

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F207899

PATRICIA AYCOCK-COLEMAN,
EMPLOYEE

CLAIMANT

QUAPAW QUARTER NURSING &
REHABILITATION CENTER,
EMPLOYER

RESPONDENT

PACIFIC EMPLOYERS INS. CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 12, 2009

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE JEREMY SWEARINGEN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed June 24, 2008. The administrative law judge found, among other things, that the claimant was performing employment services when she slipped and fell on June 24, 2002. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant

proved she sustained a compensable injury on June 24, 2002. The claimant proved she was entitled to temporary total disability through July 10, 2002 and reasonably necessary medical treatment.

I. HISTORY

The testimony of Patricia Aycock, now age 54, indicated that she began working at Quapaw Nursing Home in about April 2002. The parties stipulated that the employment relationship existed at all relevant times, including June 24, 2002. The claimant testified that she was a CNA, and that her shift was from seven in the morning to three in the afternoon. The claimant testified at deposition:

Q. Now, when you have your shift, do you have a set time that you have to take a lunch?

A. Yes....At that time, my lunch break was like 11:30....

Q. And how long is your lunch?

A. Thirty minutes.

Q. And do all the CNAs take lunch at the same time, or do you go at shifts, or -

A. You go at shifts....Like, the person before me, she went at 11, and she was supposed to have been back at 11:30, but she did not return back at 11:30....

Q. Now, normally when there were only two people in the hallway and one of you went to lunch, would the remaining person cover the whole hallway?

A. Yes.

Q. So, this day on June 24th if there were three people and y'all were waiting on one, could you have gone to lunch and had Rose Johnson cover the hallway?

A. No.

Q. Why not?

A. Because I had bed patients, and I was told I could not go on lunch break until that person come back....

Q. And when you say when the person would come back, would they physically come to wherever you were and say, "All right, I'm back now"?

A. Yes....

Q. Okay. So, tell me, do you recall what time it was that you fell?

A. Well, since she hadn't come back, you know, I gave her five minutes after the time she was supposed to come back. And since she hadn't come back at 11:30, I started looking for her. I thought she might be in the dining room. I went to the dining room, and she wasn't in the dining room. And I proceeded to come out of the dining room and walk down the hall on Hall C. After I walked down Hall C, that's when I fell.

Q. Okay. So, it was about 11:35?

A. Yeah....

Q. Now, when you fell, tell me how you fell.

A. Let me see. I think I - when I went down, I think I fell on my right knee. And then when I try and get up, I fell backwards in some kind of way. My leg went all the way behind me....My right leg.

The claimant's testimony indicated that she worked until 3 p.m. on the date of accident, June 24, 2002. The claimant testified that she treated at St. Vincent Family Clinic on June 24, 2002, and the claimant testified that she was taken off work for two days. The claimant testified that she did not go to work the next day, June 25, 2002. The record indicates that the claimant sought treatment at St. Vincent Family Clinic on June 25, 2002, where it was noted, "Patient complains of head congestion and cough and sore throat that started about a week ago. She also fell yesterday and bumped her right knee....Right knee has a small area of erythema over the inferior aspect of the patella and it is mildly tender to exam. She has no knee effusion and FROM." The claimant was assessed with "1. Sinusitis. 2. Right knee contusion."

The claimant testified that she returned to work "I think like the 26th or the 27th, somewhere up in there. And I don't think I stayed that long on the 26th....I think it was like the 25th or 26th, but I didn't stay that long. I

went, but I ended up back at home." The claimant's testimony indicated that she did not work after June 26, 2002.

Dr. K. Cooper examined the claimant on July 10, 2002:

Ms. Adcock is here today complaining of some right sided mid and low back pain. She says she slipped and fell at work last week and bruised her right knee. She was seen by Dr. Ebel and says that just as that was beginning to improve, she twisted last evening and felt a pop in the mid back. She's had some pain and discomfort since. She denies any past history of back problems....

Examination of the back reveals some mild right sided discomfort to palpation along the right perithoracic musculature and the perilumbar musculature. She complains of subjective radiational pain in the right thigh, but neurologically remains intact.

The claimant testified that she could not remember Dr. Cooper and did not remember an incident when she twisted and felt a pop in her back. In any event, Dr. Cooper's assessment included "Right mid back pain." The treatment plan included, "1. Flexeril 10 mg po tid for spasm along with Vioxx 25 mg daily. I've given her a work statement recommending light duty over the next few days. No lifting over 25 pounds. Moist heat applications." The claimant testified that no light-duty work was available with the respondent-employer.

The claimant filled out a Form AR-C, Claim For Compensation, on July 23, 2002. The claimant wrote in the Accident Information section of the Form AR-C, "I injured my back going on my lunch break. I was walking down the hall and I slipped and fell."

Dr. Reginald J. Rutherford examined the claimant on March 10, 2003:

Ms. Aycock reports that she fell at work in June of 2002. Since that time she has noted low back pain, bilateral leg pain, leg cramps, tingling in the legs and intermittent weakness of the legs. She has undergone MRI study of the lumbar spine which was performed in February of this year. This reveals degenerative change at L3/4 and L4/5 with an annular tear at 4/5 and lateral recessed stenosis at 4/5....

There was no palpable spasm of the lumbar paraspinal muscles....Ms. Aycock's examination is normal. By history she sustained a lumbar strain pattern injury. Her MRI study of the lumbar spine demonstrates degenerative change at L3/4 and L4/5 accompanied by an annular tear at L4/5 and lateral recessed stenosis at L4/5. Further diagnostic testing will be arranged to comprise a total body bone scan and EMG/Nerve Conduction Study both lower extremities. Ms. Aycock will be seen in follow up upon completion of the above studies.

Dr. Rutherford provided an EMG Report on April 1, 2003: "The nerve conduction study and needle examination are normal. There is no evidence of lumbar radiculopathy, lumbosacral plexopathy or peripheral neuropathy." Dr.

Rutherford further noted on April 1, 2003, "Her bone scan reveals mild scoliosis and mild arthritic change in the feet. There is nothing identified in lumbar spine on total body bone scan or SPECT imaging. Ms. Aycock's EMG/Nerve Conduction Study is normal. There is no evidence to suggest lumbar radiculopathy, lumbosacral plexopathy or peripheral neuropathy. Ms. Aycock's complaints are felt attributable to mechanical back pain."

An MRI of the claimant's lumbar spine was taken on October 14, 2003, with the following impression: "Protrusion of disk into the inferior recess of the neural foramen at L3-4. No evidence for nerve root impingement. Otherwise the lumbar spine shows relative minor discogenic changes. Transitional segment of the lumbar sacral junction, as noted above."

An x-ray of the claimant's right knee was taken on October 16, 2003, with the following findings: "No fracture or malalignment. A trace suprapatellar effusion is noted. Mild degenerative changes are noted with joint space narrowing and mild osteophytosis. There is relative osteopenia of the knee." An x-ray of the claimant's right knee was taken on February 26, 2004: "Findings reveal no

fracture, dislocation, or arthritic changes of the right knee." The impression was "Negative."

Dr. Tad C. Pruitt saw the claimant on April 9, 2004: "Patricia is a 50-year-old CNA at the Quapaw Nursing Home referred by Dr. Moss-Vickers for evaluation of swelling and pain in the right knee. She has a locking sensation there and difficulty climbing stairs. She says she doesn't work much right now secondary to back pain....Knee x-rays show no abnormalities." Dr. Pruitt planned an MRI of the right knee. An MRI of the claimant's right knee was taken on April 14, 2004:

The bones are intact with normal marrow signal. There is no osseous contusion, occult fracture or osteochondral defect identified. Articular cartilage is well maintained. The cruciate ligaments, collateral ligaments and iliotibial tract are intact. There is no meniscal tear identified. The quadriceps and patellar tendons are normal. There is a trace joint effusion in the patellar bursa and in the lateral aspect of the tibiofemoral joint. No Baker's cyst is seen.

IMPRESSION:

1. Minimal joint effusion. This is nonspecific and may reflect bursitis or synovitis.
2. Otherwise normal MR of the knee with no demonstrated internal derangement.

Dr. Sunder Krishnan evaluated the claimant on April 14, 2004 and noted, "She informs me that she initially injured herself on the job on June 24, 2002. At that time she

injured her low back and right knee....Inspection of the back reveals some paraspinal muscle spasm and facet tenderness bilaterally on deep palpation....She had one ESI and that helped her. I would like to complete another epidural steroid injection and see how she is doing. Hopefully, we will be able to get her back pain symptoms under better control. As mentioned above Dr. Pruitt will focus on her knee."

Dr. Pruitt noted on April 19, 2004, "The MRI shows no significant bony abnormalities aside from mild synovitis....Neoprene Knee Sleeve to be worn to provide gentle compression to reduce swelling, stabilize patellofemoral tracking, and support quadriceps (front thigh muscle) function....No specific follow-up appointment was made. Previously learned exercises and precautions should be continued as needed to maintain mobility and strength. Should significant symptoms recur, the present condition worsen, or should other bone, joint, or muscle problems occur, I will be happy to provide further evaluation."

Dr. Krishnan performed an epidural steroid injection on April 22, 2004. The post-procedural diagnosis was "1. L4-5

HNP. 2. Transitional anatomy." Dr. Krishnan performed another injection on May 13, 2004.

A CT lumbar discogram was performed on July 6, 2004, with the following impression:

1. Right posterior/lateral L3-4 disc protrusion with posterior displacement of the right L4 nerve root. Generation of 7/10 concordant low back pain during discography. Grade IV degenerative tear in the L4-5 disc without generation of pain.
2. Normal CT morphology of the L2-3 disc without generation of pain during the procedure.
3. Transitional vertebra at the lumbosacral junction as described above.

Dr. Krishnan's post-procedural diagnosis was "1. Internal disk derangement at L3/4. 2. Transitional anatomy with partial sacralization of the L5 segment."

Dr. Krishnan noted on July 21, 2004, "At this point in time the patient has exhausted conservative intervention. She is extremely wary about proceeding with major spinal surgery. Both her and her husband would like to proceed with percutaneous discectomy as an option."

Dr. Krishnan performed a "Fluoroscopically guided percutaneous L3-4 discectomy" on August 19, 2004. Dr. Krishnan noted on August 26, 2004, "She informed me that she was noticing significant improvement. She is extremely satisfied with the results of the procedure thus far."

Dr. Krishnan saw the claimant on September 29, 2004 and assessed "Status post-L3/4 diskectomy, doing rather well....At this point in time I have encouraged her to take it easy."

Dr. Krishnan referred the claimant to Dr. Kenneth A. Martin, who examined the claimant on December 6, 2004: "Ms. Aycock is a 50 year old female seen today for evaluation of her right knee. She states that in June of 2002 shw (sic) fell on the right knee at work at a nursing home....She states that she has muscle spasms, and she was sent to PT for three weeks. She states that the therapy helped some....She had an injection 6 months ago which helped a little....The right knee is tender over the lateral joint line and the medial joint line....There is a 1+ effusion....There is no pain with forced flexion but there is pain with forced extension....X-RAYS: Three views are made of the right knee. There is no fracture or dislocation seen. There is a significant lateral tilt and subluxation on the merchant view."

Dr. Martin's impression was "Plica right knee." Dr. Martin planned a right knee arthroscopy.

It was noted at Christ Health Primary Care Clinic on or about December 20, 2004, "Blacked out Monday and fell and hurt right shoulder and right knee. Also made right side of lower back swell up again."

Dr. Krishnan saw the claimant on January 10, 2005 and assessed "Status post-diskectomy L3/4." Dr. Krishnan's treatment plan included "3. Getting a surgical referral to discuss either artificial disk replacement or intrabody fusion, however, at this point in time I think we are better off following a conservative pathway at least until her knee surgery is completed and she has a recovery phase from that. If her knee pain improves and her gait improves perhaps her low back pain will improve as well. The patient would like to follow this conservative pathway."

Dr. Martin performed an arthroscopy, arthroscopic partial synovectomy, and lateral retinacular release on January 27, 2005:

Ms. Aycock sustained an injury to her knee with resultant anterior knee pain. The pain has persisted despite conservative treatment. Because of her continued pain, she is a candidate for arthroscopy....

The articular surfaces of the patella had Grade II changes primarily on the lateral facet. There was a very tight lateral retinaculum. The patella

tracked laterally with evidence of a significant lateral tilt on examination.

Medially, there was significant synovitis anteromedially. This was in the area of the presumed injury to the knee. There was a small plica present but significant inflammation in the synovium and the fat pad. There was also fibrosis of the fat pad and synovium in this area....The shaver was then inserted through the medial portal and a partial synovectomy was performed....

Inspection of the lateral compartment showed no meniscal tear. There was Grade I change on the tibial surface, with a normal femoral surface....

The post-operative diagnosis was "1. Medial plica syndrome. 2. Synovitis. 3. Grade II patellar chondromalacia."

Dr. Krishnan noted on May 18, 2005, "She had her knee surgery done and reports that she is doing better from that. Unfortunately she still does have low back pain extending into the right gluteal region. However, at this point in time she really does not want to pursue her symptoms more aggressively." Dr. Krishnan assessed "Status post-diskectomy L3/4." Dr. Krishnan assessed "Lumbar disk displacement" on November 16, 2005. Dr. Krishnan assessed "Lumbosacral spondylosis" on February 15, 2006 and stated, "She does have evidence of facet arthropathy. Certainly we can go ahead and try some diagnostic facet medial branch

nerve injections. If she obtains good relief for the duration of local anesthetic we can consider facet rhizotomies....She is fully aware that these interventions are being offered to her as a form of symptom reduction. In no way, shape or form am I reversing her existing disease process."

Dr. Krishnan noted on April 17, 2006, "Unfortunately it appears that she has fallen into the 15% of patients that do not respond favorably after a successful diagnostic injection. At this point in time I do not feel further injection treatments are going to help her. We will continue her medication management. She is in agreement. I will see her back in three months or sooner if required."

The claimant filled out a History Survey on or about July 17, 2006, indicating that she fell at work on June 24, 2002 while "going to lunch." The claimant described pain in her low back and right knee.

Dr. Pruitt filled out a questionnaire sent by the respondents' attorney dated June 19, 2007. Dr. Pruitt checked a box indicating "No" beside the question, "4. Is there any way you can state with a reasonable degree of medical certainty whether Ms. Aycock's knee problems and

need for treatment were caused by the 2002 accident or the 2004 intervening injury?"

Dr. Krishnan noted on August 15, 2007, "Patricia came in today for semi-urgent visit. She informed me basically on Saturday she got out of the chair and suddenly her back went out on her. Ever since that time she has had some right sided lumbar spasms." Dr. Krishnan assessed "Acute myofascial pain....I discussed the rationale of trying a trigger point injection with her and her husband today. They wish to proceed."

The respondents' attorney questioned Dr. Martin at a deposition taken November 28, 2007:

Q. Now, do I understand correctly that the Claimant in this case, Ms. Patricia Aycock, came to be a patient of yours on or about December 6th of 2004?

A. That's correct....

Q. In your physical exam of the Claimant on December 6, 2004, what physical findings of pathology did you make?

A. She had tenderness over both the knee medial and lateral joint lines. And that's the inside part of the knee and the outside part of the knee. She had what was a little band inside the knee, called a plica that was present on the medial side of the patella. That's the inside part of the knee, around the kneecap. She did have swelling in her knee. Her range of motion was a little bit less than normal....Did not find any

instability. And the rest of the exam was rather unremarkable.

Q. In terms of a physical exam, Doctor, did you make any findings to indicate whether the pathology that she presented with was something recent versus something long-standing?

A. I didn't make any determination there. I couldn't tell.

Q. Okay. Now, you mentioned the plica. What, is it a band in the knee that you say you found? What exactly is that in laymen's terms? I mean, that's pretty laymen's terms, a band, but what is that, and how are those caused? How do they come about?

A. It's something that she was born with....And it's like a shelf that sticks out, and it will catch sometimes between the kneecap and the thighbone, as it bends. And it's just something that we see occasionally.

Q. When you say that shelf that sticks out, does that produce symptoms in the knee, abnormal symptoms in the knee?

A. It can, and it can be injured sometimes....

Q. And is there any way, in talking about, with respect to this plica, even assuming that it was at one point injured at some point in the past and may have become scarred, is there any way to determine what caused that initial scarring or what caused that scarring subsequently to become symptomatic?

A. There is no way I can tell exactly when it occurred, but I can see that the plica was present and that it was painful, and I thought it was symptomatic at the time.

Q. Okay. So with respect to the claimant's plica that you found, did you feel that that was the source of her knee pathology that she presented to you with?

A. I thought that was one of the sources, uh-huh.

Q. Okay, were there any other sources that you suspected?

A. Just by the fact that she fell on her knee and was told she had a bruise, that she can get pain from the patella, or the kneecap, just from the damage to the kneecap with any sort of fall....

Dr. Krishnan corresponded with the respondents' attorney on January 14, 2008:

In summary, the claimant initially presented to me on April 14, 2004 with complaints of low back pain as well as right knee pain. I was informed that this was the result of a work-comp injury that was subsequently settled. I did inform the patient that she needed to follow up with her Orthopedic Physician for the management of her knee problems. I have had the pleasure of treating the claimant ever since her initial presentation, and her treatment has not been under workers compensation. She has undergone a variety of minimally invasive spinal procedures as well as medication management through the years in an effort to help decrease her pain and lead a better quality of life.

I did review the records that were faxed over to my office the other day. I believe that this is the first time I had the opportunity to review these records. Based on Dr. Ebel's note from 6/25/02 it appears that the claimant initially presented with complaints that she fell at work and bumped her right knee. On his exam he noted some mild tenderness over the inferior aspect of the right patella. He managed her for sinus

congestion as well on this visit. On 7/10/02 the claimant presented to Dr. Cooper with right sided back pain. His note indicated that she twisted the previous evening and felt a pop in her back, and since than (sic) had been having the pain. Please note that I have not been provided with any of the claimant's paperwork from work when she actually filed the claim. Based on the two aforementioned notes I cannot state with a reasonable degree of medical certainty that the claimants back pain is a result of her work-injury. As I am not a knee specialist I will defer on commenting upon her knee to the Orthopedic Physician who was managing this problem....

A pre-hearing order was filed on March 13, 2008. The claimant contended, among other things, that she slipped and fell and sustained a compensable injury to her low back and right knee. The claimant contended that she was entitled to temporary total disability from June 25, 2002 to at least April 17, 2006. The respondents contended, among other things, that the claimant did not sustain a compensable injury.

A hearing was held on March 26, 2008. The respondents' attorney cross-examined the claimant:

Q. During the course of the day, did you talk to your supervisor about your - about going to lunch, about leaving to go to lunch?

A. Yes, I did.

Q. Did you tell her that your replacement hadn't come back yet?

A. Yes.

Q. And let's say around 11:30, by 11:30 you said your replacement still wasn't back.

A. No.

Q. And that's eating into your lunch time, is that right? You only have 30 minutes.

A. Yeah.

Q. So when your replacement hadn't made it back, you went around and you looked for her, is that correct?

A. Yes.

Q. Okay, and do I understand that when you didn't find her, you went and talked to your supervisor about what to do?

A. Yes.

Q. Okay, and did your supervisor tell you that if you brought your patients to the dining room, the patients from your hall to the dining room, then you could go ahead and leave for lunch?

A. Yes, she did.

Q. Okay, and did you take all of your patients from their hallway that you were working on and take them into the dining room to where all your patients on your hallway were secure?

A. Yes, I did.

Q. At that point, from having secured your patients into the dining room, did you leave for lunch?

A. Yes, I did.

Q. Okay, and you were going to leave with Ms. Valley to go to lunch. Now, picture with me you're walking down the hall, and I guess it would be Hallway C that you're walking down when you had this incident, is that correct?

A. Yes.

Q. And Ms. Valley is further on ahead of you waiting at the doorway, is that correct?

A. Yes.

Q. And that's the doorway that exits out of the facility, and she's waiting on you to walk out with her to go to lunch.

A. Yes, she was.

Q. And you were walking toward her on your way to go out the door for lunch?

A. Yes.

Q. Okay. Now, it was at that moment that you say you had your fall and you slipped and fell on something that was in the floor, is that right?

A. Yes, it was....

Q. Now, do you recall telling me at your deposition that if you happened to have fallen, if the fall had never occurred, you would have continued walking right down the Hallway C and right out the door to lunch?

A. Yes, I would....

Q. After you had this fall and they assisted you up, did you continue on with Marlene to go and take what was left of the break that you had?

A. Yes, we did.

Mertis "Marlene" Valley testified that she was working with the claimant on June 24, 2002 and witnessed the accident. The administrative law judge questioned Ms. Valley:

Q. Tell me what you witnessed?

A. Well, we were preparing to get ready to go to lunch and we had to have a relief person before you can leave the floor, and she was looking for her relief person and I was, you know, telling her, you know, "Did you find your relief person?" She was like, "Not yet." So she was going into a room and came out and went into another one, that's when she slipped and fell and I asked her, I said, "Girl, are you okay," because of the way she hit, it was so hard, and some of the administrative people came out and, you know, we all ran down to see could we assist her in getting up.

The claimant testified that the knee surgery performed by Dr. Martin "helped a little bit, but I still have pain."

The administrative law judge found, in pertinent part:

4. On June 24, 2002, the claimant sustained an injury arising out of and in the course of her employment, in that the claimant was performing employment services at the time of the accidental slip and fall resulting in her injuries.
5. The claimant was temporarily totally disabled for the period commencing June 25, 2002, and continuing through April 17, 2006.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of June 24, 2002.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4) (Repl. 2002) defines

"compensable injury":

(A) (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[.] ...

(B) "Compensable injury" does not include:

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated[.]

An employee is performing employment services when she is doing something that is generally required by her employer. *Wallace v. West Fraser South, Inc.*, 365 Ark. 68, 225 S.W.3d 361 (2006). The test for determining whether an employee was acting within the "course of employment" at the time of the injury requires that the injury occur within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interest directly or indirectly. *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999). The issue of whether an employee was performing employment

services within the course of employment depends on the particular facts and circumstances of each case. *Moncus v. Billingsley Logging & Am. Ins. Co.*, 366 Ark. 383, 235 S.W.3d 877 (2006).

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)(A)(i). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The employee'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).

An administrative law judge found in the present matter, "4. On June 24, 2002, the claimant sustained an injury arising out of and in the course of her employment,

in that the claimant was performing employment services at the time of the accidental slip and fall resulting in her injuries." The Full Commission finds that the claimant proved she sustained a compensable injury to her right knee. The parties stipulated that the employment relationship existed at all relevant times, including June 24, 2002. The claimant, a certified nursing assistant, testified that she was caring for patients on June 24, 2002. The claimant's lunch break began at 11:30 a.m., but the claimant testified that she could not leave for lunch until her replacement arrived. The claimant testified that she slipped and fell while walking down Hall C looking for her replacement. We recognize other portions of the record where the claimant testified that she had "secured" her patients with a supervisor and was actually on her way to lunch when she slipped and fell. However, Mertis Valley corroborated the claimant's testimony that the claimant could not leave for lunch until her replacement arrived. Ms. Valley testified that the employer "drilled it in our head" that nursing assistants could not leave for lunch without a replacement on the floor. The Commission also notes that the claimant

remained "clocked in" and on the respondent-employer's premises when she fell.

The Full Commission finds that the claimant proved that, at the time she slipped and fell on June 24, 2002, the claimant was doing something generally required by her employer, was acting within the course of employment, and was advancing the employer's interest by not leaving for lunch until a replacement was available to assist with patient care. Therefore, the claimant proved she was performing employment services when she slipped and fell on June 24, 2002.

Pursuant to Ark. Code Ann. §11-9-102(4)(A)(i), the Full Commission finds that the claimant proved she sustained an accidental injury causing external physical harm to her right knee. The injury arose out of and in the course of the claimant's employment on June 24, 2002. The injury was caused by a specific incident, was identifiable by time and place of occurrence, and required medical services on June 25, 2002. A physician assessed "right knee contusion." The claimant established a compensable injury by medical evidence supported by objective findings not within the claimant's voluntary control. The objective finding in the

instant matter was "erythema," i.e., redness of the skin, as noted by the treating physician. The claimant therefore proved she sustained a compensable injury to her right knee in the form of a right knee contusion.

The claimant did not prove that she sustained a compensable injury to her back. The claimant testified that she fell on her right knee on June 24, 2002. The record does not demonstrate that the claimant also injured her back when she fell on her right knee. The record from St. Vincent Family Clinic on June 25, 2002 showed that the claimant fell and bumped her right knee. The claimant was assessed with a contusion to the right knee and there was no history given or description of an injury to the claimant's back. On July 10, 2002, Dr. Cooper noted that the claimant complained of middle and low back pain after "twisted last evening and felt a pop in the mid back." There is no indication that this twist and pop occurred at work. The claimant's shift was from 7:00 a.m. to 3:00 p.m. and the claimant's testimony indicated she had not returned to work after approximately June 26, 2002. Moreover, Dr. Cooper's examination of the back revealed discomfort and pain but no objective medical findings. Dr. Cooper's treatment plan

included a prescription of Flexeril "for spasm." We recognize that the Arkansas Supreme Court has recognized a prescription of Flexeril for spasm to constitute an objective medical finding establishing an injury. See *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). In the present matter, even if muscle spasm was present in the claimant's back on July 10 2002, which the record does not show, the evidence does not establish a causal connection between the Flexeril prescription for spasm and the June 24, 2002 accidental injury to the claimant's right knee. See *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The claimant wrote on a Form AR-C dated July 23, 2002 that she hurt her back when she slipped and fell. The record does not corroborate the history written by the claimant on the Form AR-C. Dr. Rutherford reported on March 10, 2003 that a lumbar MRI showed degenerative change and an annular tear at L4/5. Dr. Rutherford did not causally connect these findings to the June 24, 2002 accident and the evidence does not establish a causal connection. Dr. Rutherford opined that the claimant's complaints were due to "mechanical back pain." The record does not establish a

causal connection between the claimant's mechanical back pain and the June 24, 2002 accidental injury to the claimant's right knee.

The Full Commission finds that the claimant did not prove she sustained an accidental injury causing physical harm to her back on June 24, 2002. The claimant did not prove she sustained an injury to her back arising out of and in the course of employment. The claimant did not prove she sustained an accidental injury to her back which required medical services or resulted in disability or death. The claimant did not sustain an injury to her back which was caused by a specific incident or was identifiable by time and place of occurrence. The claimant did not establish a compensable injury to her back by medical evidence supported by objective findings. We note Dr. Krishan's correspondence in January 2008, stating, "I cannot state with a reasonable degree of medical certainty that the claimant's back pain is a result of her work-injury." The discography performed on July 6, 2004 did not show objective medical evidence demonstrating a compensable injury to the claimant's back on June 24, 2002. The "internal disk derangement at L3/4"

subsequently diagnosed by Dr. Krishan was not causally related to the June 24, 2002 accident at work.

B. 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) (Repl. 2002). 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 claimant testified that she slipped and fell on her right knee on June 24, 2002. A physician examined the claimant on June 25, 2002 and noted, "Right knee has a small area of erythema over the inferior aspect of the patella and it is mildly tender to exam." The physician's assessment included "Right knee contusion." The Full Commission has found that the claimant proved she sustained a compensable injury to her right knee, in the form of a right knee contusion, occurring on June 24, 2002.

On October 16, 2003, an x-ray of the claimant's right knee showed a trace suprapatellar effusion, mild degenerative changes, and osteopenia of the knee. The record does not demonstrate that these findings were causally related to the June 24, 2002 accidental injury. An x-ray of the claimant's right knee on February 26, 2004 was "Negative" for any abnormalities. The claimant did not prove by a preponderance of the evidence that any of the treatment for her knee provided beginning October 16, 2003 was reasonably necessary in connection with the June 24, 2002 accidental injury.

Dr. Pruitt began treating the claimant on April 9, 2004 and noted that knee x-rays showed no abnormalities. An MRI of the claimant's right knee taken April 14, 2004 showed minimal joint effusion but was otherwise normal. Dr. Pruitt treated the claimant conservatively and did not recommend surgery. The claimant began treating with Dr. Martin on December 6, 2004 and Dr. Martin performed surgery on January 27, 2005. Dr. Martin's post-operative diagnosis was "1. Medial plica syndrome. 2. Synovitis. 3. Grade II patellar chondromalacia." There is no probative evidence before the Commission demonstrating that this post-operative

diagnosis on January 27, 2005 was causally related to the claimant's right knee erythema and contusion occurring on June 24, 2002. The Full Commission attaches significant weight to Dr. Pruitt's expert opinion, rendered on June 19, 2007, indicating that the claimant's knee problems were not causally related to the 2002 accidental injury. Dr. Martin testified that the "Plica" he observed during surgery was "something she was born with." The preponderance of evidence does not demonstrate that the claimant aggravated or otherwise injured her plica on June 24, 2002 leading to a need for surgery on January 27, 2005. Nor did any other portion of Dr. Martin's reports or testimony establish such a causal connection. The claimant did not prove by a preponderance of the evidence that the surgery performed by Dr. Martin was reasonably necessary in connection with the claimant's compensable injury.

C. Temporary Disability

Ark. Code Ann. §11-9-501(a) (Repl. 2002) provides:

(1) Compensation to the injured employee shall not be allowed for the first seven (7) days' disability resulting from injury, excluding the day of injury.

(2) If a disability extends beyond that period, compensation shall commence with the ninth day of disability.

(3) If a disability extends for a period of two (2) weeks, compensation shall be allowed beginning the first day of disability, excluding the day of injury.

An employee who has suffered a scheduled injury is entitled to temporary disability during her healing period or until she returns to work, whichever occurs first. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). 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 determination of fact for the Commission. *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 "was temporarily totally disabled for the period commencing June 25, 2002, and continuing through April 17, 2006." The Full Commission finds that the claimant proved she was entitled to temporary total

disability compensation beginning June 25, 2002 until July 10, 2002. The Full Commission has determined that the claimant sustained a compensable injury to her right knee, in the form of a contusion, on June 24, 2002. The claimant testified that she did not work on June 25, 2002. The claimant testified that she attempted to work but was unable to work on approximately June 26, 2002. On July 10, 2002, Dr. Cooper examined the claimant for back pain after an incident to the claimant's back occurring away from the workplace. Dr. Cooper did not note any complaints regarding the claimant's right knee. The record does not indicate that the claimant remained within her healing period for the compensable right knee injury after July 10, 2002.

Temporary total disability benefits cannot be awarded after a claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987).

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved she sustained a compensable injury to her right knee on June 24, 2002. The claimant proved she was entitled to temporary total disability compensation

beginning June 25, 2002 until July 10, 2002. The claimant did not prove that she sustained a compensable injury to her back, and the claimant did not prove that any of the treatment beginning October 16, 2003 was reasonably necessary in connection with the claimant's compensable right knee injury. The claimant did not prove that surgery performed by Dr. Martin was reasonably necessary.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her back, that the healing period for the claimant's knee injury ended on or before July 10, 2002, and the finding that the treatment to the claimant's right knee beginning October

16, 2003, was not reasonable and necessary medical treatment. However, I must respectfully dissent from the majority's finding that the claimant sustained a compensable injury to her right knee on June 24, 2002. In my opinion, the claimant was not performing employment services at the time she fell.

Act 796 defines a compensable injury as a "an accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death." Ark. Code Ann. §11-9-102(4) (A) (i). A compensable injury does not include an "[i]njury which was inflicted upon the employee at a time when employment services were not being performed... ." Ark. Code Ann. §11-9-102(4) (B) (iii).

Employment services are performed when the employee does something that is generally required by his or her employer. Collins v. Excel Specialty Products, 347 Ark. 811, 69 S.W.3d 14 (2002); Pifer v.

Single Source Transport, 347 Ark. 851, 69 S.W.3d 1 (2002); White v. Georgia-Pacific Corp., 339 Ark 474, 6 S.W.3d 98 (1999). We use the same test to determine whether an employee was performing "employment services" as we do when determining whether an employee was acting within "the course of employment." Smith v. City of Ft. Smith, 84 Ark. App. 430, 143 S.W.3d 593 (2004); Collins, supra; Pifer, supra; White, supra; Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997). The test is whether the injury occurred "within the time and space boundaries of the employment, when the employee [was] carrying out the employer's purpose or advancing the employer's interest directly or indirectly." Collins, supra; Pifer, supra; White, supra; Olsten, supra. The critical issue is whether the interests of the employer were being carried out by the employee at the time of the injury. Collins, supra. In Collins and Pifer, the Arkansas Supreme Court specifically overruled "all prior decisions by the Arkansas Court of Appeals" to the extent that they were inconsistent with the holdings in those two cases. Wal-Mart Stores, Inc. v. King, 93 Ark. App. 101, 216 S.W.3d

648 (2005). Whether a worker was performing employment services within the course of employment depends on the particular facts and circumstances of each case. The controlling test is whether the employee is engaged in the primary activity that she was hired to perform, or in incidental activities that are inherently necessary for the performance of the primary activity.

In my opinion, a review of the evidence demonstrates that the claimant was not performing employment services at the time she fell. The claimant was walking out the door to have lunch with her co-worker when she fell. At the moment she fell, she was not securing residents in the dining hall. She was no longer looking in the hallway for her replacement. She had been excused by her supervisor to go to lunch. In fact, she was walking toward the exit door to meet her friend Mertis Valley who was waiting for the claimant so they could leave for lunch. There was nothing that the claimant was doing either directly or indirectly at the time of the fall that was advancing the respondent employer's interests. She was leaving to go on an unpaid lunch break. Furthermore, at the time she fell the

claimant was not even on the same hallway she worked on. She was only passing through that hallway because it was the one that she had to go through to exit the building. The claimant's actions at the time she fell were purely personal in nature.

In my opinion, this case is akin to the case of Robinson v. St. Vincent Infirmary Medical Center, 88 Ark. App. 168, 196 S.W.3d 508 (2004). In that case, the claimant slipped on a puddle of spilled coffee while she was getting her lunch. The Commission denied the claim on the basis the claimant was not performing employment services. The Court of Appeals affirmed the Commission finding:

Here, appellant left the second floor and was proceeding to the fourth floor to get her lunch and personal effects. From there, her intention was to go to the cafeteria. Appellee gleaned no benefit from appellant going to the fourth floor to get her lunch. Her action was totally personal in nature and more in line with Beavers [Beavers v. Benton County, 66 Ark. App. 153, 991 S.W.2d 618(1999)] and Harding [Harding v. City of Texarkana, 62 Ark. App. 137, 970 S.W.2d 202(1998)]. Further, the fact that appellant cleaned up the spill after her fall could be considered performing employment services;

however, this occurred after the fall and is of no consequence in determining whether she was performing employment services at the time of the fall.

Just like the claimant in Robinson, the claimant in this case was walking down the hallway to the door to go on her unpaid lunch break when she fell. The claimant admitted that had she not fallen she would have continued out the door to lunch. As such, the claimant's activity was purely personal in nature and not directly or indirectly advancing the respondent employer's interests. Therefore, for all the reasons set forth herein I find that the claimant was not performing employment services at the time she fell. Accordingly, I must dissent from the majority's finding that she was performing employment services.

KAREN H. MCKINNEY, COMMISSIONER

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

The majority is affirming the Administrative Law Judge's finding that the claimant sustained a

compensable injury to her right knee on June 24, 2002. However, the majority is reversing the Administrative Law Judge's finding that the claimant also sustained a compensable injury to her lower back and is substantially reducing the Administrative Law Judge's award of medical and disability benefits for the compensable knee injury. After a de novo review of the record, I find the claimant sustained a compensable injury to her back and is entitled to all benefits awarded to her by the Judge for her back and knee injuries. Therefore, while I concur in the majority's holding that the claimant sustained a compensable knee injury, I believe they have erred in not affirming and adopting the Administrative Law Judge's Opinion in all respects. For that reason, I must respectfully concur, in part, and dissent, in part, from the majority's opinion.

This claim was initially controverted because the respondent contended that the claimant was on a lunch break and not performing an employment service at the time of the injury. The majority correctly rejects this argument and concludes the claimant was performing

an employment service at the time of her fall. The majority is also correct in finding the claimant sustained an injury to her right knee in this fall. However, I believe the evidence establishes the claimant also sustained an injury to her lower back.

In finding the claimant's back injury was not compensable, the majority makes several conclusionary statements to that effect, and then incorrectly states the claimant's back condition existence is not supported by objective findings. I believe the majority is incorrect on these points. First, I note the majority's own opinion sets out findings about a lumbar MRI and a discogram the claimant underwent. Both of those tests, which are clearly objective, reflect a disc injury at L3-L4. According to the discogram, the claimant has an annular tear at that level and Dr. Krishan, the physician who directed the claimant to undergo the discogram, concluded she had a herniated disc at that level. Clearly, the condition discovered by Dr. Krishan would cause the symptoms the claimant complained of. I simply do not see how it can be argued that the

existence of the claimant's condition is not supported by objective findings.

The real issue is whether a causal connection exists between the claimant's fall and her back difficulties. As indicated above, the majority deals with this issue by simply making several conclusionary statements without analyzing the facts in evidence. The majority overlooks the temporal relationship between the claimant's fall and the onset of the claimant's symptoms. Prior to her injury, the claimant had been engaged in frequent heavy lifting in carrying out her nursing duties. However, following her injury, she was not able to return to work and carry out those types of activities.

The majority also quotes Dr. Krishan's statement regarding causation of the claimant's back pain. It is true the doctor indicated he could not state with a reasonable degree of medical certainty that the claimant's back pain was caused by her job-related fall. But, causation is a question for the Commission to determine and not the medical provider. I also note, in reviewing the letter from which the statement was

taken, Dr. Krishan was conditioning the statement upon information provided him by the respondent. He stated that he did not have all of the records relating to the claimant's past treatment history in his possession, and his opinion was based solely on the two documents provided him by the respondent. Had Dr. Krishan been in possession of the claimant's entire medical records from the other providers, his opinion might have differed.

In short, I find the medical records establish the claimant sustained an L3-L4 disc injury to her lower back in the form of an annular tear with a disc herniation. This type of injury is known to cause discogenic back pain, as well as the radicular symptoms being complained of by the claimant. The presence of this condition is objectively verified by MRI scans and a discogram. Also, when the proximity of the onset of symptoms is compared to the claimant's job related fall, it is apparent to me that she sustained a job-related injury to her lower back. I must, therefore, dissent from the majority's finding to the contrary.

I also disagree with the majority's conclusion that the medical treatment the claimant received for her

knee is not reasonable and necessary. Since the majority has found the claimant sustained a compensable injury to her knee, the only issue is whether the compensable injury is some cause of her need for the requested medical treatment. In this regard, I note Dr. Kenneth Martin, the Little Rock orthopedist who operated on the claimant's knee, indicated his belief the claimant's job-related fall was the partial cause of her need for treatment.

According to the diagnostic tests, the claimant had a knee condition involving a plica. According to Dr. Martin, plica is a remnant of the compartmentalization of the knee that exists in some people. The claimant was diagnosed by Dr. Martin as having a plica which was interfering with her knee movement causing her pain. In his deposition, while being questioned by the respondent's counsel, the following exchange took place:

Q. Okay. So with respect to the claimant's plica that you found, did you feel that that was the source of her knee pathology that she presented to you with?

- A. I thought that was one of the sources, uh-huh.
- Q. Okay, were there any other sources that you suspected?
- A. Just by the fact that she fell on her knee and was told she had a bruise, that she can get pain from the patella, or the kneecap, just from the damage to the kneecap with any sort of fall.

I believe the above quotation establishes that the claimant's fall was partially the cause for her need for medical treatment. As has been previously held, a claimant is entitled to additional medical treatment if the compensable injury was a factor in the need for such medical treatment. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S. W. 3d 383 (2004).

In this case, the respondent had been carrying out her duties as normal until the fall. As has been found by the majority, she sustained a blow to her knee when she fell, which caused an immediate onset of symptoms. These symptoms did not improve until Dr. Martin performed his surgery on the claimant. I believe the opinion of Dr. Martin, when taken in conjunction

with the immediate onset of symptoms, and the consistent complaints made by the claimant, establishes that the treatment provided her was caused in part by her compensable injury. Under the Workers' Compensation Act, as interpreted by the Arkansas Appellate Courts, she has met her burden of proof in this regard.

In conclusion, the majority has erred in finding the claimant failed to establish a compensable injury to her back or that the medical treatment she sought from Dr. Martin is reasonable and necessary and related to her compensable injury. I find that the claimant has met her burden in both regards and is entitled to receive all disability and medical benefits as awarded by the Administrative Law Judge, including treatment from Dr. Martin and Dr. Krishan and other physicians the claimant saw at their direction or referral.

For the reasons set out above, I respectfully concur in part, and dissent in part, from the majority's decision.

PHILIP A. HOOD, Commissioner