

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510342

DAVID BELIEW,  
EMPLOYEE

CLAIMANT

LENNOX INDUSTRIES,  
EMPLOYER

RESPONDENT

ACE AMERICAN,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 1, 2009

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

Claimant represented by the HONORABLE STEVEN MCNEELY,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE BETTY J. HARDY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The Arkansas Court of Appeals has reversed and remanded the above-styled case to the Full Commission. *Beliew v. Lennox Industries*, CA07-1197 (June 18, 2008). Based on our *de novo* review of the entire record, including the findings of low-back strain made by Drs. Hord and Daniel, the Full Commission finds that the claimant did not prove Dr. Chakales' treatment was reasonably necessary. The Full

Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits.

I. HISTORY

David Ray Beliew, age 40, testified that he began working for Lennox Industries in February 1994. Mr. Beliew testified that he was a "run-test operator/conversion" for the respondent-employer. The parties stipulated that the claimant sustained a compensable back injury on July 20, 2005. The claimant testified on direct examination:

Q. Tell the Judge what happened when you injured your back in July 2005?

A. Well, we convert units when the units come in, whatever needs to be done to be changed, whether it be blowers, coils, doors, or whatever, and then we have to test them to make sure that all the wires are hooked back up. And to do this the sections are where you work on them is probably - the closest one would probably be 25 feet, and they are sat on big carts that's got hard rubber - or plastic wheels, rather. You have to push on them. They've got a tugger that pulls them, but you have to steer them from the rear to turn them, make them go straight. As I was doing that I felt something pull in my lower back, burning sensation. I went and told my supervisor. It kept getting harder, and I told him I needed to go to see a doctor.

Dr. M.E. Hord noted on July 20, 2005, "He has a distinct muscle spasm in his left paraspinous muscles in his lumbar spine area." Dr. Hord assessed "Lumbar strain." The

record indicates that Dr. Noble Daniel reported pain with mild spasm in the claimant's left paravertebral area on July 22, 2005. Dr. Daniel assessed "strain - not improving." Dr. Daniel assessed "lumbosacral strain" on September 22, 2005.

Dr. Brent Sprinkle, a physical medicine and rehabilitation specialist, evaluated the claimant on October 3, 2005 and noted that the claimant complained of thoracic pain and intermittent left thigh pain. Dr. Sprinkle's impression was "1. Thoracic strain. 2. Thoracic myofascial pain syndrome." Dr. Sprinkle planned an MRI of the claimant's thoracic spine, and he returned the claimant to work with no lifting over 30 pounds.

An MRI of the thoracic spine was taken on October 10, 2005, with the impression, "Mild early degenerative changes, most significant at T11-T12, but no focal disk herniation or significant canal stenosis is seen." The claimant followed up with Dr. Sprinkle on October 10, 2005: "The trigger point injection helped him a little bit....The physical therapy seems to help when he goes....He has not yet been back to work because the restrictions were too tight....He will advance his work restrictions to no pushing or pulling

greater than 100 pounds, no lifting greater than 50 pounds." Dr. Sprinkle's impression was "1. Thoracic somatic dysfunction. 2. Thoracic pain."

Dr. Sprinkle followed up with the claimant on October 19, 2005 and noted in part, "1. Will get him back into physical therapy....5. Maintain the current work restrictions as they are. 6. If he does not want to consider the epidural, another treatment option would be a trigger point injection. If he does not want to pursue that, then he will be at maximum medical improvement."

The record indicates that the claimant participated in scheduled physical therapy visits from September 2005 through November 2005. Dr. Sprinkle opined on November 2, 2005 that the claimant had reached maximum medical improvement, and Dr. Sprinkle assigned a 0% permanent impairment rating. The claimant continued to attend physical therapy treatment. The record indicates that the claimant did not work after about November 10, 2005.

The claimant followed up with Dr. Daniel on December 13, 2005. Dr. Daniel referred the claimant back to Dr. Sprinkle. The claimant saw Dr. Sprinkle on December 15, 2005:

1. He has tried physical therapy, trigger points, non-steroidals, muscle relaxers, Lidoderm patches, RS stimulator, and manipulation all without sustainable benefit. The only other treatment option for him would be an epidural steroid injection. He has the most noticeable degenerative changes at T11-12, so I would recommend a T11-12 epidural.
2. He can return to work with no lifting over 35 pounds, no pushing or pulling greater than 50 pounds. He can increase that by 10 pounds per week on both measures starting 2 weeks after his epidural. If it is helpful he can have up to 2 additional injections. If not, he will be at maximum medical improvement.
3. I would conclude a 0% permanent impairment rating.

Dr. Sprinkle's impression was "1. Thoracic degenerative disc disease, preexisting. 2. Thoracic myofascial pain syndrome. 3. Thoracic strain." The claimant testified that Dr. Sprinkle's treatment did not provide any relief.

The claimant returned to Dr. Daniel on January 12, 2006:

David is back in today just seeing me as a non-workmen's comp visit. Basically he continues to have musculoskeletal back pain. He's been through Dr. Sprinkle's work up and treatment. Apparently his MRI and bone scan are unremarkable however I don't have that report. The information is just from the patient. Basically we talked 20 minutes about general management of back pain. I ended up giving him Toradol 60 mg IM to see if that would help. If it does, we will call him in some p.o. Toradol for a while. I've told him I'm really not taking him on as a pain management or

further back pain doctor as I think the better part of valor is to continue with workmen's comp. He's going to request a second opinion. Discharged ambulatory in no acute distress.

The claimant underwent physical therapy treatment at Baptist Health beginning January 20, 2006.

Dr. Richard Wilson, the claimant's family physician, referred the claimant to Dr. Harold Chakales on January 30, 2006.

Dr. Annette P. Meador saw the claimant on February 9, 2006:

Mr. Beliew is a 37-year-old employee of Lenox (sic) Industries in Stuttgart. On July 20, 2005, he was at work steering a 30 ton unit on wheels when he felt something give in his left lower back....He tried to go back to work a couple of times, but was unable. He states the last time he went to work was probably in November.... He has seen Dr. Brent Sprinkle who performed trigger point injections for diagnosis of thoracic myofascial pain and thoracic degenerative disc disease. He has also had trials of nonsteroidal anti-inflammatory medications, muscle relaxers, Lidoderm patches, and manipulation. He has had two rounds of physical therapy which he states did not help. He states that no medications have helped. At one point in November of 2005 the patient declined epidural or trigger point injections. He did not complete the full course of the RS muscle stimulation treatment....

David states he spends most of the day on the couch and the bed. He was taught exercises by the physical therapist, but he refuses to do so. His pain is worse with lifting and bending and

pushing. He also states that he has pain along the anterior aspect of the left thigh....

He is an alert and oriented, well-developed, well-nourished 37-year-old who is very hostile when I initially walked in the room and merely introduced myself. Specifically, I asked him to show me where his pain was and he became angry and stated that he "did not want to show me the wrong place because that got him in trouble with Dr. Sprinkle." I then asked him if there was anyone that accompanied him that could tell me where his pain was and then he became confused and allowed me to go ahead and examine him for a little while. He pointed to the left flank and medial scapula area as being his source of pain....On straight-leg-raising he reached forward as if to grab my arm at a mere 10 degrees. After I explained that this is a normal part of physical examination, he allowed me to continue....

#### **IMPRESSION**

1. Myofascial posterior thoracic pain, with minimal physical exam findings, out of proportion to the level of pain which he reports to be a 9.
2. The patient has serious emotional and anger problems. When I performed the straight-leg raise, as noted above, he acted as if I was trying to hurt him. I asked who he was angry at and he states that he is angry that no one has been able to figure out what causes his pain. I explained that I was trying to perform physical examination maneuvers to indeed try to diagnose the pain generator. He then allowed me to continue with my examination.

Dr. Meador recommended the following: "I have sent him back to work to full duty on 2/10/06 with 0% impairment. I see no reason why he cannot return to gainful employment."

The record indicates that the respondents paid benefits through February 11, 2006. The claimant agreed on cross-

examination that he applied for, and began receiving short-term disability on February 17, 2006.

Dr. Harold H. Chakales, an orthopaedic surgeon, began treating the claimant on February 27, 2006:

Mr. Beliew is a 37-year-old man who presents with complaints of pain as the result of a work related incident which occurred on July 20, 2005....He began to have low back pain with pain radiating into his hips. He was treated by Dr. Brent Sprinkle at that time, but he has not improved....He states he has persistent and chronic low back pain with pain radiating into the left leg. He last worked in November. He has tried to get a light duty job but none were available....He had an MRI of the thoracic spine but not the lumbar spine....Complete x-rays of the lumbar spine show a transitional fifth lumbar vertebra. There is some degenerative disc disease present....

Dr. Chakales diagnosed "1. Lumbar disc syndrome with left-sided sciatica....We will schedule him for an MRI of the lumbar spine. He previously had an MRI of the thoracic spine. We will also schedule him for an EMG/NCV of his back and both legs. I have prescribed some pain pills and muscle relaxers. He is temporarily totally disabled at this time."

Dr. Wilson saw the claimant on March 1, 2006, and his impression at that time was degenerative disc disease. Dr. Wilson assisted the claimant in filling out Family Medical

Leave papers. Dr. Wilson appeared to take the claimant off work "Pending Rehab."

An MRI of the claimant's lumbar spine was taken on March 22, 2006, and the findings at that time included, "Advanced degenerative changes are present in the disc space at L4-L5. The upper lumbar discs are normal....L4-L5: Dessication of the disc....Broad-based disc bulge is present. No focal protrusion or extrusion of disc...." The impression was "Moderate sized annular tear in the disc at L4-L5. Broad-based bulge but no focal protrusion or disc extrusion. No evidence for mechanical nerve root impingement in the lumbar spine."

The following impression resulted from a Neurology Procedure Report on March 22, 2006:

1. Normal motor and sensory nerve conduction velocity testing of the left leg with no evidence of a peripheral neuropathy.
2. Abnormal EMG needle study due to chronic denervation changes at the left S1 (plus or minus left L5) level. This suggests possible left S1 radiculopathy and \_\_\_ possible left L5 radiculopathy. Correlation with imaging studies is needed.

The claimant saw Dr. Chakales on March 27, 2006: "He is symptomatic in his back and is still having trouble. He had an MRI which is abnormal and showed a moderate-sized tear of

the annulus, with a bulging disc at L4-5. There is also some evidence of abnormality at the L5-S1 level. The EMG/NCV is abnormal at L4-5, L5-S1."

Dr. Chakales noted on April 24, 2006, "He is going to have a discogram in 10 days and is still symptomatic. He is having quite a bit of back pain. He remains disabled and unable to work."

On May 4, 2006, Dr. Chakales performed a lumbar discogram at L3/4, L4/5, and L5/S1. The pre-operative diagnosis was "Lumbar disc syndrome with radiculopathy." The post-operative diagnosis was "Lumbar disc syndrome with radiculopathy and instability."

A radiologist's impression following discography on May 4, 2006 was "Posterior annular tear at L3/4." A CT of the claimant's lumbar spine was taken on May 4, 2006, with the impression, "Findings consistent with grade I to II disc with contrast definitely extending to the annulus and questionably beyond the annulus at L3-L4. Normal disc at L4-L5. Grade I disc at L5-S1 with contrast extending to the annulus."

The claimant followed up with Dr. Chakales on May 12, 2006: "His discogram was abnormal at L3-4. I felt there

were changes at L4-5, L5-S1. He states after the discogram he had increasing pain, but it is easing a little. He has a lumbar disc syndrome at two levels. He has also had abnormal EMG studies. If he is still having trouble, we might consider a fusion or treat him nonoperatively. He has been sick for almost a year and has positive sciatica. He is unable to work."

A pre-hearing order was filed on August 9, 2006. The claimant contended that he remained symptomatic and wished to continue treatment with Dr. Harold Chakales at the respondents' expense. The respondents contended that all appropriate benefits had been paid. The parties agreed to litigate the following issues: "Reasonable and necessary medical treatment; additional temporary total disability benefits; controversion and attorney's fees."

The claimant agreed on cross-examination that his short-term disability expired on August 17, 2006. The claimant's employment with the respondents was subsequently terminated.

The parties deposed Dr. Sprinkle on September 1, 2006. Dr. Sprinkle agreed that he began treating the claimant on

October 3, 2005. The respondents' attorney questioned Dr. Sprinkle:

Q. What was your impression after seeing Mr. Beliew on October the 3<sup>rd</sup>, 2005?

A. My initial diagnosis was a thoracic strain and more specifically, thoracic myofascial pain syndrome, which was essentially a strain of that muscle group that I mentioned previously to be tender....

Q. Just as a general rule of thumb, how long does it take a patient on average to heal from some type of strain or sprain of their spine?

A. In an ideal setting, probably within the eight to ten-week range is what you kinda shoot for....

Q. As part of Dr. Chakales' recommendations, the Claimant had an MRI of his lumbar spine. I have a - I don't have the films, but I have a copy of the radiologist's report that I'd like for you to look at.

A. (Consulting Document) He does have some degenerative disc disease changes at the L4-5 level with a tear in that disc and kind of a broad-based bulge, but no real focal extrusion. It was also noted that he had some transitional anatomy, which is just - that's a congenital finding where you have sort of a residual disc between the S-1 and S-2 vertebrae that's not anything that occurs as the result of an injury.

Q. Okay. So as far as your review of the radiologist's report from the MRI of the lumbar spine, is it basically consistent with someone who has degenerative disc disease in their thoracic spine and also in their lumbar spine?

A. Yes.

Q. You mentioned an annular tear. If you would, describe what that is and tell us if it has any significance.

A. Annular tears - essentially, the disc has two parts, the nucleus or inner part and then the annulus, which is the outer layer. It's sorta layered like an onion. As a disc degenerates or wears out, you can sometimes get little tears in that outer layer. It's been shown with MRI imaging that tears can frequently occur in patients with degenerative disc disease and produce no symptoms. On occasion when they're in the acute phase, they can produce symptoms.

Q. Do you review this report as being in the acute phase?

A. It's very difficult to know for sure what phase it's in. However, it sounds like it's a pretty large tear, and relatively large tears when they're that noticeable - it was panning across the disc from the right to the left side. That would suggest probably a more acute finding.

Q. Can you determine from this report when that annular tear occurred?

A. No....

Q. Can you state with any reasonable degree of medical certainty whether or not the findings from Mr. Beliew's MRI would be due to an injury that he described occurring when he was pushing some air conditioning units?

A. I'd say there's a greater than 51 percent chance that these findings are not related to that specific injury.

A hearing was held on September 15, 2006. The claimant described his pain symptoms: "Basically it's not as bad, but

it's a constant pain. I mean, the leg don't hurt if I'm off of it." The claimant testified that he was unable to work because of his back pain. The claimant testified that he had received a certified letter notifying him his employment was terminated.

The claimant testified on cross-examination regarding Dr. Chakales' treatment, "He's got me off of my feet, you know, got me on limited things to do which has helped some, and he's got me on muscle relaxers and pain pills."

An administrative law judge found that the claimant proved Dr. Chakales' treatment was reasonably necessary. The administrative law judge found that the claimant proved he was entitled to temporary total disability benefits from February 12, 2006 to a date yet to be determined. The respondents appealed to the Full Commission. The Full Commission found that the claimant did not prove Dr. Chakales' treatment was reasonably necessary, and that the claimant did not prove he was entitled to additional temporary total disability benefits. The Court of Appeals has determined that the Full Commission arbitrarily disregarded the medical records from Drs. Hord and Daniel

that diagnosed the claimant with a low-back strain prior to Dr. Sprinkle's examination of the claimant.

## 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 he is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

In the present matter, Dr. Chakales informed the claimant's attorney in correspondence dated August 6, 2006, "Mr. Beliew has failed to respond to nonoperative management. At this time I believe he is a suitable surgical candidate. He has been disabled since approximately July 2005." The Full Commission finds that the claimant did not prove surgery as recommended by Dr. Chakales was reasonably necessary. The Court of Appeals has

directed the Commission to consider the medical reports of Dr. Hord and Dr. Daniel. Dr. Hord reported muscle spasm in the claimant's lumbar spine area on July 20, 2005 and assessed "Lumbar strain." Dr. Daniel assessed "lumbosacral strain" on September 22, 2005. Neither Dr. Hord nor Dr. Daniel ever referred the claimant to Dr. Chakales for potential surgery to the claimant's lumbar spine. The record indicates that Dr. Wilson, the claimant's family physician, referred the claimant to Dr. Chakales. Dr. Daniel actually referred the claimant back to Dr. Sprinkle, rather than Dr. Chakales, in December 2005. Neither Dr. Hord nor Dr. Daniel ever opined that the claimant needed surgery for his lumbar strain.

After considering the opinions of Dr. Hord, Dr. Daniel, and Dr. Chakales, the Full Commission attaches significant weight to the opinion of Dr. Sprinkle. Dr. Sprinkle agreed at deposition that his initial diagnosis has been thoracic strain. Dr. Sprinkle also credibly testified that he had examined the claimant's thoracic and lumbar area, and that he considered "thoracic and lumbar together conceptually....the only tenderness and tightness I found was in that thoracic area." Dr. Sprinkle testified that he

reviewed the claimant's lumbar MRI which showed "some degenerative disc disease changes at the L4-5 level with a tear in that disc and kind of a broad-based bulge, but no real focal extrusion." Dr. Sprinkle opined that the findings seen on the lumbar MRI were not related to the claimant's compensable injury. It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, after considering the reports of lumbar strain by Drs. Hord and Daniel, the Full Commission finds that the claimant did not prove surgery as recommended by Dr. Chakales was reasonably necessary. We find the expert opinions of Dr. Sprinkle and Dr. Meador to be more credible. Dr. Sprinkle's reports indicated that the claimant reached maximum medical improvement no later than December 15, 2005. Dr. Meador sent the claimant back to work at full duty on February 10, 2006 with 0% impairment. Neither Dr. Sprinkle nor Dr. Meador opined that the claimant would need surgery.

Based on our *de novo* review of the entire record, and after considering the reports of lumbar strain by Dr. Hord and Dr. Daniel, the Full Commission finds that the claimant

did not prove surgery recommended by Dr. Chakales was reasonably necessary. The record demonstrates, pursuant to the credible examinations and reports of Dr. Sprinkle and Dr. Meador, that the claimant reached maximum medical improvement for his thoracic and lumbar strain no later than February 10, 2006. 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). The claimant did not prove he was entitled to additional temporary total disability benefits after February 10, 2006. The instant claim for additional benefits is denied and dismissed.

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

After a de novo review of the record, I must respectfully dissent from the majority opinion. I find that the claimant did prove that Dr. Chakales' treatment was

reasonably necessary and that the claimant is entitled to temporary total disability benefits. This claim was remanded by the Arkansas Court of Appeals to the Full Commission for further findings of fact, because the Full Commission did not address the reports of either Dr. Hord or Dr. Daniel who first examined the claimant and noted the presence of low-back pain. The majority of the Full Commission was unmoved by the opinions of Dr. Hord and Dr. Daniel and denied the claim for medical treatment and temporary total disability benefits.

Under Arkansas workers' compensation law, employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark Code Ann. Sec. 11-9-508(a) (Supp. 2005). Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Injured workers have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17, 1989 (D612291). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. Wackenhut Corp. v. Jones, 73 Ark.

App. 158, 40 S.W.3d 333 (2001). Reasonable and necessary medical services may include those 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. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). A claimant does not have to support a continued need for medical treatment with objective findings. Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

The medical records of Dr. Hord, Dr. Daniel, and Dr. Chakales and the testimony of the claimant show that the claimant sustained a low back injury in July 2005 while in the employment of the respondents. The claimant's own testimony and work history established that his back pain began only after the July 2005 accident. The claimant testified that he had a perfect attendance record for four years, ending in July 2005 with his compensable injury. The claimant testified that in July 2005 he was moving a unit around, pushing and pulling it with a tugger to steer the unit, when he felt something pull in his lower back, which

caused a burning sensation. The claimant testified that he was in continuous pain in his back and left leg since the date of his injury, and the treatment that he received did not help his pain. Clearly, the claimant established by a preponderance of the evidence that his low back injury was casually connected to the injury he sustained while in the employment of the respondents.

I find that the claimant has shown by a preponderance of the evidence that the treatment by Dr. Chakales is reasonable and necessary medical treatment of the compensable injury. As noted by the Court of Appeals, the medical records show that the claimant reported low back pain from the beginning of his compensable claim, and Drs. Hord and Daniel both diagnosed an injury to his lumbar spine.

The claimant was sent to Dr. Hord by the respondents on July 20, 2005, after he reported his injury. Kim Chastain, the company nurse, filled out the Authorization For Treatment From Lennox form which described the injury as "back pain." Dr. Hord noted on the form that his subjective finding was low back pain and that his diagnosis was a lumbar strain. The claimant reported mid to

low back pain. In Dr. Hord's medical notes, he noted that the claimant had distinct muscle spasm in his left paraspinous muscles in his lumbar spine area. Dr. Hord continued the claimant on Flexeril for muscle spasms, Medrol Dosepack, and Naproxin.

The claimant continued his treatment for his back injury with Dr. Daniel. On September 19, 2005, medical notes on an Authorization For Treatment From Lennox form indicated that the claimant's pain was generally from the T-9 to L2 level and that the pain radiated to his left leg. On September 22, 2005 another Authorization For Treatment From Lennox form indicated a "LS strain" or lumbosacral strain. Dr. Daniel referred the claimant to physical therapy, adding that the claimant was to be treated for a "LS strain."

The claimant began physical therapy on September 26, 2005. On the patient information sheet, the claimant indicated that he suffered from upper left back pain and left leg pain. The physical therapist's notes indicate that she was treating the claimant for a "L/S strain." The physical therapist also noted that her plan for the claimant was mid to low back strengthening. The claimant did not receive any relief from physical therapy.

The claimant continued to have pain and limitations due to pain in his back and left leg, including lumbar pain, never addressed by Dr. Sprinkle or Dr. Meador. Unhappy with the results of Dr. Sprinkle's treatment and still in pain, the claimant sought medical treatment from Dr. Meador on February 9, 2006. On the claimant's pain chart, the claimant indicated that he had pain down the left side of his entire back and down his left leg. Dr. Meador noted that the x-rays of the claimant's cervical and lumbar back were normal, and that the MRI of the thoracic spine were normal. Despite the claimant's indication on the pain chart that he suffered from pain in the lumbar region, Dr. Meador did not order an MRI on the lumbar area. Dr. Meador returned the claimant to work as of February 10, 2006.

Still in pain, the claimant sought treatment from Dr. Chakales on February 27, 2006. Dr. Chakales reviewed x-rays which revealed that the lumbar spine had a transitional fifth lumbar vertebra. Dr. Chakales observed that the claimant walked with an antalgic gait and had straightening of the lumbar lordosis. Dr. Chakales diagnosed the claimant as having lumbar disc syndrome with left sided sciatica and

ordered an MRI of the lumbar spine and an EMG/NCV of his back and both legs.

The MRI revealed that the claimant suffered from a moderate sized tear of the annulus with a bulging disk at L4-5 and some abnormality at L5-S1. Dr. Chakales then ordered a discogram, which revealed abnormalities at L3-4, L4-5, and L5-S1. Dr. Chakales also noted that the claimant's EMG test was abnormal. Additionally, Dr. Chakales noted that the claimant had chronic nerve root irritation, and as the claimant has failed to respond to non-operative management, he is a surgical candidate. The evidence of pain originating with the compensable injury and diagnosed as a lumbar strain, of complaints of lumbar pain originating with the injury, and the continuous nature of those complaints with no success from the treatment of other areas of his spine support the conclusion that the claimant's need for treatment of his lumbar spine is directly related to the compensable injury and that Dr. Chakales' treatment of those complaints is reasonable and necessary.

The majority has disregarded this evidence with the justification that neither Dr. Hord nor Dr. Daniel referred the claimant to Dr. Chakales for a surgical

evaluation concerning his lumbar spine, that the claimant's family physician referred him to Dr. Chakales and that neither Dr. Hord nor Dr. Daniel ever opined that the claimant needed surgery to his lumbar spine. The majority instead has given more weight to the opinions of Dr. Sprinkle and Dr. Meador.

The facts do not bear this analysis out. First, the claimant was sent to Dr. Daniel by Kim Chastain, industrial nurse for the respondent employer, upon his report of injury. He was first seen by Dr. Hord because of Dr. Daniel's absence at that time. Upon the claimant's return to that clinic, Dr. Daniel took over the claimant's care, and Dr. Hord had no opportunity to treat the claimant for this injury again. Certainly after only the first visit and diagnosis of lumbar strain, it would have been inappropriate for Dr. Hord to recommend surgery without further investigation. The fact that Dr. Hord neither referred the claimant to Dr. Chakales for a surgical evaluation nor opined that he needed lumbar surgery is irrelevant to the reasonability and necessity of Dr. Chakales' treatment. Dr. Hord, based upon the claimant's complaints and examination, found that he had a lumbar

strain. This is the examination and diagnosis closest in time to the injury and is crucial to his care.

Likewise, Dr. Daniel's treatment and opinions are deserving of greater weight than that afforded by the majority. After approximately one month of treatment, including an unsuccessful round of physical therapy, Dr. Daniel, a clinician at Stuttgart Regional Care Network, was in no position to recommend surgery, but did indeed refer the claimant for specialized care *based upon his diagnosis of lumbosacral strain*. To disregard a general practitioner's observations, notes and initial diagnosis for the reason that he chose to refer the patient to a specialist instead of recommending surgery himself is nonsensical. The fact that he did not refer the claimant to Dr. Chakales is likewise irrelevant. Had Dr. Sprinkle had access to Dr. Hord's and Dr. Daniel's records and had he actually used them in addressing the totality of the claimant's problems, there would have been no need for further referrals, which leads nicely to the next point.

The fact that the treating physicians disregarded Dr. Hord, Dr. Daniel and the claimant speaks more to the value of their opinions than it does to the value of the

opinions of Dr. Hord and Dr. Daniel. Dr. Hord and Dr. Daniel created medical records based upon the claimant's complaints and his own observations, which Dr. Sprinkle and Dr. Meador did not use through their own or others' fault.

Kim Chastain, the industrial nurse for the respondents, testified that she was not surprised that Dr. Hord diagnosed the claimant as having a "low back strain" and that she did not pay attention to the low back part of the Authorization For Treatment From Lennox form. Chastain also admitted that she did not know why Dr. Sprinkle would only treat the claimant's mid back when he was diagnosed as having a low back strain. Kathy Keary, a senior claims manager, became involved in the claim in September 2005. She admitted that the July 20, 2005 Authorization For Treatment From Lennox form which indicated that the claimant suffered a low back strain was never sent to her and that it was not in her file. All of her decisions were made without all of the information, particularly the initial observations and diagnoses. After the claimant had been referred to Dr. Sprinkle, and had been seeing him for a time, Keary assigned the claim to Cheryl Johnson, nurse case manager, without providing all the medical records to

Johnson. Johnson testified that left leg pain could be indicative of a lumbar injury, but she was not aware of any left leg pain complaints by the claimant.

The claims manager, the nurse case manager, Dr. Sprinkle and Dr. Meador all made decisions regarding the claimant's care without all the information. This information was crucial to the claimant's treatment, and the opinions of Dr. Sprinkle and Dr. Meador cannot be sufficient to support a decision by this Commission, because they do not address the entirety of the claimant's injury. Their opinions on his thoracic spine may indeed be valid, but since they fail to address his lumbar condition which remained symptomatic since the date of injury, they do not provide a substantial basis for denying the claim for medical treatment. When all the medical records are considered, it is clear that the claimant's lumbar spine has been in need of treatment since the date of injury and that Dr. Chakales has provided and proposed reasonable and necessary treatment of his compensable injury.

Dr. Sprinkle's opinion, that the claimant is at maximum medical improvement and in need of no more treatment of his compensable injury, is undermined by his statement

that he observed no tenderness and tightness in the claimant's lumbar area when his notes state that he did observe tenderness and tightness in the left lumbar paraspinals on October 10, 2005. Furthermore, his opinion, attributing no significance to the MRI scan showing a lumbar annular tear was made without the benefit of Dr. Hord's and Dr. Daniel's observations or of the complaints made by the claimant at that time. His opinion is also undermined by the fact that he limited his examination of the claimant's back to his thoracic spine based upon the claimant's statement that his pain was mid-back. Of course, the claimant's description is important, vitally important, but he is not a doctor, not medically trained. It is again inconceivable that Dr. Sprinkle would ignore any other part of his spine especially where his left leg pain was indicative of lumbar issues and where Dr. Sprinkle observed tenderness and tightness in the lumbar paraspinals.

Despite the claimant being diagnosed by Dr. Daniel and Dr. Hord as having a lumbosacral strain, Cheryl Johnson noting that leg pain indicates a lumbar injury, and Dr. Sprinkle's own notation that the claimant had lumbar paraspinal trigger points, Dr. Sprinkle determined that the

claimant suffered a thoracic strain. As such, Dr. Sprinkle ordered an MRI of the thoracic spine only. The MRI revealed that the claimant suffered from a posterior disk bulge and mild disk desiccation at T11-T12. Dr. Sprinkle completely ignored the claimant's lumbar spine.

The majority also found that the claimant failed to prove by a preponderance of the evidence that he was entitled to temporary total disability benefits from February 11, 2006 through a date yet to be determined. Dr. Meador concluded that the claimant was at maximum medical improvement with a zero percent impairment rating on February 9, 2006. At that point, Dr. Meador released the claimant to go back to work with no restrictions. However, as previously discussed, I find the opinion of Dr. Meador should be given little weight.

Temporary total disability for unscheduled injuries is that period within the healing period in which a claimant suffers a 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 healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. Breshears, supra; J.A. Riggs Tractor Co. v. Etzkorn, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

The claimant has not exited his healing period. Dr. Chakales recommended additional treatment for the claimant. There is no evidence that Dr. Chakales has placed the claimant at maximum medical improvement or that he has released the claimant to return to work. The claimant's symptoms were never adequately addressed until he began treatment with Dr. Chakales. The denial of temporary total disability benefits when a doctor who is treating the wrong body part places a claimant at maximum medical improvement is beyond the pale, especially when the credible medical evidence shows that the claimant had problems with his lumbar from the date of injury and that treatment of his lumbar spine has met with some success.

In conclusion, the majority errs in finding that the claimant did not prove that Dr. Chakales' treatment and proposed surgery were reasonable and necessary medical

treatment and in denying him temporary total benefits after February 9, 2006. I find that the claimant is entitled to receive all reasonable and necessary treatment proposed by Dr. Chakales and to receive temporary total disability from February 9, 2006 to a date yet to be determined.

For the aforementioned reasons, I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner