

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613992

GLEND A FLYNN,
EMPLOYEE

CLAIMANT

SOUTHWEST CATERING COMPANY,
EMPLOYER

RESPONDENT

PHOENIX INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 4, 2009

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

Claimant represented by the HONORABLE SHANNON MUSE CARROLL,
Attorney at Law, Hot Springs, Arkansas.

Respondent represented by the HONORABLE PHILLIP CUFFMAN,
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The Arkansas Court of Appeals has reversed and remanded the above-styled matter to the Commission for more specific findings. *Flynn v. Southwest Catering Co.*, CA09-132 (Sept. 30, 2009). The Full Commission finds that the claimant did not prove she sustained a compensable injury to her neck or arms. We also find that the claimant did not prove she was entitled to additional temporary total disability benefits for her compensable foot sprain injury.

I. HISTORY

Glenda Gail Flynn, age 65, testified that she was employed as a waitress at Oaklawn Race Track on December 16, 2006. The parties stipulated that "there was a December 16, 2006, compensable foot sprain injury." The claimant testified on direct examination:

Q. So tell me, on December 16, 2006, what happened?

A. I was going through the kitchen, and they have rugs, or mats....Like I was headed to the coffee machine. And, instead of lining up, there was one sort of diagonal like. Someone might have just pushed it or something. I'm not for sure. But, anyway, my foot got caught right on the corner of it, and it just threw me off to the side. In falling, there was that formica counter there....And I was going down towards it. It happened so fast - in a second. I heard something snap. I didn't know what it was. And about that time my foot hurt so bad, and I was trying to grab a hold of the counter to keep my head from hitting on it....

Q. Did you catch yourself on the counter?

A. Yes. I didn't hit my head or nothing or go on down, because I caught myself on that counter there....

Q. And did you have one hand or both hands on the counter?

A. It was like this (demonstrating).

Q. Tell me, for the record, one hand, or both?

A. I caught myself with both of them, like that (demonstrating)....

Q. Did your neck and arms hurt at the same time, or when did you start discovering that that was causing you some pain?

A. That day they took me in, the foot was so bad that I didn't notice the arms all that bad. I mean I was just really bad on my foot....

The claimant was treated at St. Joseph's Business Health Clinic on December 16, 2006, where she was diagnosed with "Foot Sprain (R)." The record indicates that Dallas Pomeroy, PA-C, returned the claimant to restricted work for the period December 18, 2006 through December 26, 2006. The claimant testified, however, that she did not return to work after December 16, 2006.

Dallas Pomeroy noted on December 18, 2006:

Ms. Flem (sic) is a pleasant 62-year-old female who is employed with Southwestern Catering. She presents to the Business Health Clinic today for complaints of pain per her right ankle and foot after a work relate (sic) injury this past weekend. The patient states that on 12/16/2006 at approximately 10:25 p.m. the patient was walking in the kitchen and slipped on a mat and twisted her foot sideways. She had immediate pain and swelling per the foot and ankle. She applied ice that day, but the next day had severe pain and was unable to put any pressure on the foot. Today she is having slight improvement but is still unable to walk completely due to the pain. The patient denies any pain per her knee or hip. She has noticed no bruising but has had some swelling....

Examination of the right foot, the patient has tenderness to palpation over the lateral portion of the foot, but no tenderness over the medial or lateral malleolus. The patient has most tenderness with internal rotation of the foot, but there is noted weakness and inability to dorsiflex her foot. Plantarflexion is normal. Her gait is abnormal with a steppage gait with the right foot and limp.

There is no obvious ecchymosis. Dorsal pedis and posterior tibialis pulses are intact. The rest of her exam is unremarkable.

Ms. Pomeroy's impression was "Right foot sprain.

PLAN/COURSE: The patient will be placed on Naprosyn 500 milligrams b.i.d. She will be able to return to work if they have seated work only. She must use her cane both at work and at home. We will also send her for an AFO to give her better support for her foot while it is healing from the sprain...." It was indicated that the claimant could return to restricted work on December 27, 2006 through January 8, 2007.

Dallas Pomeroy noted on December 27, 2006, "The patient continues to have pain per the right foot which is worse with prolonged standing and walking....On examination of the right foot, the patient has tenderness to palpation over the lateral portion of the foot and over the lateral anterior compartment of the foot with internal rotation and flexion.

The patient is unable to dorsiflex her foot or toe. Her gait is abnormal with a steppage gait and mild limp." Ms. Pomeroy's impression was "Sprain....I set the patient up for a course of physical therapy....The patient is to remain on restrictive duty. Apparently, there is no limited duty at work and she has been off work at this time. The patient is to return to the Business Health Clinic upon completion of her first physical therapy session."

Dr. Michael K. Atta examined the claimant on January 17, 2007:

The patient returns for further evaluation and states that her right foot is slightly better. However, she is still experiencing persisting pain along the lateral aspect of the foot as well as some tightness in the right calf region. She denies any redness, swelling or bruising in her calf. However, she has mild bruising over the lateral aspect of the mid foot region. She states that she is still experiencing some difficulty on walking. She denies any numbness or tingling in the foot....

Examination of the patient's her foot (sic) reveals some ecchymosis along the lateral aspect of the mid foot region. Palpation reveals mild tenderness at this site. The patient still has restrictive range of motion at the right ankle with dorsiflexion and plantar flexion, each being approximately 20 degrees with mild pain. Neurovascular examination of the foot is otherwise intact.

Dr. Atta's assessment was "Right foot sprain.

PLAN/COURSE: The patient will be continued on another three sessions of physical therapy. In the meantime, she will be continued on her current work restrictions. She will be seen again in the Business Health Clinic in one week for further evaluation...."

Dr. Atta examined the claimant on January 25, 2007 and assessed "Right foot sprain with obvious right foot drop." Dr. Atta planned additional diagnostic testing and he returned the claimant to restricted work.

Dr. R. Paul Tucker, a neurologist, performed outpatient nerve conduction studies and reported on February 6, 2007:

This 63-year-old woman has a right foot drop. There is always the question of the difference between peroneal nerve palsy and a right L5 nerve root compression syndrome....Overall these findings are consistent with a right peroneal nerve palsy with a delayed conduction there. We also have an absence of the peroneal F-wave....

The claimant followed up with Dr. Atta on February 12, 2007:

The patient states that she is still experiencing numbness along the anterior lateral aspect of her right ankle and some weakness in the musculature of the right foot. Otherwise, she feels like she is improving. She denies any persisting redness or swelling around the ankle.

The patient's nerve conduction studies revealed a possible right perennial (sic) nerve palsy with delayed conduction....

In view of the patient's nerve conduction velocity findings I feel that neurological consult is necessary to further evaluate the probable cause of the perennial nerve palsy to ascertain whether it is due or linked to her foot sprain in any way or not.

In the meantime, the patient will be continued on her current medications and current work restrictions and will be seen again in the Business Health Clinic after her consult for further evaluation.

Dr. Atta assessed "Right foot sprain with right perennial (sic) nerve palsy."

The claimant presented to Dr. Tucker on April 2, 2007:

This 63 year old right handed white woman is referred for a right foot drop. This has almost cleared now. She walks without any assistive device. She was given a brace but has never used it....

She has worked as a waitress in the past. She was walking where there were mats. Her feet became tangled and she tripped over the mats. She caught herself on her arms and did not fall to the ground. She seemed to injure her arms, and now she feels as if this burns in her arms between her shoulder and her elbow, more on the left side. This really hurts her. She has an area that is tender in the left arm, three fourths of the way between her elbow and shoulder. When she fell, she had to scoot to the bathroom. Her manager helped her put ice on this in the kitchen. The next day, he referred her to Dr. Atta.

She was dragging her right foot. It would seem to pull out or abduct. She was working for Southwest Catering at that time. She has been unable to

work since that time. This has been about four months.

I had seen her for EMG and nerve conductions on 02/06/2007. She was referred by Dr. Atta for a right foot drop. One can have a foot drop with either an L4-5 disc or an L-5 nerve root compression....The findings were consistent with a right peroneal nerve palsy, with a delayed conduction there....More recently, she has noticed a small knot in the left arm....In examining the arms for the area of the knot, I could feel an area of induration and tenderness, which I would say is a horizontal area and is in the location previously noted. This was about one to one and a half centimeters wide and with the long dimension horizontally, about three centimeters. I cannot feel this on the right side. It was somewhat tender. There was no redness of heat, etc....

Some of the weakness is certainly atypical. The weakness of ankle dorsiflexion is most impressive since there is a question of some atrophy there. We do not know what the small lump in her arm is. There seems to be something there when she caught herself, when she started to fall. She twisted her ankle. Twisting of the ankle usually does not cause ankle dorsiflexion weakness, as with a peroneal nerve palsy.

We need to obtain approval for the MRI of the cervical spine. I would like to extend this now to the lumbar spine as well. She has the small lump on her left arm. She also needs approval for the Zanaflex.

Dr. Atta reported on May 24, 2007:

The patient returns for further evaluation. She states that her right ankle is feeling much better. She has developed strength in the ankle and is no longer walking with a stepish (sic) gait. She does not have any numbness or tingling in her right lower extremity.

However, the patient states that she is experiencing severe pain in the lateral aspects of her arms. On further discussion, the patient states that she has been experiencing pain in both arms every (sic) since a week after the injury and attributes this to possibly falling onto her elbows when she had the initial injury. She denies any current bruising, redness or swelling in her upper extremities. She does not have any numbness or tingling in her upper extremities....

Examination of both upper extremities does not show any redness, swelling or ecchymosis. Palpation reveals tenderness over the lateral aspects of both arms, but no swelling. Flexion and abduction at both shoulder joints is approximately 90 degrees with pain. Internal rotation, external rotation, adduction and extension are full and intact.

Neurovascular examination of both upper extremities is normal.

Dr. Atta assessed "1. Resolving right foot sprain. 2. Bilateral arm pain." Dr. Atta planned an MRI of the cervical spine, and he continued the claimant on her current work restrictions until the MRI was performed.

An orthopaedic specialist, Dr. Steven A. Kulik, performed an Independent Medical Examination on May 30, 2007:

Ms. Flynn is a 63-year-old female who works for Southwest Catering Company and injured herself on December 16, 2006. She apparently was walking and slipped on a rug and twisted her right ankle and foot and heard a snap. She could not walk on it that evening or the next day. She was seen by Dr.

Atta at St. Joseph Mercy Business Health Clinic. X-rays were taken and no fractures were identified. She was treated with Naprosyn. She was also treated with a boot type walker.

In January, she was begun on physical therapy and has progressed with physical therapy.

Patient is improving and currently she has very little pain in her right foot. She does have a history significant for being referred to Dr. Tucker in Hot Springs where EMGs were done of her lower extremity. This showed a peroneal nerve weakness....

Her right foot and ankle were evaluated. Her ankle was stable on anterior stress and lateral tilt. There is absolutely no tenderness in her ankle. There is no significant tenderness of her foot except possibly the dorsolateral midfoot area. No swelling and no particular warmth. There is full motion....X-rays of her foot show no fractures.

Dr. Kulik's assessment was "1. Right foot sprain. 2. No evidence of fracture or chronic ligamentous instability. 3. Weakness in her peroneal nerve as evidenced by dorsiflexion. Weakness of about 4/5. According to patient this is improving." Dr. Kulik recommended physical therapy for the next three weeks and stated, "2. I think that the patient could go back to work from the standpoint of her foot. 3. Ms. Flynn also complains of pain in her upper extremities. I did not fully evaluate or examine it. I did very cursory evaluation of her records. She does appear to

have pain mostly in her shoulders and some pain in the back of her neck. Just from the review of Dr. Atta's records, I do agree that an MRI of her neck would probably be needed."

The record indicates that the respondents paid temporary total disability benefits through June 16, 2007.

An MRI of the claimant's cervical spine was taken on August 7, 2007, with the impression, "1. Mild bilateral foraminal narrowing at C4-C5. 2. Moderate bilateral neural foraminal narrowing at C5-C6, greater on the right than the left."

Dr. Atta reported on August 9, 2007:

The patient returns for further evaluation at this time. She was last seen in the Business Health Clinic on May 24th, 2007 when an MRI of her cervical spine was ordered on account of complaints of bilateral pain in the lateral aspects of both arms and shoulders.

The patient states that she is still experiencing the same pain and that it is intermittent, but still very severe.

The MRI revealed mild bilateral neural foraminal narrowing at C4/C5 as well as moderate bilateral neural foraminal narrowing at C5/C6, which is greater on the right than the left. No regions of spinal stenosis were demonstrated. No definite pressure on any nerve or spinal cord tissue was noted.

ASSESSMENT: Degenerative joint disease of the cervical spine.

PLAN/COURSE: I had an extensive discussion with the patient where I explained that the objective findings do not clearly correlate with any traumatic injury from falling onto her upper extremities. Based on this MRI report I am therefore not able to show any objective findings to further justify linking her current symptoms to the injury which occurred on December 16th 2006.

However, I have expressed to the patient that the MRI was initially requested by Dr. Paul Tucker, the neurologist, to further evaluate her symptoms after she had had an initial office visit with him on April 2nd 2007. I feel that it would therefore be best that Dr. Tucker also be allowed to evaluate the MRI as well. I am therefore requesting that the patient also be sent to see Dr. Tucker for further evaluation. However, I have explained to the patient that at this time I do not feel that there is any further intervention that is required from an occupational health point of view.

Dr. Tucker noted on September 5, 2007:

This 63 year old woman is here for a follow-up for Workman's Compensation after an MRI. She was referred to me specifically by Dr. Michael Atta. When she saw me, she told me she had tripped over some mats and caught herself on her arms. This seemed to injure her arms. She felt as if she had burning in her arms between her shoulder and elbow, more on the left side. There was a tender area in the left arm, between the elbow and shoulder. She placed ice on this and the next day, she was referred to Dr. Atta. Somehow she failed to mention this, or he failed to mention this in his report.

He did obtain an MRI of the cervical spine, and this was quite abnormal. She had mild bilateral narrowing of the neural foramina at C4-5, but this was moderate at C5-6. This was greater on the right side.

In terms of EMG and nerve conduction studies, there was a focus at that time of the legs. There was the question of a right peroneal palsy at that time. Her symptoms in the legs have cleared now, so this is not a problem. She had some therapy and treatment of this, and this is no longer a problem.

The problem she is having now is still with her arms, where she caught herself. She had weakness when we first saw her. We reviewed the MRI more carefully. Although they mention narrowing at C5-6, it was in the report itself that said the narrowing was at C6-7, greater on the right than the left, with the most prominent changes there.

This is a difficult problem. Clearly she has a definite abnormality. I think the least expensive and most precise way to improve her status would be to obtain a myelogram with a post myelographic (sic) CT rather than doing further EMG and nerve conduction studies, and then going on to do this study. I think this would be economical and reasonable. We could repeat the MRI with a higher resolution machine, but will go to the definitive test to see if she needs something specifically at C6-7 done.

I had seen her initially on 02/06/2007. She was referred to me for EMG and nerve conduction studies of her legs, and we raised the question of the change in her legs. Those symptoms seemed to have now cleared completely. She had fallen on December 16th, 2006. She had sustained a significant injury, particularly at C6-7 on the right side.

A pre-hearing order was filed on October 16, 2007. The claimant's contentions were listed as follows: "1.

Compensability of a neck injury as well as the foot sprain injury on December 16, 2006. 2. Entitlement to additional

medical, both for the neck and the foot. 3. Entitlement to TTD benefits from June 16, 2007, to a date to be determined. 4. Entitlement to attorney's fees."

The respondents contended the following: "1. Respondents accepted the claimant's foot injury and have paid all appropriate benefits. 2. Respondents have controverted the neck injury and contend this is not a compensable injury arising out of the course and scope of claimant's employment."

The parties agreed to litigate the following issues:

1. Compensability of a neck injury.
2. Medical benefits.
3. TTD benefits.
4. Attorney's fees.

A hearing was held on December 7, 2007. At that time, the claimant contended that she sustained a compensable injury not only to her foot and ankle, but also her neck and arms. The claimant contended that she was entitled to temporary total disability benefits from June 16, 2007 through a date yet to be determined. The claimant contended that she was entitled to reasonably necessary medical treatment for her neck and arms. The claimant reserved the issue of additional medical treatment related to her foot. The claimant testified with regard to her foot, "My foot is

a lot better. I won't complain on it. Once in a while I'll have like a real sharp - like a bolt goes through it. But it don't last for a second, and that's very rare. It just might be some way I'm walking or something - like a bolt of lightning or something sharp has got in it. But I've not complained on it. If they would just get my arms to where I could get back to work."

An administrative law judge filed an order and opinion on January 14, 2008. The administrative law judge found that the claimant proved she sustained "not only a right foot injury on December 16, 2006, when she tripped over a mat at work, but she also has proven that she sustained a neck and arm injury at the same time." The administrative law judge found that the respondents were responsible "for the reasonable and necessary medical treatment the claimant has received and for the recommended testing and treatment for the compensable neck and arm injury." The administrative law judge found that the claimant proved "she remained in her healing period and unable to earn wages from June 17, 2007, to a date to be determined." The respondents appealed to the Full Commission. The Full Commission reversed the administrative law judge's decision and found

that the claimant did not prove she sustained a compensable injury to her neck or either arm. The Court of Appeals has reversed and remanded for more specific findings.

II. ADJUDICATION

A. Compensability

_____ Ark. Code Ann. §11-9-102(4) (Repl. 2002) provides:

(A) "Compensable injury" means:

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

The employee's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(E) (i).

Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

An administrative law judge found in the present matter, "4. The claimant has proven by a preponderance of the evidence that she sustained not only a right foot injury on December 16, 2006, when she tripped over a mat at work, but she also has proven that she sustained a neck and arm injury at the same time." The Full Commission finds that the claimant did not prove she sustained a compensable injury to her neck or either arm. The parties stipulated that the claimant sustained "a compensable foot sprain injury" on December 16, 2006. The claimant testified that her foot became caught, and that she fell down, heard a snap, and tried to grab a counter with both hands. The claimant testified, "That day they took me in, the foot was so bad that I didn't notice the arms all that bad. I mean I was just really bad on my foot."

The evidence does not demonstrate that the claimant sustained a compensable injury to her neck or arms on December 16, 2006. The claimant began treating at a clinic on December 16, 2006 for a right foot sprain. Dallas

Pomeroy, a physician's assistant, examined the claimant on December 18, 2006 and noted pain in the claimant's right foot and ankle. There was no indication that the claimant had injured her neck or arms. Ms. Pomeroy treated the claimant conservatively for a right foot sprain. The claimant received additional treatment for her right foot on December 27, 2006, January 17, 2007, January 25, 2007, February 6, 2007, and February 12, 2007. There were no reports from Ms. Pomeroy, Dr. Atta, or Dr. Tucker on any of these dates that the claimant had injured her neck or arms on December 16, 2006.

Dr. Tucker noted on April 2, 2007 that the claimant had been "referred for a right foot drop. This has almost cleared now." Dr. Tucker also noted on April 2, 2007, nearly four months after the compensable foot sprain injury, that "She was walking where there were mats. Her feet became tangled and she tripped over the mats. She caught herself on her arms and did not fall to the ground. She seemed to injure her arms, and now she feels as if this burns in her arms between her shoulder and her elbow, more on the left side." The authority of the Commission to resolve conflicting evidence also extends to medical

testimony. *Foxx v. American Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). The Commission is to determine the credibility of the medical evidence and may review the basis for the opinion. *Id.* The probative evidence before the Commission does not support Dr. Tucker's April 2, 2007 notation, based on the claimant's history given to him, that the claimant also injured her arms when she sustained a right foot sprain on December 16, 2006. Nor does the record show that the induration or small lump in the claimant's arm noted on April 2, 2007 was in any way the result of the accidental injury occurring on December 16, 2006.

An MRI of the claimant's cervical spine on August 7, 2007 showed foraminal narrowing at C4-C5 and C5-C6. There is no evidence before the Commission demonstrating that this narrowing resulted from the claimant's fall on December 16, 2006. Dr. Atta reviewed the cervical MRI and assessed "Degenerative joint disease of the cervical spine....I explained that the objective findings do not clearly correlate with any traumatic injury from falling onto her upper extremities. Based on this MRI report I am therefore not able to show any objective findings to further justify linking her current symptoms to the injury which occurred on

December 16th 2006." The Full Commission finds that Dr. Atta's opinion is corroborated by the record and is entitled to significant evidentiary weight. Dr. Tucker stated on September 5, 2007, "She had sustained a significant injury, particularly at C6-7 on the right side." The Full Commission recognizes that Dr. Atta is an occupational health physician whereas Dr. Tucker is a neurologist. Nevertheless, the Commission is authorized to accept or reject medical opinions and to determine their medical soundness and probative force. *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 969 S.W.2d 692 (1999). In the present matter, Dr. Atta's opinion is supported by the evidence of record and is entitled to more weight than Dr. Tucker's opinion.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her neck or arms on December 16, 2006. The claimant did not prove that she sustained an accidental injury causing internal or external physical harm to her neck or either arm. The claimant did not prove that she sustained an injury to her neck or either arm which arose out of and in the course of employment, required

medical services, or resulted in disability. The claimant did not prove that she sustained an injury to her neck or either arm which was caused by a specific incident identifiable by time and place of occurrence on December 16, 2006. The claimant did not establish a compensable injury to her neck or either arm by medical evidence supported by objective findings. We therefore reverse the administrative law judge's finding that the claimant proved she sustained a compensable injury.

B. Temporary Disability

The Court has instructed the Commission to make findings on the issue of the claimant's entitlement to temporary total disability benefits for her foot injury beyond June 16, 2007. An employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits during her healing period or until she returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46

Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Whether an employee's healing period has ended is a factual determination to be made by the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

In the present matter, the parties stipulated that the claimant sustained "a compensable foot sprain injury" on December 16, 2006. The claimant was diagnosed with a right foot sprain injury and was released to restricted work beginning December 18, 2006. The claimant testified that she did not return to work after December 16, 2006. The claimant was treated conservatively for her compensable right foot sprain. Dr. Atta assessed "right foot sprain with obvious right foot drop" on January 25, 2007. Dr. Tucker reported on February 6, 2007 that electrodiagnostic testing was consistent with a right peroneal nerve palsy. Dr. Tucker noted on April 2, 2007, however, that the claimant's right foot drop had "almost cleared now. She walks without any assistive device. She was given a brace but has never used it." Dr. Atta noted on May 24, 2007,

"She states that her right ankle is feeling much better. She has developed strength in the ankle and is no longer walking with a stepish gait. She does not have any numbness or tingling in her right lower extremity." Dr. Atta's assessment included "1. Resolving right foot sprain."

Dr. Kulik, an orthopaedic specialist, evaluated the claimant on May 30, 2007 and noted, "Patient is improving and currently she has very little pain in her right foot....Her ankle was stable on anterior stress and lateral tilt. There is absolutely no tenderness in her ankle. There is no significant tenderness of her foot except possibly the dorsolateral midfoot area. No swelling and no particular warmth. There is full motion....X-rays of her foot show no fractures." Dr. Kulik recommended additional therapy but opined that the claimant "could go back to work from the standpoint of her foot." The respondents continued to pay temporary total disability benefits through June 16, 2007. Dr. Atta stated on August 9, 2007, "I do not feel that there is any further evaluation that is required from an occupational health point of view." Dr. Tucker noted on September 5, 2007, "Her symptoms in the legs have cleared now, so this is not a problem....Those symptoms seemed to

have now cleared completely." The claimant essentially testified at hearing that she was no longer unable to work because of the compensable foot sprain injury.

Based on the claimant's testimony and the medical reports by the treating physicians, the record demonstrates that the claimant did not continue in a healing period for her compensable foot sprain injury beyond June 16, 2007. The claimant therefore did not prove that she was entitled to additional temporary total disability benefits for her compensable scheduled injury.

Pursuant to the remand from the Arkansas Court of Appeals, and based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she sustained a compensable injury to her neck or her arms. The Full Commission also finds that the claimant did not prove she was entitled to additional temporary total disability benefits beyond June 16, 2007. We therefore reverse the administrative law judge's decision, 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, reversing the Administrative Law Judge, finds that the claimant did not prove she sustained a compensable injury to her neck or arms. After a de novo review of the record, I find, as did the Administrative Law Judge, that the claimant proved by a preponderance of the evidence that in addition to her compensable right foot injury, sustained during a fall at work on December 16, 2006, the claimant also sustained compensable neck and upper extremity injuries. Therefore, I must respectfully dissent.

There is no dispute that there was an incident on December 16, 2006, when the claimant almost fell after tripping over a mat. The claimant caught herself,

using both hands, on a counter near the coffee machines. The respondent accepted a right foot injury and paid medical and temporary total disability benefits associated with that injury. The claimant credibly testified that she began experiencing problems with her arms and neck immediately after the fall. The claimant testified that she notified Dallas Pomeroy, nurse practitioner, on her second visit, about her neck, shoulders, and arm hurting. On May 24, 2007, Dr. Michael Atta ordered a cervical MRI, and then referred the claimant to Dr. Paul Tucker to evaluate the MRI findings and her symptoms. On April 2, 2007, Dr. Tucker's report notes and measures the knot in the claimant's left arm. Dr. Tucker further mentions the "small lump in her arm" later in his report and states, "There seems to be something there when she caught herself, when she started to fall." On September 5, 2007, Dr. Tucker reviewed the claimant's MRI and addressed the results, as follows:

This is a difficult problem. Clearly she has a definite abnormality. I think the least expensive

and most precise way to improve her status would be to obtain a myelogram with a post myelographic CT rather than doing further EMG and nerve conduction studies, and then going on to do this study. I think this would be economical and reasonable. We could repeat the MRI with a higher resolution machine, but will go to the definitive test to see if she needs something specifically at C6-7 done.

Dr. Tucker ended his September 5, 2007, progress report stating that the claimant's problems with her legs seem to have cleared up completely but that the claimant had also sustained a significant injury at C6-7 on the right side when she fell on December 16, 2006.

The majority has chosen to place greater weight on the opinion of Dr. Atta, an occupational health physician, than on that of Dr. Tucker, a neurologist. This makes absolutely no sense. As outlined above, Dr. Atta referred the claimant to Dr. Tucker. Dr. Atta wanted Dr. Tucker's opinion. As such, I believe it can safely be said that in this instance, even Dr. Atta

would not place greater weight on his own opinion versus the opinion of Dr. Tucker, otherwise, he would not have referred the claimant to Dr. Tucker seeking his opinion. To place greater weight on the opinion of a referring occupational health doctor over that of the specialist to whom the claimant was referred simply defies common sense.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner