

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F413280

JACK COLE, EMPLOYEE	CLAIMANT
NETWORK OF COMMUNITY OPTIONS, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 16, 2009

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

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE FRANK B. NEWELL, 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 October 31, 2007. The administrative law judge found that the claimant was entitled to additional benefits. After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant did not prove he was entitled to temporary total disability

compensation after August 4, 2005. The claimant did not prove he was entitled to additional medical treatment as recommended by Dr. Ricca.

I. HISTORY

Jack C. Cole, age 59, complained of pain in his neck, back, left elbow, and left wrist after slipping and falling in November 1999. An x-ray of the claimant's cervical spine showed degenerative disk change at C5-6 without evidence of an acute traumatic injury. A lumbar x-ray showed no significant abnormality. The claimant complained of headaches and dizziness in July 2003. The diagnosis included possible "acute labyrinthitis." Dr. Monty R. Barker noted in September 2003, "The patient reports an approximately two month history of intermittent vertigo and disequilibrium....Past otologic history is positive for chronic motion sensitivity. He also reports a long-term history of bilateral tinnitus with some noise exposure in the past. No other ENT symptoms or complaints are voiced." Dr. Barker assessed the following: "1. Based on his history and the fact he has completely resolved his vertigo, it was most likely secondary to a labyrinthitis type of pathology. As would be expected, it appears to have self-resolved. 2.

Noise exposure history with symmetric high tone neurosensory loss - the patient might consider amplification at some point in the future. Would recommend noise protective measures and annual audiograms. Return sooner if new complaints arise."

It was noted on September 10, 2003, "Mr. Cole admits to never having had good balance. He admits to a virtual life-long history of bilateral tinnitus. He notes his wife does sometimes complain of his not hearing well....Based on a single episode of severe dysequilibrium and no other accompanying central indications, I suspect the etiology is vestibular. Assuming no further re-occurrences, this may fall into the labyrinthitis category."

The claimant began working for the respondent-employer in June 2004. The parties stipulated that the claimant sustained compensable injuries on November 24, 2004. The claimant testified that the vehicle he was driving was struck on the right rear corner by another vehicle. The claimant testified that the impact of the accident caused one of his teeth to be loosened and later extracted. The claimant testified that, as far as he knew, he did not hit his head in the accident.

The claimant was treated at Fulton County Internal Medicine on December 2, 2004: "Here for c/o neck pain. Involved in MVA 8 days ago. Kind of tight initially, now hurting worse every day." The notes indicate that Dr. David Kauffman assessed cervical spine strain and treated the claimant conservatively. On December 7, 2004, Dr. Kauffman signed a note indicating that the claimant "was unable to work 12-06-04 thru 12-13-04 due to neck pain."

The claimant was given a physical therapy evaluation on December 17, 2004. Dr. Kauffman generally took the claimant off work beginning December 20, 2004. Dr. Kauffman indicated on January 3, 2005 that the claimant would be referred to a spine specialist and stated, "He will not return to work until released by specialist." The claimant was discharged from physical therapy on February 11, 2005.

The claimant was seen at Ozarks Neurosurgical Associates on February 25, 2005. The claimant complained of right posterior neck pain, bilateral mid-back pain, and bilateral low back pain. Diagnostic studies were recommended for neck pain, low back pain, and imbalance.

The claimant was taken off work "until follow up with Dr. Green completed."

Diagnostic testing was administered on April 19, 2005. The impression following a CT of the claimant's head was "No intracranial hemorrhage or mass lesion and essentially normal-appearing unenhanced CT of the brain." The impression from an MRI of the lumbosacral spine was "Small herniated nucleus pulposus at the L5-S1 level, but this does not cause marked central canal or neural foraminal stenosis. No compression fractures are noted. There is mild bulging disk at the L3-L4 and L4-L5 levels, but this does not cause central canal or neural foraminal stenosis."

An MRI of the cervical spine was taken on April 19, 2005:

At the C5-C6 level, there is bony spurring and a bulging/protruding disc. On the axial images, the C2-C3 level is essentially normal. The C3-C4 level reveals no gross abnormalities. The C4-C5 level reveals no marked abnormalities. The C5-C6 level reveals the bulging/protruding disk eccentric to the right narrowing the right neural foramina. The C6-C7 level is essentially normal as is the C7-T1 level.

Impression

C5-C6 disk disease with what I believe is called hard disk extending to the right causing right neural foraminal narrowing and some effacement of the cerebrospinal fluid anterior to the cord on

the right side. The rest of the cervical spine is essentially normal. The cord itself is intact.

Alice Mills, N.P., saw the claimant at Ozarks Neurosurgical Associates on April 29, 2005 and recommended additional diagnostic studies. Ms. Mills returned the claimant to restricted work on May 11, 2005. A CT of the claimant's cervical spine was taken on May 18, 2005:

CT examination of the cervical spine demonstrates degenerative changes. Osteophytes are noted at multiple levels. This is especially noted at C5-C6 and C6-C7. There is a small amount of gas in the disc at C5-C6. There is no fracture or dislocation. No soft tissue disc herniation is appreciated.

Impression

1. Degenerative changes in the cervical spine as above. These are especially severe at C5-C6 and C6-C7.
2. No soft tissue disc herniation is appreciated.
3. Sagittal and coronal reconstructions are obtained as requested.

The claimant was referred to a pain clinic. The claimant was evaluated at Pain Treatment Associates on June 20, 2005, where he was diagnosed with radiculopathy. The claimant underwent an epidural steroid injection. A CompChoice report on or about June 20, 2005 indicated that the claimant was "unable to return to work."

Dr. Stephen J. Eichert, D.O., corresponded with a CompChoice representative on August 4, 2005:

I examined Jack Cole in the presence of his wife today. He is a pleasant 56-year-old left-handed white male who was working as a CNA at network of community options on or about November 24, 2004. At that time he was a restrained driver driving a van. He was stationary and getting ready to make a turn. He was struck from behind by a truck. There was no loss of consciousness. Several days later he noted a crick in his neck and a headache. The headache was on the left side. It burns on the right side of the face. There is pain in the suboccipital region, neck, and superior thoracic region. His wrists hurt, his thumbs hurt, he has pain at the beltline, three toes on the right are numb, and he has pain in the right foot. He has some pain in his right testicle, groin, and leg. His lip is numb. He feels as if there is pressure over him forcing him down. He has poor balance....

On his physical exam his height is 6' and his weight is 185 pounds. He walks with a cane and switches hands with it easily. Despite this, Romberg's test is negative. Heel and toe walking are performed well. Neck is supple. Weber's localizes to the right and Rinne's is physiologic. Extraocular movements are full. Fundi are unremarkable. Visual fields show inconsistencies. Deep tendon reflexes are brisk. Plantar responses are flexor. There is no focal weakness. Straight leg raising is unremarkable. MRIs of his lumbar spine and cervical spine performed at Baxter Regional Medical Center on 04/19/05 show minimal degenerative change at each level.

Jack Cole has a variety of complaints related to a motor vehicle accident in November of 2004. There are no objective neurologic abnormalities.

Mr. Cole is at MMI. No further medical treatment is warranted.

A CompChoice medical treatment report indicates that the claimant was given a full duty release on August 4, 2005. The claimant testified that the respondents stopped paying temporary total disability after Dr. Eichert's report.

Nevertheless, Dr. Kauffman wrote on August 19, 2005, "Jack Cole continues to have objective neurological abnormalities as a result of a MVA on 11/24/04. It is my professional opinion that he is still disabled and deserves a complete neurological exam by a board certified medical doctor (not an osteopath)."

A Change of Physician Order was entered on July 5, 2006: "A change of physician is hereby approved by the Arkansas Workers' Compensation Commission for Jack C. Cole to change from Dr. Douglas Green to Dr. Patrick Chan[.]"

Dr. Patrick D.S. Chan examined the claimant on August 9, 2006 and gave the following impression: "1. Work related injury 11-24-04. 2. Chronic neck pain and left shoulder pain: C5 C6 small HNP on MRI of April 05. 3. Chronic LBP and right groin pain; L5 S1 small HNP and DDD on MRI of April 05." Dr. Chan's treatment plan included medication,

physical therapy, and more diagnostic testing. Dr. Chan assigned a Work Status of "permanently disabled."

The claimant testified that the respondents stopped paying for medical treatment after the claimant's visit with Dr. Chan.

Dr. James D. Park, D.C., examined the claimant on November 3, 2006 and stated, "It would appear based on the length of time since the accident that he is at MMI. However, I have reservations that accepting at this point that there is nothing else to be done for him considering the level of his symptomatology and the significant way it is affecting his activities of daily living. Due to my reservations I would recommended (sic) that he be evaluated by Dr. Gregory Ricca, a local neurosurgeon."

Dr. Gregory F. Ricca examined the claimant on February 19, 2007. Dr. Ricca's impression included cervicalgia, cervical degenerative disc disease, lumbago, lumbar degenerative disc disease, dizziness, tinnitus, positive Romberg's sign, burning right face pain, and tingling in feet. Dr. Ricca stated, "I suspect his marked dizziness is from dislodgement of an otolith. I think this needs to be evaluated by an ENT specialist. His neck pain could be from

the mild instability of C4 on C5. If this is so, then this could be treated with an ACDF. The instability is mild and I recommend that reasonable nonsurgical Rx be exhausted first. I cannot explain the tingling in his hands and feet but recommend an EMG/NCV of the extremities to better evaluate this. His right burning face pain could be related to the trigeminal nerve." Dr. Ricca recommended additional diagnostic studies and treatment at a pain clinic and stated, "Mr. Cole and his wife asked if I could say whether or not Mr. Cole could return to work. Based on his examination, I do not believe he can work at this time because of his very unsteady gait."

A pre-hearing order was filed on May 8, 2007. The claimant contended that he sustained a compensable injury to his neck and back. The respondents contended that they had accepted liability for minor injuries sustained by the claimant on November 24, 2004, when the claimant's vehicle was rear-ended. The respondents contended that the carrier had paid for care provided by several doctors, including Dr. David Kauffman, Dr. K. Douglass Green, and physicians at Pain Treatment Associates. The respondents contended that the claimant had been worked up by Dr. Stephen Eichert and

may also have been evaluated by Dr. Patrick Chan. The respondents contended that the claimant was placed at MMI by Dr. Eichert on August 4, 2005 and that no permanent rating had been assigned. The respondents denied liability for treatment provided by Dr. Ricca. The respondents contended that they did not owe additional weekly benefits and that the claimant was not entitled to an award of additional medical benefits. The respondents denied liability for the claimant's dizziness, headaches, and facial numbness. The respondents denied that the claimant sustained a herniated lumbar disc or a herniated cervical disc as a result of the November 24, 2004 motor vehicle accident.

The administrative law judge scheduled a hearing on the issues of additional temporary disability and medical benefits subsequent to August 4, 2005.

A Functional Capacity Evaluation was done on May 24, 2007: "The results of this evaluation indicate that Jack Cole is currently demonstrating the ability to perform work in the SEDENTARY category according to the U.S. Department of Labor (DOT) Work Classification Level in an 8 hour time period based on his material handling tolerances."

Dr. Yuanyuan Long examined the claimant on May 29, 2007: "This is a 58-YO white male with multiple neurological symptoms that occurred after a motor vehicle accident. The symptoms include constant headache, tingling in the right face, dizziness and tinnitus (this was old but got significantly worse after the event), neck pain, shoulder pain, tingling and numbness of the fingers and pain radiating to the thighs with multiple sensation abnormalities. The patient also has some gait instability." Dr. Long's treatment plan included EMG/NCV to evaluate peripheral nerves, EEG to rule out possible seizure activity, MRI of the head to rule out possible intracranial pathology, and ENT consult to rule out an ear problem.

A hearing was held on August 16, 2007. The claimant testified that he had not received the additional diagnostic testing recommended by Dr. Long. The claimant described his symptoms as "headache, numbness, pain down my neck, back, numb in my hands and my feet." The claimant testified that he had experienced ringing in his ears since childhood, and "Since the accident, it has increased 10, 12-fold, I think." The claimant testified that the condition that kept him from working was "the dizziness, the constant headache, the pain

in my neck, my shoulder, down in my waist. There's things I can't do because of the pain in my wrists and my thumbs. I have trouble motivating, I think because, some of the problem is because of the numbness in my feet."

An administrative law judge (ALJ) found, among other things, that the claimant was temporarily totally disabled from November 25, 2004 until a date to be determined. The ALJ found that the claimant needed additional medical treatment. The ALJ designated Dr. Ricca as the claimant's "authorized treating physician henceforth."

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4) (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 November 24, 2004. The claimant was in a motor vehicle accident that day. The claimant testified that the accident jarred a tooth loose but there are no corroborating dental records. The first medical treatment of record occurred on December 2, 2004, at which time the claimant reported neck pain following a motor vehicle accident. Dr. Kauffman assessed cervical spine strain and treated the claimant conservatively. Beginning February 25, 2005, three months following the cervical spine strain, the claimant's pain began spreading to his middle and lower back. A CT of the claimant's head in April 2005 was normal. A lumbar MRI in April 2005 showed bulges at L3-L4 and L4-L5, but there is absolutely no indication that this condition occurred as a

result of the November 2004 motor vehicle accident. A cervical MRI in April 2005 showed bony spurring and a bulging disc at C5-C6. The diagnostic impression was C5-C6 disk disease with a "hard disk extending to the right." The record does not demonstrate that the abnormalities shown in the cervical MRI were in any way caused by the November 2004 motor vehicle accident.

The parties stipulated that the claimant sustained a compensable injury on November 24, 2004. The evidence before the Commission shows that, as a result of the compensable injury, the claimant sustained physical harm in the form of a cervical strain. The record before us does not demonstrate that the November 24, 2004 motor vehicle accident resulted in any other physical harm to the claimant other than a cervical strain as diagnosed by Dr. Kauffman. The claimant did not prove that he sustained a compensable injury to his shoulders, back, or head. Nor did the claimant prove that the compensable injury aggravated the claimant's pre-existing labyrinthine condition. The record does not show that the compensable cervical strain also resulted in headaches, facial numbness, or dizziness.

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 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, the respondents provided reasonably necessary medical treatment in connection with the claimant's cervical strain. The claimant sustained a compensable cervical strain on November 24, 2004. Dr. Ricca examined the claimant in February 2007 and diagnosed cervicgia, cervical degenerative disc disease, lumbago, lumbar degenerative disc disease, tinnitus, positive Romberg's sign, burning right face pain, and tingling in the claimant's feet. The evidence before the Commission does not show that any of the conditions diagnosed by Dr. Ricca were causally related to the claimant's compensable injury.

Nor is there any evidence of record demonstrating that the claimant sustained a dislodged otolith, that is, trauma to the inner ear, as a result of the compensable injury. The Full Commission reverses the administrative law judge's award of additional medical treatment.

C. Temporary Disability

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). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002). The determination of when the healing period has ended is a question of fact for the Commission. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

In the present matter, the administrative law judge found that the claimant "was temporarily totally disabled for the period beginning November 25, 2004, through August 4, 2005, and continuing thereafter through the end of his healing period, a date to be determined." The Full Commission does not affirm this finding. Dr. Eichert pronounced maximum medical improvement on August 4, 2005. The Full Commission finds that Dr. Eichert's opinion is entitled to significant weight, and we find that the claimant reached the end of his healing period no later than August 4, 2005. An employee is not entitled to temporary total disability after the end of his healing period. *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 finds that the claimant sustained a compensable cervical strain on November 24, 2004. The claimant did not prove he was entitled to additional medical treatment recommended by Dr. Ricca. The claimant did not prove he was entitled to temporary total disability compensation after August 4, 2005. The decision of the

administrative law judge is reversed, and this claim is denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

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

CONCURRING & DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. The majority, reversing the Administrative Law Judge, finds that the claimant merely sustained a "cervical strain" in the November 24, 2004 motor vehicle accident, and that the claimant is not entitled to additional reasonably necessary medical treatment or temporary total disability benefits after August 4, 2005, the date the respondent doctor opined the claimant had reached maximum medical improvement for a "cervical strain." After a de novo review of the record, I find that the claimant did not reach the end of his healing period on

August 4, 2005, and is entitled to additional reasonably necessary medical treatment and temporary total disability benefits for his compensable cervical injury, which, contrary to the majority's conclusion is not limited to a "cervical strain." Furthermore, also contrary to the majority, I find that the claimant has proved by a preponderance of the evidence that he sustained a compensable lumbar injury in the November 24, 2004 motor vehicle accident and is entitled to additional reasonably necessary medical treatment for this injury as well. Therefore, while I agree with the majority that the claimant did sustain a compensable cervical injury on November 24, 2004, I must respectfully dissent from the majority opinion on every other issue.

HISTORY

On November 24, 2004, while working as a driver for the respondent, the claimant was involved in a motor vehicle accident. The claimant testified that his vehicle, a van configured as a school-bus, was struck on the rear right side by a telephone maintenance truck. The claimant testified that the impact of the two

vehicles was such that the telephone maintenance truck had to be towed from the scene. The claimant testified that he experienced head and neck pain after the accident and that on December 2, 2004, he sought treatment from Dr. David Kauffman. Dr Kaufmann's report from December 2, 2004 states that the claimant was "here for (complaints of) neck pain. involved in MVA. 8 days ago. Kind of tight initially now hurting worse every day." Dr. Kaufmann diagnosed the claimant as having a cervical sprain-strain and prescribed Vicodin, heat and Flexeril. On December 7, 2004, Dr. Kaufmann's note indicates "spasm just as bad" and treated the claimant with a Toradol injection and continued the Flexeril and added Naproxen. On December 13, 2004, Dr. Kaufmann's note indicates that the claimant's "neck remains stiff and painful." Dr. Kaufmann again continued the Flexeril and Naproxen and sent the claimant for a physical therapy evaluation. On December 20, 2004, Dr. Kaufmann noted that the claimant was "essentially no better" but Dr. Kaufmann continued the physical therapy and Flexeril. On January 3, 2005, Dr. Kaufmann indicated that the claimant's symptoms have been unresponsive to

the Naproxen, Flexeril and physical therapy and wrote: "will arrange for referral to spine specialist for evaluation, possible MRI, nerve conduction studies, etc." The claimant was discharged from physical therapy on February 11, 2005, with the notation that the claimant was to see a neurologist on February 25, 2005.

The medical records indicate that on February 25, 2005 the claimant was seen by Alice Mills, a nurse practitioner in the office of Dr. Douglas Green. Ms. Mills stated:

ASSESSMENT:

History and exam findings reviewed by Dr. Green. Assessment and Plan as outlined below.

723.1 Neck pain

Patient with new onset of neck and bilateral upper extremity pain following a motor vehicle accident. Physical exam suggests possible cervical radiculopathy and further radiographic evaluation is recommended. Due to the nature of the injury both cervical MRI and flexion extension plain films will be requested. Additional diagnostic and treatment recommendations to follow review of above.

724.2 Low back pain

Low back pain and right lower extremity complaints following a motor vehicle accident. Radiographic evaluation is recommended.

Additional diagnostic and treatment recommendations to follow review of above....

PLAN:

Neck pain

Orders:

Pending Workers' Compensation approval, schedule MRI Cervical Spine and Flexion/Extension films....

Low back pain

Orders:

Pending Workers' Compensation approval, schedule MRI Lumbar Spine and Flexion/Extension films.

An MRI of the claimant's cervical spine was performed on April 19, 2005:

MRI OF THE CERVICAL SPINE

MRI of the cervical spine is done without IV contrast. T1 and T2 weighted images are obtained as well as FLASH axial images. At the C5-C6 level, there is bony spurring and a bulging/protruding disk. On the axial images, the C2-C3 level is essentially normal. The C3-C4 level reveals no gross abnormalities. The C4-C5 level reveals no marked abnormalities. The C5-C6 level reveals the bulging/protruding disk eccentric to the right narrowing the right neural foramina. The C6-C7 level is essentially normal as is the C7-T1 level.

Impression

C5-C6 disk disease with what I believe is called hard disk extending to the right causing right neural foraminal narrowing and some effacement of the cerebrospinal

fluid anterior to the cord on the right side. The rest of the cervical spine is essentially normal. The cord itself is intact.

An MRI of the claimant's lumbar spine was also performed on April 19, 2005:

MRI OF THE LUMBOSACRAL SPINE

Good alignment is noted. There is disk space narrowing at the L5-S1 level as well as the L3-L4 level. No compression fractures are noted. On the axial images, herniated nucleus pulposus is noted at the L5-S1 level. This is centrally located and does not cause marked central canal or neural foraminal stenosis.

Impression

Small herniated nucleus pulposus at the L5-S1 level, but this does not cause marked central canal or neural foraminal stenosis. No compression fractures are noted. There is mild bulging disk at the L3-L4 and L4-L5 levels, but this does not cause central canal or neural foraminal stenosis.

After reviewing the above diagnostic reports, on April 29, 2005, Ms. Mills assessed the claimant as follows:

ASSESSMENT

722.72 Intervertebral disc disorder with myelopathy, cervical region
Patient with persistent neck and bilateral upper extremity complaints following a motor vehicle accident.
Imaging studies demonstrate no

definite fracture or areas of significant neural impingement. C5-C6 level does appear to demonstrate a disc osteophyte complex lateralized toward the right, although it is not felt adequate to explain all symptoms. Recommend further conservative treatment interventions with consideration of electrodiagnostic studies if symptoms fail to improve. Additional CT imaging is recommended to better evaluate area of occipitocervical junction for abnormalities that could contribute to patient's widespread neurologic complaints. No surgical treatment recommended at this time.

722.10 Displacement of lumbar intervertebral disc
Persistent low back and lower extremity complaints following a motor vehicle accident. Imaging studies demonstrate no obvious fracture or areas of significant neural impingement. Right L5-S1 disc herniation could be an acute finding but does not appear to be adequate to explain all reported symptoms. Discussed treatment options with recommendations made for a trial of conservative treatment. No surgical intervention recommended at this time.

At the April 29, 2005 visit Ms. Mills prescribed Neurontin and noted that she would "Schedule referral to Pain Treatment Associates."

On May 18, 2005 the claimant underwent a CT scan of the cervical spine:

CT OF THE CERVICAL SPINE May 18, 2005: CT examination of the cervical spine demonstrates degenerative changes. Osteophytes are noted at multiple levels. This is especially noted at C5-C6 and C6-C7. There is a small amount of gas in the disc at C5-C6. There is no fracture or dislocation. No soft tissue disc herniation is appreciated.

Impression

1. Degenerative changes in the cervical spine as above. These are especially severe at C5-C6 and C6-C7.
2. No soft tissue disc herniation is appreciated.
3. Sagittal and coronal reconstructions are obtained as requested.

The claimant returned to Dr. Greene's office and saw Ms. Mills again on June 7, 2005. At this visit, in regard to the claimant's cervical injury, Ms. Mills stated:

CT films demonstrate disc osteophyte complexes at C5-C6 and C6-C7 levels without acute disc herniation apparent. Some sclerotic changes/ligamentous thickening at C1-2 also suspected, possibly representing remote trauma. Recommend Bone Scan to exclude a more acute process. If Bone Scan unremarkable and no significant improvement in symptoms noted with Neurontin and/or Pain Clinic interventions, consider scheduling electrodiagnostic studies.

On August 4, 2005, the claimant saw Dr. Stephen J. Eichert, a D.O. at Mid-South Neurosurgery, Inc.. Dr. Eichert stated, in part: "Jack Cole has a variety of complaints related to a motor vehicle accident in November of 2004. There are no objective neurologic abnormalities. Mr. Cole is at MMI. No further medical treatment is warranted."

Subsequent to Dr. Eichert's evaluation, the claimant returned to Dr. David Kauffman, and on August 19, 2005, Dr. Kauffman wrote the following:

To Whom It May Concern:

Jack Cole continues to have objective neurological abnormalities as a result of a MVA on 11/24/04. It is my professional opinion that he is still disabled and deserves a complete neurological exam by a board certified medical doctor (not an osteopath.)

Sincerely,
David Kauffman,

M.D.

As the respondent refused to pay for any further treatment after receiving Dr. Eichert's opinion, the claimant petitioned the Commission for and was granted a change of physician to neurosurgeon Dr. Patrick Chan. Dr. Chan examined the claimant on one occasion, and recommended a new cervical MRI and a new

lumbar MRI. Dr. Chan also prescribed anti-inflammatory medications. After the respondent denied further care from Dr. Chan, the claimant saw Dr. James Park, D.C., who referred the claimant to Dr. Gregory Ricca, a Jonesboro neurosurgeon. Dr. Ricca recommended current cervical flexion/extension x-rays to rule out ligament instability of C4 on C5, to be done by Dr. Park. Dr. Ricca also recommended that the claimant be treated at a pain clinic. After Dr. Park performed the x-rays, Dr. Ricca referred the claimant to Dr. Yuanyuan Long, a neurologist. Dr. Long recommended EMG/NCV to evaluate peripheral nerves integrity.

DISCUSSION

While I completely agree with the majority that the claimant has clearly proved by a preponderance of the evidence that he sustained a compensable neck injury in the November 24, 2004 motor vehicle accident, I disagree with the majority's determination that the claimant only sustained a "cervical strain" which had resolved by August 4, 2005. I find that the claimant is entitled to additional reasonably necessary medical treatment for his cervical spine injury, as well as for

the injury to his lumbar spine, sustained in the automobile accident of November 24, 2005. The majority's conclusion otherwise is based solely on the opinion of one doctor, Dr. Eichert, an osteopath, and arbitrarily disregards the medical opinions of every other doctor the claimant has seen, including the opinions of two neurosurgeons, Dr. Chan and Dr. Ricca, and a neurologist, Dr. Long. While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, ___ Ark. App. ___, ___ S.W.2d_____, (2007).

The Arkansas Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the

nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a) (3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). A claimant does not have to support a continuing need for medical treatment with "objective medical findings". Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

Here, the evidence clearly shows that the medical treatment received by the claimant following respondents' refusal to authorize further treatment after the one-time visit to Dr. Chan, was reasonably necessary in connection with the claimant's November 24, 2004, compensable injuries. For the cervical injury, Dr. Chan has recommended a cervical and lumbar MRI and anti-inflammatory medications. Dr. Ricca has recommended that the claimant be treated at a pain clinic. Dr. Long has recommended an EMG/NCV. Clearly, based on every doctor's

opinion other than that of Dr. Eichert, the respondent has not provided reasonably necessary medical treatment as required by Ark. Code Ann. §11-9-508(a).

Regarding temporary total disability benefits, the majority states:

Dr. Eichert pronounced maximum medical improvement on August 4, 2005. The Full Commission finds that the Dr. Eichert's opinion is entitled to significant weight, and we find that the claimant reached the end of his healing period on August 4, 2005.

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). The healing period continues until the employee is as far restored as the permanent character of her injury will permit. When the underlying condition causing the disability becomes stable and when nothing further will improve that condition, the healing period has ended. Mad Butcher Inc. v. Parker, 4 Ark. App. 124, 628 S.W. 2d 582 (1982). See Searcy Indus. Laundry, Inc.

v. Ferren, 92 Ark. App. 65, 211 S.W. 3d 11 (2005).

"Disability" means incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury. Ark. Code Ann. §11-9-102(8). Here, the evidence preponderates that the claimant remains within his healing period relative to the November 24, 2004, compensable accident and is entitled to temporary total disability benefits. The claimant was not released as having reached maximum medical improvement at the time he was last seen by his treating physician, Dr. Green, on June 21, 2005. The claimant had been referred to Dr. Green by Dr. Kauffman, who provided and directed the claimant's medical care relative to the November 24, 2004, compensable motor vehicle accident beginning December 2, 2004. The claimant was again seen by Dr. Kauffman on August 19, 2005, following his one-time August 4, 2005, respondent-directed visit to Dr. Eichert, at which time he opined that the claimant required further medical treatment and was unable to return to work. The claimant credibly testified that he has been unable to return to work.

Based on the above, I find that the claimant is entitled to temporary total disability benefits from August 4, 2005 until a date yet to be determined.

In conclusion, I find that the claimant has proved by a preponderance of the evidence his entitlement to additional reasonably necessary medical treatment and temporary total disability benefits for his cervical injury, as well as for his lumbar injury, both compensable as a result of the November 24, 2004 motor vehicle accident.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner