

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F710007

CARMEN SAUCEDO,
EMPLOYEE

CLAIMANT

WORK SOURCE, INC.,
EMPLOYER

RESPONDENT

EMPLOYERS INSURANCE CO. OF WAUSAU,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 5, 2008

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

Claimant represented by the HONORABLE EVELYN BROOKS,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JAMES A.
ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed February 15, 2008. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at
the pre-hearing conference conducted on November
28, 2007, and contained in a pre-hearing order
filed November 29, 2007, are hereby accepted as
fact.

2. Claimant has failed to prove by a preponderance
of the evidence that she is entitled to additional
medical treatment and/or temporary total disability
benefits for her compensable injury.

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

Therefore we affirm and adopt the February 15, 2008 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion denying the claimant additional medical treatment and temporary total disability benefits for an

admittedly compensable injury occurring on July 13, 2007.

The opinion of the Administrative Law Judge was affirmed and adopted in its entirety by the majority without additional discussion. Therefore, the opinion of the Administrative Law Judge and all of the findings and conclusions contained in that decision are now the majority opinion. Death & Permanent Total Disability Trust Fund v. Branum, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

The claimant sustained injuries to her neck, back, hip, shoulder, and leg after slipping on a wet floor in the bathroom at work on July 13, 2007. These injuries were accepted as compensable by the respondents. The claimant was initially treated by Karl W. Haws, D.O. Dr. Haws diagnosed the claimant's condition as "musculoskeletal pain secondary to fall" and treated her with muscle relaxers, narcotic pain medication, and physical therapy. The claimant was next treated by Dr. Rebecca C. Lewis, D.O. The diagnosis and treatment under Dr. Lewis was essentially the same as with Dr. Haws, except that Dr. Lewis had an MRI of the thoracic spine performed. This study was normal. Both Drs. Haws and Lewis released the claimant to return to

work without restrictions. Finally, the claimant came under the treatment of Vicki H. Moore, a nurse practitioner. An MRI of the claimant's lumbar spine was performed at the request of Moore on November 14, 2007. This study showed a desiccated and bulging disc at L4-L5. Thereafter the claimant continued to suffer from the effects of her injuries. As was the case under the treatment of Drs. Haws and Lewis, Moore treated the claimant with medication. However, Moore said that the back problems would require the claimant to alternate sitting and standing and that she could not lift over ten pounds at a time. She said that the claimant could not work and needed continued conservative treatment.

The Arkansas Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). 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); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Furthermore, it is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the treatment is geared toward management of the claimant's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). More aggressive treatments that may alleviate an individual claimant's pain can be reasonably necessary. White Consolidated Industries v. Galloway, 74 Ark. App. 13, 45 S.W.3d 396 (2001).

It is obvious that the claimant sustained multiple injuries as a direct result of the fall which occurred on July 13, 2007. Most substantially, she suffered damage to the L4-L5 lumbar disc which has created the need for continued medication therapy. In addition, it is likely that a consultation with a back specialist is in order, as the claimant has only been afforded treatment by two osteopaths and a nurse. In

short, it seems highly inappropriate to have so prematurely terminated the claimant's medical care when the requested treatment amounts to the bare minimum which could be expected from her particular injuries.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The credible medical evidence in this case establishes that the claimant is in need of additional medical treatment and that her condition has not yet stabilized. In addition, she has been given significant physical limitations which will prevent her from returning to work for the foreseeable future. Under these circumstances, the claimant has established her entitlement to temporary total disability benefits.

From a de novo review of the record, I find that the claimant proved, by a preponderance of the

evidence, her entitlement to additional conservative medical treatment and temporary total disability benefits. Therefore, I must respectfully dissent from the majority opinion denying the claimant these benefits.

PHILIP A. HOOD, Commissioner