

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613829

LORLIE D. FINLEY, EMPLOYEE	CLAIMANT
PERENNIAL HEALTHCARE, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE COMPANY, C/O AIG CLAIMS SERVICE, TPA	RESPONDENT

OPINION FILED JANUARY 13, 2009

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

Claimant represented by HONORABLE STEVEN R. McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed May 27, 2008.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.

3. Claimant has not proven by a preponderance of the evidence that she is entitled to additional medical treatment from Drs. Raul Ramirez, Amir Qureshi, and Zachary Mason because (a) they were not authorized treating physicians from the period of December 15, 2006 until February 12, 2007; and (b) after claimant reached the end of her healing period on February 12, 2007, any condition that Ramirez, Qureshi and Mason were treating was not casually related to her compensable injury.

4. Claimant has not proven by a preponderance of the evidence that Drs. Ramirez, Qureshi and Mason were authorized treating physicians from the date of injury until the claim was controverted.

5. Claimant has not proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits after February 12, 2007, since she reached the end of her healing period on that date.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from

a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

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

CONCURRING AND DISSENTING OPINION

I must respectfully concur in part and dissent in part from the majority opinion. Based on a de novo review of the record, I find that the preponderance of the evidence establishes that the claimant is entitled to additional medical and disability benefits as a result of her

admittedly compensable injury of December 15, 2006. While I concur that the treatment the claimant received from Drs. Ramirez, Qureshi, and Mason prior to December 2007, was not authorized and is therefore not the liability of the respondent, I find that the treatment the claimant received from them was reasonable and necessary and the respondent should be liable for paying for any treatment from those physicians after December 2007, when the claimant was referred to them for treatment by Dr. Hart, and therefore I must respectfully dissent on this issue. Also, as I find that the preponderance of the evidence of record clearly shows that the claimant became disabled because of her compensable injury and she has remained in her healing period from the date of that injury through the date of the hearing and would award temporary total disability benefits accordingly, I must dissent on this issue as well.

There does not appear to be any dispute regarding the underlying facts of this case. The claimant testified she slipped on a wet floor after assisting one of the respondent's patients with a shower. She was transported to

a hospital emergency room because she was unable to rise after her fall. At the request of the emergency room physician, the claimant underwent a CT scan of her lumbar spine on December 15, 2006, the day of her accident. The report relating to that CT scan noted the presence of osteoarthritis and related degenerative problems at L3-L4, L4-L5, and L5-S1. The report also states the scan detected diffuse disc bulging at L3-L4 and L4-L5. Similar tests performed on the claimant's head and cervical spine did not note any abnormalities.

Because of the claimant's continued complaints of pain, she underwent an MRI of her lumbar spine on December 21, 2006. According to the radiology report of that date, the MRI detected the presence of a paracentral disc bulging at L3-L4 and L2-L3. (Later diagnostic testing suggested the claimant had a transitional vertebrae resulting in her having an S1-S2 level, causing some discrepancies in the location of spinal abnormalities as reported in various scans of the claimant's lumbar spine).

Eventually, the claimant came under the treatment of Dr. Stephen Cathey, a Little Rock neurosurgeon. In a fill in the blank form, dated January 19, 2007, which Dr. Cathey prepared at the request of the respondent's nurse case manager, he diagnosed the claimant as suffering from a lumbar strain resulting from her job related injury. Dr. Cathey also indicated the claimant's pain was not related to a non-organic or other health disorder and 100% of her condition was related to her work injury. He likewise stated that none of her problems were the result of any pre-existing degenerative conditions. Lastly, he indicated the claimant had reached the point of her maximum medical improvement and could return to regular duty work on or about February 12, 2007.

Dr. Cathey also authored a clinic note dated January 29, 2007 in which he documented an office visit with the claimant. After setting out a history of a job related injury, he stated his belief that the claimant suffered a musculoskeletal strain which was not a condition which would

respond favorably to spinal surgery or other neurosurgical intervention.

As a result of referral from Dr. Raul Ramirez, the claimant's personal physician, the claimant also saw Dr. Zach Mason, another Little Rock neurosurgeon. His report of February 21, 2007 did not vary significantly from Dr. Cathey's in that he did not feel the claimant's disc bulge at L4-L5 required neurosurgical intervention. Dr. Mason concluded his report by recommending the claimant return to Dr. Ramirez for further treatment.

In a report dated April 3, 2007, Dr. Ramirez stated the claimant was suffering from bulging discs at different levels which were, in his opinion, the cause of her pain symptoms. He indicated she was taking medication for this condition and it was currently unsafe for her to work. He also stated that she had been referred to a pain management specialist who was currently treating her. Presumably, this specialist was Dr. Qureshi.

The claimant eventually petitioned the Commission for a change of physician. Accordingly, the claimant was

directed to seek treatment from Dr. Thomas Hart. In a report dated November 2, 2007, Dr. Hart noted the claimant's past history of a bulging disc and opined she should receive an updated MRI to more fully evaluate her condition. In another report also dated November 2, 2007, he more extensively reviewed her medical history and noted her complaints of radicular pain and related symptoms. He went on to state his belief that a discogram would be necessary to fully evaluate her condition.

The claimant later underwent a lumbar MRI on November 28, 2007. The report associated with that examination confirmed the presence of a transitional vertebral anatomy (that is, she had an extra lumbar vertebrae, later labeled to be S-2). The MRI exam also determined the claimant was suffering from a broad based disc bulge with a suggestion of an annular fissure at L4-L5 and similar though less severe abnormalities at L3-L4.

The discogram was performed on December 19, 2007, and was performed in conjunction with a CT scan of the lumbar spine with contrast. The CT scan noted the injection

resulted in a "circumferential spread indicating complete intra-distal obstruction" at the L5-S1 level. The report outlining that finding noted a contrast material pool in a "focal disc herniation or protrusion in the right paracentral and subvertebrael portion of the disc potentially compromising the right SI nerve root within the lateral recess."

In Dr. Hart's operative notes regarding the discogram he stated that it was his opinion that the claimant had a moderate disc protrusion at the L4-L5 level and a disc disruption at the L5-S1 level. Dr. Hart concluded his operative note with a statement he was intending to refer the claimant for a neurosurgical consultation, probably with Dr. Reza Shahim. However, subsequent medical records indicate the referral was to Dr. Zach Mason, a neurosurgeon who had previously seen the claimant.

The claimant saw Dr. Mason on January 15, 2008. In his report of that date, Dr. Mason stated his belief the claimant was not a neurosurgical candidate. However, he

suggested the claimant be referred to Dr. Shahim and stated that he would make the appropriate referral if necessary.

The respondent, in refusing to provide the claimant any medical and disability benefits after December 19, 2007, relies in great part on the claimant's past medical history. In this regard, I note that the record contains the results of a nerve conduction study performed on the claimant in April 1999, which determined that she was suffering from bilateral carpal tunnel syndrome. However, it does not appear the claimant received any further treatment for that condition. I also note the claimant sought medical treatment for an apparent job related injury in October 2000, where she reported an onset of back pain, including a "pop" while reaching over a table at work. The claimant was initially treated for this injury at a local hospital emergency room and was later seen by Dr. Peggy Brown, a Searcy neurologist. In a reported dated December 1, 2000, Dr. Brown noted the claimant was in substantial pain but an MRI and a nerve conduction study did not show any

abnormalities. The claimant returned to her regular physician who did not prescribe any treatment for her.

The claimant also sought treatment for back problems in January 2002, and was seen by Dr. Kevin Spence of the White County Medical Clinic. According to Dr. Spence's report of January 9, 2002, he saw the claimant for a back injury which she alleged occurred when she attempted some heavy lifting at work on November 26, 2001. Dr. Spence prescribed the claimant medication and provided an epidural steroid injection in the claimant's lumbar spine. Dr. Spence last saw the claimant for this problem on January 23, 2002, when he noted that she was still suffering from back pain with radicular symptoms. The doctor also noted the claimant had a normal MRI. Dr. Spence stated the claimant had not received any treatment after the epidural steroid injection but the only additional treatment he recommended for her was heat therapy and a TENS unit.

The claimant's most serious past health problems were her gastrointestinal difficulties and chronic depression. For the former problem, the claimant eventually

underwent a gastric bypass. The claimant's mental status required extensive medication and counseling and did result, for at least a briefs periods of time, hospitalization. Also, the claimant testified during the hearing she received Social Security Disability benefits for a few years prior to her going to work for the respondent. According to her, the Social Security disability benefits were received because of the combined effects of her stomach disorders and her depression.

Significantly, the claimant also testified regarding memory problems she suffered because of her depression. These problems are noticeable when reviewing her medical records in that she frequently gives erratic and contradictory information regarding her personal status and past health issues. For example, the claimant and her husband testified at the hearing they had been married for almost 30 years. However, many of her medical records in the years preceding her injury states she is either single, divorced, or living just with children, or living alone. Also, some of her medical histories reflects she has no

major health issues, but others discuss her gastric bypass surgery and back injuries. Although, some of the medical providers note in their treatment notes she had no past history of family medical conditions, other medical reports reflect that her family had an extensive past history of cancer, heart conditions and similar health problems.

Unfortunately, in denying her claim, the majority has relied, not only on her past medical history, but on some of the inaccurate information the claimant has provided to her medical providers. The Administrative Law Judge questioned the claimant's credibility and specifically cited her statements about not being able to recall receiving medical treatment for her lower back in 2001 through 2002. However, the claimant testified during the hearing she was not denying she received this treatment merely that she could not recall it. Given the numerous other misstatements about relatively mundane matters in her medical record, it is obvious she is telling the truth regarding her faulty memory. I would also note that the Administrative Law Judge also stated the claimant's gastric bypass surgery was to

treat her prior back condition. The Administrative Law Judge obtained this information from a statement the claimant made to one of her treating doctors. However, as indicated above, the claimant's statements regarding her past medical history are not accurate. Furthermore, I simply cannot see any possible connection between a gastric bypass and back injury. The former procedure was obviously intended to treat the claimant's gastrointestinal problems and her obesity.

The majority, by affirming and adopting the Administrative Law Judge, has also used the claimant's past medical history of back injuries to deny her benefits in the present claim. Neither of the two incidents which caused her to seek medical treatment in 2000 and later in 2002 appear to be significant. The first injury only required her to seek medical treatment on a very few occasions and resulted in nothing more extensive than prescriptions for some medications. The claimant apparently returned to work performing labor intensive duties after this injury. The second event likewise only involved a few doctor's visits and the claimant received no further treatment other than

epidural steroid injections. The claimant did not seek any further medical treatment for her lower back for a period of over four years until her compensable injury in this case. Further, the claimant was employed with this respondent for approximately six months prior to her injury and during that time frequently engaged in activities requiring heavy lifting and other strenuous activities. Had she been suffering from extensive back problems prior to this date, she almost certainly would have not been able to perform her job duties for as long as did.

In spite of the majority's reliance on the claimant's past medical history to deny this claim, I also note that the claimant's past records do not establish that she had any significant degree of degenerative disc disease prior to her job related injury of December 15, 2006. The record does not contain reports relating to the MRI's the claimant underwent in 2000 and 2002, but accompanying treatment notes stated the MRI's were "normal." Since the MRI's the claimant underwent following her most recent compensable injury had multiple abnormalities, it seems

certain her condition must have been adversely affected by her compensable injury of 2006.

Given the lack of medical evidence demonstrating the existence of any prior disabling condition in the claimant's lower back, I find that the majority, by affirming and adopting the Administrative Law Judge's reliance upon the claimant's past medical history, has erred. If these past medical records had demonstrated a significant amount of degenerative disc disease or other spinal abnormalities, a basis might exist for finding the claimant's problems were not causally connected with her most recent injury. However, the medical evidence does not support such a conclusion.

Questions as to how past medical history affects compensability of subsequent injuries is a issue dealt with on frequent occasions by this Commission and Appellate Courts. An often quoted axiom in workers' compensation is an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. See Heritage Baptist Temple v. Robison, 82 Ark.

App. 460, 120 S.W.3d 150 (2003). In the case at bar, there is no dispute that the claimant had injured her back previously. However, there is little, if any, evidence demonstrating her past injuries caused any disability prior to her compensable injury of December 15, 2006. I find that the evidence presented by the respondent regarding the claimant's past medical history simply does not establish any preexisting condition which could have resulted in her ongoing disability and need for treatment.

It is readily apparent the claimant's most recent job related accident caused her current disability and need for treatment. But, even if the claimant had been suffering from a potentially disabling degenerative condition, the medical evidence and facts of this case clearly demonstrate her admittedly job related accident caused her condition to become symptomatic. In that case, all that is necessary for the claimant to establish entitlement to additional medical and temporary disability benefits is that the most recent compensable injury must be a factor causing the inability to work and need for additional medical treatment. Williams v.

L. & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004). The claimant has met her burden of proof in this regard.

While I find the claimant has met her burden regarding causation, she must also prove the medical treatment she is seeking is reasonable and necessary and is provided by authorized treating physicians. The majority has ruled against the claimant on both of these issues. The medical treatment in question was provided to the claimant by Drs. Ramirez, Mason, and Qureshi. The respondent is correct in asserting that Dr. Ramirez was never authorized by them or by the Commission to treat the claimant, nor did she see him as a result of a referral by a doctor who was so authorized. He did not provide the claimant a great deal of treatment for her condition and I do not believe the respondent is liable for whatever assistance he did provide her. Likewise, to the extent the claimant was treated by Drs. Mason and Qureshi, as a result of Dr. Ramirez's referral is also unauthorized and, even if reasonable and

necessary, would not be the responsibility of the respondent.

However, I note the claimant saw Dr. Hart as a result of a change of physician granted by this Commission. Consequently, Dr. Hart was an authorized treating physician who provided the claimant reasonable and necessary medical treatment. The respondent does not dispute Dr. Hart's treatment of the claimant and has accepted and paid for his services. In his report of December 10, 2007, Dr. Hart specifically directed the claimant to see Dr. Qureshi for help with her back complaints. Clearly, this made Dr. Qureshi in the chain of referral by Dr. Hart. Also, in Dr. Hart's report of December 19, 2007, he discussed sending the claimant on to Dr. Shahim or another neurosurgeon. Later, the claimant saw Dr. Mason and in Dr. Mason's report of January 15, 2008, he specifically lists Dr. Hart as the doctor making the referral. Therefore, I find that the reports of Dr. Hart and Dr. Mason, when taken together, clearly establish that the treatment the claimant received from Drs. Qureshi and Mason after December 2007 was the

result of referrals by the claimant's authorized physician, Dr. Thomas Hart. The respondent is therefore liable for the treatment the claimant received from those doctors after the referral from Dr. Hart.

The remaining medical issue is whether the treatment the claimant received from Drs. Qureshi and Mason after December 2007 is reasonable and necessary. The record does not contain any medical reports from Dr. Qureshi but the reports from Drs. Hart and Mason indicate the claimant was seeing him for pain management. Clearly, this is the type of therapy the claimant needs. She testified her back was causing her severe pain and substantially limiting her activities. If Dr. Qureshi is successful in providing the claimant conservative treatment so as to reduce the claimant's dependence on narcotic pain medication and allow her to return to work or at least a more normal lifestyle, his treatment would be successful and welcome. Therefore, I find that Dr. Qureshi's treatment is reasonable and necessary and is causally related to the claimant's compensable injury. The respondent should be found liable

for any medical treatment Dr. Qureshi has rendered to the claimant on or after December 10, 2007.

Likewise, I find that the evaluation of Dr. Mason in January 2008, and any subsequent treatment or examinations he provided to the claimant should also be the respondent's liability. Clearly, given the findings of Dr. Hart, a neurosurgical evaluation was appropriate. According to Dr. Hart's evaluation of the claimant's discogram, MRI, and CT with contrast, the claimant had large bulging discs at two levels and strong evidence of an annular tear. While Dr. Mason eventually opined that surgery would not be beneficial to the claimant, his opinion in this regard would be important in determining what steps should be taken to treat her condition. These types of evaluations are routinely granted, and, in fact, the claimant had undergone such evaluations previously when her condition had not been so thoroughly evaluated by diagnostic testing. Once again, I believe the medical evidence is overwhelming that the treatment the claimant received by Dr. Mason after December

2007 was reasonable and necessary and related to her compensable injury.

The final issue is the claimant's entitlement to additional temporary total disability benefits. The respondent terminated payment of these benefits to the claimant after February 12, 2007, based upon the opinion of Dr. Cathey. However, I believe Dr. Cathey's opinion in this regard is entitled to little weight. I reach that conclusion because Dr. Cathey's reports are not only inconsistent, but are based on a faulty premise. Specifically, Dr. Cathey attributed all of the claimant's disability and need for treatment to her compensable injury but opined she was at the end of her healing period because her injury was entirely musculoskeletal in origin. However, the MRI the claimant previously underwent established the presence of disc abnormalities at two levels. Also, the more extensive diagnostic testing undertaken pursuant to Dr. Hart's treatment of her indicated not only significantly bulging discs but strong evidence of an annular tear. As Dr. Hart notes in his extensive reports, injuries to the discs

themselves can be, and frequently are, the cause of severe pain and related symptoms. Further, Dr. Hart specifically connected the claimant's symptoms to the damage to her lumbar spine resulting from her fall at work. Even DR. Cathy agreed the claimant's job related accident was the source of her symptoms.

Dr. Cathey only saw the claimant on a very limited basis. He also did not have access to the extensive and more precise tests performed by Dr. Hart. Also, Dr. Cathey's opinion was apparently based on his conclusion the claimant's back pain was unrelated to a disc injury and had resolved. Obviously, Dr. Cathey's opinions are based on factual errors and should be afforded little weight.

The Workers' Compensation Act provides a claimant is entitled to receive temporary disability benefits when he or she is incapacitated from earning wages and within their healing period. Searcy Industrial Laundry, Inc. v. Ferren, 92 Ark. App. 65, 211 S.W.3d 11 (2005). The healing period ends when the employee is as far restored as the permanent nature of the injury will permit, and the underlying

condition causing the disability has become stable and nothing in the way of treatment will improve that condition. Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. Breakfield v. In and Out, Inc., 79 Ark. app. 402, 88 S.W.3d 861 (2002).

In the present case, none of the evidence indicates the claimant had received any particularly beneficial treatment prior to Dr. Cathey's opinion she was able to return to work in February 2007. To the contrary, the claimant continued to receive physical therapy after that date and eventually sought and received treatment from Dr. Hart. Also, the claimant received treatment from Dr. Ramirez and apparently Dr. Qureshi in an attempt to alleviate her symptoms. Obviously, the claimant's condition had not stabilized and she was still seeking further medical treatment. Even though Dr. Cathey opined there was no treatment for her and she was therefore released to return to work, Appellate Courts of this state have held, because one doctor opines a particular surgical procedure would not

be beneficial, does not necessarily mean that an injured worker is fully recovered and able to return to work. See Dallas County Hospital v. Daniels, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

The medical evidence in this case reflects the claimant has received very little meaningful medical treatment for her back condition since her injury. Most of what she has received has been in the form of evaluations to determine what medical treatment is necessary for her. However, because the respondent has refused to provide much actual medical treatment, the claimant's condition has not significantly improved from her injury and she remains disabled and in need of further treatment. Had the respondent allowed the claimant's treating physician to aggressively treat her injury by providing her spinal physical therapy, pain management, additional injections or other routine methods of treatment, she might well have improved by this point and been able to return to work. Unfortunately, she did not receive such treatment and has not significantly improved.

In this case, the claimant sustained an admittedly compensable injury at work. She has been evaluated on multiple occasions but has received little actual treatment. Further, as explained above, the medical evidence in this case establishes almost unequivocally the claimant's work related injury is causing her disability. Even Dr. Cathey, the physician heavily relied upon by the respondent to terminate the claimant's benefits, agreed with that proposition. Since her injury, the claimant's condition has not significantly improved due, in part, to a lack of effective medical treatment.

In conclusion, I find that the preponderance of the evidence establishes that the claimant is entitled to additional medical and disability benefits as a result of her admittedly compensable injury of December 15, 2006. While the treatment the claimant received from Drs. Ramirez, Qureshi, and Mason prior to December 2007, was not authorized and is therefore not the liability of the respondent, I believe the treatment the claimant received from them was reasonable and necessary and the respondent

should be liable for paying for any treatment from those physicians after December 2007, when the claimant was referred to them for treatment by Dr. Hart. Also, I believe the record establishes the claimant became disabled because of her compensable injury and she has remained in her healing period from the date of that injury through the date of the hearing. Accordingly, I would award temporary total disability benefits from February 12, 2007, to a date yet to be determined.

For the aforementioned reasons I must respectfully concur, in part, and dissent, in part.

PHILIP A. HOOD, Commissioner