

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600793

JUDY A. CAMPBELL,
EMPLOYEE

CLAIMANT

DEPARTMENT OF WORKFORCE EDUCATION,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 26, 2009

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

Claimant represented by the HONORABLE KENNETH E. BUCKNER,
Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed December 12, 2007. The administrative law judge found that the claimant proved she was entitled to additional medical treatment and temporary total disability compensation. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's

opinion. We find that the claimant did not prove she was entitled to additional benefits after March 5, 2007.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury as a result of a motor vehicle accident on January 12, 2006. The claimant testified that she injured her neck, back, and left knee as a result of the accident. Dr. Charles Schultz examined the claimant on February 1, 2006: "This is a 46-year-old white female complaining of continued pain in her neck with radicular pain into her right arm with muscle spasms....The patient has a decreased range of motion of her neck and low back with flexion, extention (sic), and rotation to the right and left. The patient has some muscle spasms with performing these maneuvers and at rest. Patient has tenderness over her cervical and lumbar facet joints bilaterally. Patient is now having pain over her thoracic spine region radiating to her chest wall bilaterally." Dr. Schultz's assessment included the following: "1. Neck pain with radicular pain into the right and left upper extremities with paresthesias and muscle spasms. The patient is status post anterior cervical decompression and fusion at C-5-6. The patient has

cervical spondylosis without myelopathy. The cervical spine symptoms have markedly worsened since her motor vehicle accident. 2. Thoracic spine pain with radicular pain into the right and left chest wall with muscle spasms. The patient has thoracic spondylosis without myelopathy. The thoracic spine pain was new since the motor vehicle accident...."

Dr. Shultz's treatment plan included medication and diagnostic testing. An MR of the claimant's cervical spine was taken on February 7, 2006, with the impression, "1. Anterior cervical fusion at the C5-6 level. 2. A mixed broad based disc displacement at C4-5 level causing mild flattening of the vertebral cord." An MR of the thoracic spine was also taken on February 7, 2006, with the impression, "Unremarkable noncontrast MRI of the thoracic spine."

Dr. Steven L. Cathey corresponded with Dr. Schultz on February 20, 2006:

Happily, her neurological examination remains entirely negative. There is specifically no sign of cervical myeloradiculopathy. The patient demonstrates full range of motion of the cervical spine without paraspinous muscle spasm. A well healed scar is noted just above her left clavicle related to a previous anterior cervical discectomy and fusion at C5-C6.

The patient, her husband and I reviewed a recent MRI scan of her cervical spine. The arthrodesis at C5-C6 looks great. Although there is evidence of a broad-based disc bulge/osteophyte at C4-C5, there has been no change when the most recent MRI scan is compared to a previous study two years ago.

Chuck, I feel certain Judy has suffered a musculoskeletal injury superimposed on these preexisting degenerative/operative changes in her cervical spine. Unfortunately, this is not something that will respond favorably to additional cervical disc surgery or other neurosurgical intervention. She is, however, going to be coming back to see you to discuss pain management such as physical therapy, trigger point injections, etc....

The claimant continued to follow up with Dr. Schultz. Dr. Schultz began administering cervical medial branch blocks.

Dr. A.J. Zolten performed a Neuropsychological Evaluation of the claimant on September 27, 2006. Dr. Zolten's summary stated, among other things, that the claimant was exaggerating her pain symptoms and was over-medicating.

Dr. Earl Peeples reported on October 26, 2006:

I have reviewed records regarding Judy Campbell and will provide comments regarding those records. The appropriateness of medical intervention she is receiving for symptoms is to be addressed....

This file is consistent with an individual who sustained a cervical strain in a motor vehicle

accident. She was carefully evaluated by a neurosurgeon who correlated her clinical status and MRI indicating there was no change and no evidence of cord myelopathy.

She was placed off work based on symptoms without neurological or radiographic deficit. She received over-treatment in the form of invasive procedures and opiate medications not substantiated by objective physical findings. I did not find a logical basis for the repeated facet injections or for the use of opiate medications for a long period of time. Her psychological testing clearly shows a suboptimal effort and exaggerated symptoms consistent with complaints of pain without objective physical basis.

This record does not support, on a medical evidence basis, a reason for her to be off work and does support deliberate secondary gain or psychological basis for her symptoms. This is clearly outlined in her neuropsychological study....

It is my recommendation that Ms. Campbell be discontinued from medications with the exception of Tylenol and be allowed to resume normal employment for a woman of her gender and age without restriction.

Cervical strain heals in six to eight weeks without major deficit and is not a disabling condition....

She may return to work at her previous occupation if she is able to obtain the essentials of work (motivation, determination, effort)....

An MR of the claimant's lumbar spine was taken on November 27, 2006, with the impression, "There is question of numbering scheme used in the examination. There is a

large disc extrusion centrally and on the left at the L5-S1 level with a small fragment extension down the superior aspect of the S1 vertebral body. There is mild S1 root displacement."

Dr. Barry D. Baskin performed an Independent Medical Evaluation on December 5, 2006:

She had a surgical scar on the anterior neck from her previous cervical fusion....I did not appreciate any spasm in the cervical, thoracic or lumbar spine....

IMPRESSION: Judy Campbell is a 47 year old lady who was involved in a motor vehicle accident while working for a state agency on 1/12/06. She had a preexisting history of low back surgery in October 2003 and neck surgery for an anterior cervical discectomy and fusion by Dr. Steve Cathey in 1999. She had a preexisting history of a seizure disorder. The patient had a 24 hour EEG that was reviewed and the record did not reveal any evidence of frank seizure disorder, although there was some electrical irritability noted. Ms. Campbell has a broad based disc bulge in the cervical spine at C4-5. Previous anterior cervical fusion with hardware is noted at C5-6. Two MRI's of the cervical spine were actually done and there was no change on the second study compared to the first study of 2/7/06. I don't have any previous studies documenting what the cervical MRI looked like at the time of the cervical fusion. It is my impression that Ms. Campbell was involved in a motor vehicle accident and sustained a cervical strain. She did not complain of low back pain and hip pain until about 3 to 4 weeks ago. I do not think that the low back pain and hip pain are at all related to the 1/12/06 injury. I think the patient is taking Flexeril and Oxycodone and these drugs are

sedating her, particularly in light that she is also taking a fairly substantial amount of antiseizure medication with Zonisamide and Lamietal. Ms. Campbell's neuropsychological testing indicated some depression and also symptom exaggeration. I think Ms. Campbell should be at a point of maximum medical improvement. I think a functional capacity evaluation should be done with Functional Testing Centers to document her reliability with testing, as well as to ascertain her current work capabilities....From my standpoint, the patient's numbness in her hands, tremors and numbness in the face are not likely related to her cervical injury. I agree with Dr. Peeples' assessment about her medications and the fact that she is overly medicated and sedated as a result....

The claimant continued to follow up with Dr. Schultz. Dr. Schultz began performing nerve root injections at L5/S1.

Dr. Harold H. Chakales began treating the claimant on or about January 5, 2007. Dr. Chakales diagnosed the following: "1. Status post cervical fusion, solid, C5-6, with adjacent segment disease at C4-5. 2. Central disc protrusion, L5-S1, with spinal stenosis." A cervical myelogram was done on January 25, 2007, with the impression, "Cervical degenerative disc disease, spurring, and borderline spinal canal stenosis at the C4-C5 level." A lumbar myelogram was done on January 25, 2007, with the impression, "Unifocal left paracentral disc protrusion is postulated."

Dr. Chakales noted on February 2, 2007, "She had a cervical and lumbar myelogram done on January 25, 2007. The lumbar myelogram was grossly abnormal and showed a filling defect at the L5-S1 level, compatible with a lumbar disc syndrome. She also had a cervical myelogram which showed spinal stenosis at C4-5 with a disc osteophyte complex, which is a form of disc herniation. The patient has undergone iatrogenic fusion at C5-6 and is developing adjacent segment disease at the C4-5 level. I believe she is a possible candidate for anterior cervical discectomy and fusion. If her workers' compensation carrier denies this, she wishes to have surgery under her private health insurance. She may also need lumbar spine surgery and is a suitable candidate for a lumbar discogram."

The claimant participated in a Functional Capacity Evaluation on February 6, 2007 and it was concluded, "Ms. Campbell underwent a functional capacity evaluation this date with unreliable results and self-limiting behaviors. Overall, Ms. Campbell demonstrated the ability to perform work at least at the Sedentary Physical Demand Level of the Physical Demand Characteristics of Work over the course of a

normal workday with limitations and restrictions as noted above."

The claimant gave a history at Daugherty Medical Clinic on February 7, 2007 that she had lost balance and fallen, and that a crate had hit her back.

Dr. Baskin reported on February 21, 2007, "I have received the functional capacity evaluation on Judy Campbell that was performed by Functional Testing Centers....Based on the records that I have on this patient and on my evaluation of her, it is my opinion that she remains at maximum medical improvement. I do not think that Ms. Campbell has any permanent partial impairment rating based on her injury of 1/12/06. It is difficult to say what functional abilities Ms. Campbell has, given that her reliability with the FCE was suspect. I feel she could work in the light physical demand category occasionally lifting 25 pounds, bending, stooping and twisting on occasion, driving without restriction with the exception of having to occasionally stop to stretch if needed. I do not think she is disabled from her job at this time."

Dr. Chakales noted on February 26, 2007, "She has adjacent segment disease of the neck. She is scheduled for surgery and her pre-testing was fine."

The parties stipulated that the respondents paid temporary total disability benefits through March 5, 2007.

Dr. Chakales operated on the claimant on March 8, 2007. The pre-operative diagnosis was "1. Cervical disk syndrome, C4-5. 2. Postoperative anterior cervical disk ___ at C5-6, failed, with symptomatic hardware, Blackstone." The surgical procedure was "1. Exploration of cervical disk, removal of the fusion plate at C5-6 Blackstone. 2. Anterior cervical discectomy at C4-5 with a cervical fusion using a 7 mm allograft Osteotek with a 32 mm spinal plate and four screws."

Dr. Chakales noted on March 14, 2007, "She fell right after surgery and started having more pain. X-rays show the graft has migrated. We may have to go in and replace it....I will probably take her back to surgery and replace the graft within 2 weeks. Dr. Chakales performed repeat surgery on or about March 28, 2007. The claimant returned to Dr. Chakales on April 13, 2007: "She fell backwards, reinjuring her neck. She did not do anything neurologically

from what I can see...." Dr. Chakales noted on April 27, 2007, "She is doing well from her surgery....Her neck looks good."

The claimant testified that her employment was terminated in June 2007: "They said I had used up any leave, including the Family Leave Act."

Dr. Chakales noted on July 16, 2007, "The surgery has helped her neck but her back is bothering her, and she does have a ruptured disc." Dr. Chakales stated on August 1, 2007, "With regard to her low back, if this is bothersome she should have a lumbar discogram at L3-4, L4-5, L5-S1. She may be a candidate for stabilization and decompression. Her neck is better but not cured."

The impression following a post-discogram on August 14, 2007 was "1. Multilevel degenerative changes, with the worst level at L5-S1, stable to slightly worse than noted 1/25/2007."

A pre-hearing order was filed on September 10, 2007. The claimant contended that she sustained a cervical and lumbar injury as a result of the compensable motor vehicle accident. The claimant contended that she was entitled to additional temporary total disability beginning March 6,

2007 and continuing through the present. The claimant contended that the respondents should be liable for reasonably necessary medical treatment, including neck surgery and recommended low back surgery.

The respondents acknowledged that the claimant sustained a compensable cervical injury on January 12, 2006. The respondents contended that the claimant reached maximum medical improvement on or before March 5, 2007. The respondents contended that the claimant's need for medical treatment after March 5, 2007 was not related to the claimant's compensable injury and that the claimant was not entitled to additional benefits.

The parties agreed to litigate the following issues: "1) Whether, in addition to a cervical injury the claimant also sustained a low back injury on January 12, 2006. 2) The date claimant's healing period ended. 3) Claimant's entitlement to additional temporary total disability. 4) Respondents' responsibility for additional medical treatment."

A hearing was held on October 29, 2007. The claimant testified that she had undergone low back surgery approximately two weeks earlier. The claimant testified

that the surgery to her cervical spine had "helped some....The pain in my shoulder is not there anymore. And I'm able to move a little bit, move my head a little bit."

An administrative law judge (ALJ) found, among other things, that the claimant proved she sustained a cervical injury and low back injury. The ALJ found that the claimant was entitled to temporary total disability beginning March 6, 2007 through a date yet to be determined. The ALJ found that the respondents were liable for the surgeries to the claimant's cervical and lumbar spine. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(A) (Repl. 2002) defines "compensable injury":

(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[.]

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 claimant'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).

In the present matter, the parties stipulated that the claimant sustained a compensable injury on January 12, 2006. The claimant testified that she injured her neck, back, and left knee (the claimant has abandoned any claim regarding her knee). An MR on February 7, 2006 showed a previous anterior fusion at C5-6 and a broad-based disc displacement at C4-5. Dr. Cathey, a treating physician, examined the claimant and reported that the claimant's neurological examination was "entirely negative....Although there is evidence of a broad-based disc bulge/osteophyte complex at C4-C5, there has been no change when the most recent MRI scan is compared to a previous study two years ago....I feel certain Judy has suffered a musculoskeletal injury superimposed on these preexisting degenerative/operative changes in her cervical spine. Unfortunately, this is not

something that will respond favorably to additional cervical disc surgery or other neurosurgical intervention." Dr. Cathey referred the claimant back to Dr. Schultz for pain management.

The Commission has the authority to accept or reject a medical opinion and has the authority to determine the medical opinion's probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, the Full Commission finds that Dr. Cathey's expert opinion is entitled to significant probative weight. We find that the claimant sustained a musculoskeletal injury superimposed on preexisting degenerative and operative changes to the claimant's cervical spine. The evidence does not demonstrate that the claimant ruptured or herniated a cervical disc as a result of the January 12, 2006 compensable injury. Dr. Peeples opined in October 2006 that the claimant had sustained a non-operative cervical strain. Dr. Peeples' opinion was consistent with Dr. Cathey's opinion and is entitled to significant probative weight. Dr. Baskin opined in December 2006 that the claimant had sustained a cervical strain. Dr. Baskin's opinion was

consistent with the expert opinions of Dr. Cathey and Dr. Peeples and is entitled to significant probative weight.

The evidence does not demonstrate that the claimant sustained a compensable injury to her low back or lumbar spine as a result of the January 12, 2006 compensable injury. Dr. Schultz examined the claimant on February 1, 2006. Dr. Schultz assessed "spasm" in the claimant's cervical and thoracic spine but not the lumbar spine. An MR of the claimant's lumbar spine conducted on November 27, 2006 showed "a large disc extrusion centrally and on the left at the L5-S1 level with a small fragment extension down the superior aspect of the S1 vertebral body. There is mild S1 root displacement." The evidence does not demonstrate that the condition described on the November 27, 2006 MR was the causal result of the January 12, 2006 compensable injury. Dr. Baskin subsequently opined that the claimant's reported low back pain was not related to the January 12, 2006 injury. We find that Dr. Baskin's opinion was credible and entitled to significant probative weight.

The Full Commission finds that the claimant sustained a compensable cervical strain on January 12, 2006. The claimant did not prove by a preponderance of the evidence

that the January 12, 2006 injury caused internal or external physical harm to the claimant's low back or lumbar spine. The claimant did not establish a compensable injury to her low back or lumbar spine by medical evidence supported by objective findings not within the claimant's voluntary control.

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 Full Commission has determined that the claimant sustained a compensable cervical strain on January 12, 2006. Dr. Chakales saw the claimant in January 2007 and diagnosed "Central disc protrusion, L5-S1, with spinal stenosis." The record does

not demonstrate that the central lumbar disc protrusion identified by Dr. Chakales was causally related to the claimant's cervical strain or the January 12, 2006 compensable injury. Dr. Chakales also identified "adjacent segment disease" in the claimant's cervical spine, in addition to "disc osteophyte complex, which is a form of disc herniation." The evidence does not show that these conditions were causally related to the January 12, 2006 accident. Dr. Chakales performed two surgeries on the claimant's cervical spine in March 2007. The claimant did not prove by a preponderance of the evidence that these surgeries were reasonably necessary in connection with the claimant's cervical strain sustained on January 12, 2006.

A post-discogram on August 14, 2007 showed "1. Multilevel degenerative changes, with the worst level at L5-S1, stable to slightly worse than noted 1/25/2007." The record does not show that the condition shown on discogram was caused by the January 12, 2006 accident. The claimant testified in October 2007 that she had undergone low back surgery. Since we have found that the claimant did not prove she sustained a compensable injury to her low back or

lumbar spine, the claimant did not show that low back surgery was reasonably necessary.

C. Temporary Disability

Finally, temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12) (Repl. 2002). Whether or not an employee's healing period has ended is a question of fact for the Commission. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

In the present matter, the claimant sustained a compensable cervical strain on January 12, 2006. Dr. Peeples opined in October 2006 that cervical strain should heal in six to eight weeks and was not a disabling condition. Dr. Baskins examined and evaluated the claimant on December 5, 2006. Dr. Baskins opined that the claimant had reached maximum medical improvement. The evidence does not show that any of the subsequent treatment performed by Dr. Chakales extended the claimant's healing period in any

way. Dr. Baskin again stated on February 21, 2007 that the claimant had reached maximum medical improvement. The parties stipulated that the respondents paid temporary total disability compensation through March 5, 2007. The Full Commission finds that the claimant reached the end of her healing period for the January 12, 2006 compensable injury no later than March 5, 2007. Temporary total disability 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). We find that the claimant did not prove she was entitled to any temporary total disability after March 5, 2007.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she was entitled to additional benefits after March 5, 2007. The evidence before us demonstrates that the claimant sustained a compensable cervical strain on January 12, 2006. The claimant did not prove that the surgeries performed by Dr. Chakales were reasonably necessary in connection with the cervical strain. The claimant did not prove that she sustained an injury to her low back or lumbar spine, and the claimant did not prove that lumbar surgery in October 2007

was reasonably necessary. The claimant did not prove that she was entitled to any temporary total disability after March 5, 2007. The Full Commission reverses the opinion of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. The majority finds that the claimant only suffered a compensable "cervical strain" in the January 12, 2006 motor vehicle accident. The majority finds that the claimant's healing period and her entitlement to reasonably necessary medical treatment and temporary total disability benefits related to the compensable "cervical strain" ended on March 5, 2007, the date the claimant underwent an "unrelated" cervical surgery. The

majority also finds that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable lumbar injury in the January 12, 2006 motor vehicle accident. After a de novo review of the record, I find, as did the Administrative Law Judge, that the claimant has proved by a preponderance of the evidence that the cervical injury she sustained in the January 12, 2006 motor vehicle accident was more than a "cervical strain." I find, as did the Administrative Law Judge, that the surgery performed by Dr. Harold Chakales on March 5, 2007 was related to the claimant's compensable cervical injury, and that the claimant is entitled to further additional reasonably necessary medical treatment, including, but not limited to, the follow-up surgery performed by Dr. Chakales on March 5, 2007. I find, as did the Administrative Law Judge, that the claimant's healing period did not end on March 5, 2007, and the claimant is entitled to temporary total disability benefits from March 5, 2007 until a date yet to be determined. Additionally, I find, as did the Administrative Law Judge, that the claimant proved by a preponderance of the evidence that in addition to the

compensable cervical injury sustained in the January 12, 2006 motor vehicle accident, she also sustained a compensable lumbar injury, for which she is entitled to reasonably necessary medical treatment and temporary total disability benefits.

The majority's decision appears to be based solely on the conclusion that the claimant only suffered a "cervical strain" in the January 12, 2006 motor vehicle accident. Based on this false premise, the majority finds that the surgeries performed by Dr. Chakales are related solely to the claimant's pre-existing condition, and not to the "cervical strain" she sustained in the January 12, 2006 motor vehicle accident. In other words, the majority finds that the claimant has failed to prove a causal connection between the cervical treatment she has received and the cervical injury she admittedly sustained in the January 12, 2006 motor vehicle accident. To reach this obtuse conclusion, the majority had to arbitrarily disregard not only the opinions of the claimant's treating physicians, but also had to ignore Arkansas law regarding pre-existing conditions.

The claimant unquestionably had a pre-existing cervical injury, for which she had undergone a cervical fusion surgery in 1999. However, the fusion surgery was a success, and the claimant was not actively treating and was gainfully employed by the respondent on January 12, 2006, the date that she was involved in an on-the-job motor vehicle accident. On February 1, 2006, the claimant saw Dr. Charles Schultz complaining of neck pain after the on-the-job accident. Dr. Schultz described the claimant's condition as follows:

Neck pain with radicular pain into the right and left upper extremities with paresthesias and muscle spasms. The patient is status post anterior cervical decompression and fusion at C5-6. The patient has cervical spondylosis without myelopathy. **The cervical spine symptoms have markedly worsened since her motor vehicle accident.** [Emphasis added.]

Dr. Shultz' treatment plan for the claimant's neck injury is outlined as follows:

....5. Will order an MRI of the cervical spine to look for evidence of a cervical radiculopathy as an etiology for neck pain with radicular pain into the right and left upper extremities. Patient has cervical spondylosis without myelopathy. **Patient has had a marked worsening of her neck symptoms since**

her recent motor vehicle accident.

[Emphasis added.]

(6-8 omitted.)

9. Will perform an EMG and nerve conduction study to better characterize the patient's neck pain with radicular pain into the right and left upper extremities with paresthesias and muscle spasms. The patient has cervical spondylosis without myelopathy. This study will help in determining the extent of her damage.

10. Will use Flexeril 10 mg po t.i.d. for treatment muscle spasms.

11. Will use Percocet 10/325 one every four to six hours as needed for pain....

After seeing Dr. Shultz, the claimant returned to Dr. Steven Cathey, the neurosurgeon who had performed the 1999 fusion surgery for a consultation. On February 20, 2006, Dr. Cathey stated:

I feel certain Judy has suffered a musculoskeletal injury superimposed on these preexisting degenerative/operative changes in her cervical spine. Unfortunately, this is not something that will respond favorably to additional cervical disc surgery or other neurosurgical intervention. She is, however, going to be coming back to see you to discuss pain management such as physical therapy, trigger point injections, etc. Lastly, I am starting her on a therapeutic trial of Celebrex 200 mg per day. She said the medication worked quite well two years ago. **As always, I stand ready**

**to reevaluate the patient,
particularly should her pain change
in character or location.** [Emphasis
added.]

Unfortunately, Dr. Cathey's assessment of the claimant's condition turned out to be overly optimistic. The medical record shows that the claimant returned to Dr. Schultz on March 10, 2006, March 16, 2006, March 30, 2006 for neck pain treatment. The claimant also underwent physical therapy during this time period, ending on April 25, 2006. On June 21 and June 29, 2006 the claimant again returned to Dr. Schultz complaining of severe neck pain. The claimant again returned to Dr. Schultz for neck pain treatment on August 9 and August 21, 2006 as well as September 5, 2006, October 18, 2006 and also on December 8 and December 15, 2006 for neck pain treatment.

Finally, on January 2, 2007, the claimant was seen by Dr. Harold Chakales, a neurosurgeon. On this date Dr. Chakales reviewed the claimant's medical history and recommended a lumbar/cervical myelogram and a cervical spine CT scan. On February 2, 2007, after reviewing the test results, Dr. Chakales stated:

Ms. Campbell comes in. She had a cervical and lumbar myelogram done on January 26, 2007. The lumbar myelogram was grossly abnormal and showed a filling defect at the L5-S1 level, compatible with a lumbar disc syndrome. She also had a cervical myelogram which showed spinal stenosis at C4-5 with a disc osteophyte complex, which is a form of disc herniation. The patient has undergone iatrogenic fusion at C5-6 and is developing adjacent segment disease at the C4-5 level. I believe she is a possible candidate for anterior cervical discectomy and fusion....

On March 8, 2007, the date of the surgery, Dr. Chakales stated:

Ms. Judy Campbell is a 47-year-old woman who I began treating 1-2-2007. She presented to me with complaints of pain as the result of a work-related motor vehicle accident which occurred on January 12, 2006. She was wearing a seatbelt at the time of impact. She is not working at the present time. She complains of pain in her back and both legs, as well as bilateral leg numbness and weakness. Coughing or sneezing does not increase the patient's symptoms. **She states that she initially suffered an injury to her cervical spine in 1999 and subsequently had anterior cervical discectomy and fusion by Dr. Cathey and did well. However, she was involved in a motor vehicle accident in January 2006. Since that time she has been bothered with quite a bit of neck**

pain, spasm and headaches. She has had intensive physical therapy but is still having trouble. Riding makes her neck hurt quite a bit. I have performed a cervical and lumbar myelogram. Both levels are abnormal, and it appears she has a cervical disc syndrome at C4-5 with spinal stenosis. I believe she is a suitable candidate for anterior cervical discectomy at the C4-5 level with removal of the implant. [Emphasis added.]

The claimant followed up with Dr. Chakales on March 14 and March 20, 2007. She also saw Dr. Schultz on March 16, 2007. On March 27, 2007 Dr. Chakales stated:

Ms. Judy Campbell is a 47-year-old woman who I performed anterior cervical fusion disc & fusion surgery on 3/8/2007. When I evaluated her on 3/14/2007, she reported she fell right after surgery and started having more pain. X-rays show the graft has migrated. We may have to go in and replace it. I will probably take her back to surgery and replace the graft.

The claimant underwent graft replacement on March 27, 2007. The claimant again followed up with Dr. Chakales on April 2, 2007, April 13, 2007, April 27, 2007 May 18, 2007, July 16, 2007 and August 1 2007 The claimant also saw Dr. Schultz again on May 2, 2007 and July 13, 2007.

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce a disability for which compensation is sought. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Minor v. Poinsett Lumber & Manf. Co., 235 Ark. 195, 357 S.W.2d 504 (1962); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

While objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and the job. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W. 2d 422 (1999). It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

Here, the majority states:

In the present matter, the Full Commission finds that Dr. Cathey's expert opinion is entitled to significant probative weight. We find that the claimant sustained a musculoskeletal injury superimposed on preexisting degenerative and operative changes to the claimant's cervical spine. The evidence does not demonstrate that the claimant ruptured or herniated a cervical disc as a result of the January 12, 2006 compensable injury. Dr. Peeples opined in October 2006 that the claimant had sustained a non-operative cervical strain. Dr. Peeples' opinion was consistent with Dr. Cathey's opinion and is entitled to significant probative weight. Dr. Baskin opined in December 2006 that the claimant had sustained a cervical strain. Dr. Baskin's opinion was consistent with the expert opinions of Dr. Cathey and Dr. Peeples and is entitled to significant weight.

As can be seen by the course of treatment outlined above, the majority's conclusion that the claimant merely suffered a "cervical strain" based on Dr. Cathey's statement made after a one-time visit, particularly when Dr. Cathey stated that his opinion was subject to change depending on how the claimant's condition progresses, is not supported by the evidence of record. Also, contrary to the majority's statement

that the opinions of Dr. Peeples and Dr. Baskin should be afforded greater weight, I do not find the medical opinions of Dr. Peeples and Dr. Baskin to be as credible or persuasive as the findings and opinions of the primary treating physicians, Dr. Charles Schultz and Dr. Harold Chakales. Dr. Peeples never examined the claimant. Dr. Baskin never examined the claimant. For the majority to find that the claimant sustained only a "cervical strain" injury, which resolved itself, based on one report from Dr. Cathey after a one-time visit, and also on the opinions of two doctors hired by the respondent for "Independent Medical Evaluations" flies in the face of common sense, particularly where the medical evidence from the claimant's treating physicians is so strong. All of the doctors, even the respondent's hired guns agree that the claimant's previous neck surgery, which took place seven years before the motor vehicle accident, had healed well. The claimant was not actively treating for neck pain before the motor vehicle accident on January 12, 2006. The claimant was gainfully employed prior to the January 12, 2006, motor vehicle accident. She has not returned to gainful employment

since that time. Based on the above, I find that the claimant has proven, by a preponderance of the credible evidence, that her neck injury, need for treatment, and surgeries are all causally related to the admittedly compensable January 12, 2006 motor vehicle accident.

As for the lumbar injury, the majority acknowledges that an MRI of the claimant's lumbar spine conducted on November 27, 2006 showed a "large disc extrusion centrally and on the left at the L5-S1 level with a small fragment extension down the superior aspect of the S1 vertebral body. There is mild S1 root displacement." However, and despite the statement: "The evidence does not demonstrate that the condition described in the November 27, 2006 MRI was the causal result of the January 12, 2006 injury," the majority subsequently finds: "The claimant did not establish a compensable injury to her low back or lumbar spine by medical evidence supported by objective findings not within the claimant's voluntary control." Based on the majority's contradictory conclusions regarding causation and objective findings, I must find that the majority has confused the element of objective findings with the

element of causation. The workers' compensation statutes provide that "[a] compensable injury must be established by medical evidence supported by objective findings...." Ark. Code Ann. 11-9-102(4)(D) (Supp. 2007). "Objective findings" are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. §11-9-102 (16)(A)(i) (Supp. 2007). A claimant must prove a causal connection between his employment and the injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). While objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522, 524 (1999); Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002). Here, as noted by the majority, an MRI of the claimant's lumbar spine conducted on November 27, 2006 showed a "large disc extrusion centrally and on the left at the L5-S1 level with a small fragment extension down the superior aspect of the S1 vertebral body." Therefore, the claimant has clearly presented

objective findings establishing the existence and extent of her injury. As for causation, although the majority concludes that the "evidence does not demonstrate that the condition described in the November 27, 2006 MRI was the causal result of the January 12, 2006 injury" the majority does not make any findings of fact to support this determination.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner
