and temporary partial disability are the same. *Palazzolo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994). We therefore find that the claimant was not entitled to temporary partial disability compensation after her healing period ended no later than October 7, 2004.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant proved she was entitled to treatment from Dr. Mocek. Pursuant to Ark. Code Ann. §11-9-

508(a), we find that the claimant did not prove Dr. Mocek's treatment was reasonably necessary in connection with the compensable injury. The Full Commission affirms the administrative law judge's finding that the claimant did not prove she was entitled to temporary total disability compensation after October 8, 2004, and that the claimant did not prove she was entitled to temporary partial disability beginning October 1, 2005. The Full Commission finds that the claimant reached the end of her healing period no later than October 7, 2004. This claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

The claimant appeals and the respondents cross-appeal the Administrative Law Judge's February 6, 2006, opinion, finding that the claimant is entitled to additional

medical benefits and denying her additional temporary total disability benefits and temporary partial disability benefits. The Majority now reverses the portion of the Administrative Law Judge's decision awarding additional medical treatment. They affirm the portion of the Administrative Law Judge's opinion denying temporary total and temporary partial disability benefits. I must respectfully dissent from their denial of all requested benefits.

The claimant worked as a surgical technician for the respondent. The claimant testified that on April 27, 2004, she was in the process of moving a patient. The floor was wet and she slipped and fell. The claimant suffered immediate pain in her lower back, over her hip, and down her right leg. The claimant reported the injury and was instructed to contact her primary care physician.

The claimant was prescribed Flexeril by phone because her doctor was going out of town. The claimant continued to work the following week and her pain did not subside. The claimant then went to see Dr. Beard, who recommended the claimant have an MRI. The claimant submitted to an MRI and was referred for treatment with Dr.

Wilson. Dr. Wilson treated the claimant for a period of time, and then indicated that there was a conflict of interest because he was the claimant's employer. Dr. Wilson referred the claimant to Dr. Moore.

Dr. Moore treated the claimant with a TENS unit, physical therapy, trigger point injections, and lipoderm patches. When the claimant's symptoms did not resolve, the caseworker hired by the respondents' insurance carrier suggested the claimant see Dr. Meador. Dr. Meador treated the claimant for a brief period of time. The claimant testified that Dr. Meador accused her of being a "druggie" and told the claimant that her symptoms were all in her head. The claimant contacted the respondent carrier and requested to see another physician. Her request was denied. Dr. Meador released the claimant to return to work. The claimant contacted Ann Wilson, caseworker for the respondent carrier and indicated she was still in pain. She was instructed to see her primary care physician. The claimant returned for treatment with Dr. Beard.

Dr. Beard referred the claimant to Dr. Mocek. Dr. Mocek performed one epidural shot and one nerve block for the claimant's lumbar spine. The procedures partially

relieved the claimant's hip and leg symptoms, but did not take care of her low back pain. Dr. Mocek scheduled the claimant for a discogram, but the claimant has not undergone the procedure because she cannot pay for it.

\_\_\_\_\_ On appeal, the claimant requests additional medical treatment for her low back, including a proposed discography by Dr. Mocek. The claimant further requests that she be awarded additional temporary total disability benefits and temporary partial disability benefits. After reviewing the record, I find that the claimant is entitled to additional medical benefits and temporary total and temporary partial disability benefits.

An 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). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that treatment 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). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

\_\_\_\_\_ In the present instance, the medical records show that the claimant's symptoms never subsided. From the onset of her admittedly compensable injury, the claimant has reported low back pain with right leg symptoms. The claimant's injury has already been accepted as compensable and she has shown objective signs of an injury in the form of a bulging or herniated disc as shown by MRI and muscle spasms. The medical reports corroborate the claimant's testimony that her symptoms never completely resolved, indicating that she is in need of further treatment.

The medical records also support a finding that the claimant is in further need of treatment. Dr. Mocek

diagnosed the claimant as having a herniated disc at L4-5. On March 17, 2005, Dr. Mocek indicated that he believed the claimant was having pain that was discogenic in nature. He indicated that he would like to try physical therapy and traction to see if her symptoms resolved. He further indicated that if the pain continued, then he would recommend a discography to see if her pain was discogenic in nature. The claimant's symptoms persisted, and on May 6, 2005, Dr. Mocek opined that the claimant's symptoms were consistent with nerve root irritation from the disc protrusion shown by the MRI. He recommended the claimant have a discogram.

As the claimant had previously undergone various types of conservative treatment, including physical therapy and injections without relief, I find that Dr. Mocek's recommendation is necessary in order to evaluate the nature and extent of the claimant's admittedly compensable injury. Specifically, I note that it is undisputed that the claimant sustained a compensable injury. Her complaints never resolved and she was diagnosed with at least a bulging disc at level L4-5. Dr. Mocek opined that the claimant might be suffering from discogenic pain and indicated that her

symptoms were consistent with nerve root irritation at level L4-5. As the claimant's symptoms had not subsided and the claimant has objective findings, I find that Dr. Mocek's treatment, including the proposed discography is both reasonable and necessary to treat the claimant's admittedly compensable injury.

The Majority relies on Dr. Meador's opinion that the claimant's complaints were inconsistent with her physical findings. I find that the opinion of Dr. Meador is entitled to little weight. As previously noted, the claimant sustained an admittedly compensable injury. Likewise, Dr. Meador is the only physician who has indicated that the claimant should be released from care. Furthermore, I note that despite Dr. Meador's conclusion that the claimant's symptoms were inconsistent, even she prescribed additional treatment for the claimant. This treatment was in the form of pool therapy for the claimant and was given on October 7, 2004, the date she released the claimant.

The Majority further suggests that the treatment proposed by Dr. Mocek is contrary to that of every other doctor treating the claimant. I find that conclusion is incorrect. I note that Dr. Mocek's recommendation was given

after conservative treatment had failed. At that point Dr. Moore and Dr. Wilson had already referred the claimant to other physicians. However, their actions were not because the claimant was not in need of care. Rather, Dr. Wilson released the claimant because of a conflict of interest and Dr. Moore released the claimant at the request of the respondent carrier so the claimant could see Dr. Meador. Accordingly, it is clear that neither doctor intended to release the claimant from all care. Additionally, I note that while neither doctor indicated the claimant should receive a discogram, Dr. Wilson and Dr. Moore did not have the benefit of continuing to care for the claimant in order to develop or participate in a treatment plan. As such, I find that it is impermissible speculation and conjecture to presume what either Dr. Wilson or Dr. Moore would have recommended at that point in the claimant's treatment. Furthermore, the record is devoid of any medical opinion from either doctor to indicate that the claimant's request for a discogram or for ongoing treatment is unnecessary.

The Majority further contends that Dr. Wilson and Dr. Moore both indicated that the claimant's bulge at L4-5 was not pressing on the nerve root. They argue that this is

in contradiction to Dr. Mocek's opinion that the claimant suffers from a herniated disc and that the bulge is causing nerve root irritation. The medical records are clear that the claimant suffers from at least a strain, bulging disc, spasms, and pain related to her admittedly compensable injury. While there are varying opinions regarding the extent and nature of the claimant's injury, it is clear that she did sustain an injury as evidenced by the fact that the claim was accepted as compensable. It is further clear when viewing her medical records that her symptoms never subsided. This is entirely consistent with Dr. Mocek's conclusion that while the MRI did not show nerve root compression, the claimant's symptoms were consistent with nerve root irritation that is, "easily explained by the right paracentral disc protrusion at L4-5."

The Majority opines that the claimant's bulge is not related to the compensable injury. They further assert that she only sustained a strain. I reject the finding that the claimant only sustained a strain. However, regardless of whether the claimant sustained a bulge or a strain, the evidence is clear that her symptoms never subsided after her compensable injury. Accordingly, I conclude that the

recommended discogram is reasonable and necessary to treat the claimant. In fact, I find that the existence of varying opinions regarding the nature of the claimant's injury simply highlights the need for additional diagnostic testing to determine the true nature and extent of the claimant's injury. Furthermore, I note that part of the recommendation for the discography is to determine if the claimant's pain is discogenic in nature, indicating an independent justification for having the discography. Accordingly, I find that the claimant is entitled to additional medical treatment as awarded by the Administrative Law Judge.

\_\_\_\_\_ I further find that the Majority errs in denying temporary total and temporary partial disability benefits for the requested time periods. Specifically, I find that the claimant has shown that he is entitled to temporary total disability benefits for the time period of October 8, 2004 to October 1, 2005.

\_\_\_\_\_ The healing period is statutorily defined as that period for healing of an injury resulting from an accident. Dallas County Hosp. V. Daniels, 74 Ark. App. 177, 47 S.W.3d 283 (2001). The healing period continues until the employee is as far restored as the permanent character of his injury

will permit, and if the underlying condition has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The determination of when the healing period ends is a factual determination to be made by the Commission. Arkansas Highway & Transp. Dept. v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993); Mad Butcher, Supra.

The Majority's sole basis for denying temporary total and temporary partial disability benefits appears to be based on the finding that the claimant exited her healing period no later than October 7, 2004. I must disagree with this conclusion. In my opinion, the medical records reveal that the claimant had persistent symptoms and that she had not healed at the time of Dr. Meador's release. Despite the release from Dr. Meador, the claimant's symptoms did not subside. This is evidenced by the fact that the claimant continued to seek treatment, despite being released by Dr. Meador. I also note that as of the time of the claimant's last treatment with Dr. Meador, the claimant's symptoms were still there, and even Dr. Meador believed that the claimant would require ongoing treatment in the form of water therapy.

As such, I can only conclude that since the claimant needed additional treatment, she had not exited her healing period.

Likewise, Dr. Mocek documented the claimant's complaints and need for treatment. He also explicitly indicated that as of October 21, 2005, she remained in her healing period and unable to work. On December 22, 2004, Dr. Mocek issued a note providing, "Pt. to remain off work until March 17 for further spine treatments." On the same date, in his medical report, he described her course of planned treatment and then indicated, "We will just get her through the PT and then get her back to work part time with no lifting over about 25 pounds when she returns from therapy. We will advance her work schedule gradually."

Later, in response to a letter dated October 21, 2005, from the claimant's counsel, Dr. Mocek indicated that the claimant remained in her healing period. He further indicated the claimant had the following restrictions, "No lifting over 25 lbs. No prolonged sitting > 30 min's at a time." Accordingly, I find the claimant remained in her healing period and is entitled to the requested temporary total and temporary partial disability benefits.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner