

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613036

DONNA LAMBERT,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 26, 2009

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

Claimant represented by the HONORABLE TERENCE C. JENSEN,
Attorney at Law, Benton, Arkansas.

Respondent represented by the HONORABLE TOD C. BASSETT,
Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed July 1, 2008. The administrative law judge found that the claimant proved she sustained a compensable injury, and that the claimant was entitled to temporary total disability compensation from November 27, 2006 to a date yet to be determined. After reviewing the entire record *de novo*, the Full Commission finds that the claimant

proved she sustained a compensable injury, and that the claimant was entitled to temporary total disability from November 27, 2006 through February 21, 2008.

I. HISTORY

Donna Lambert, age 47, reported intense low back pain and pain in her neck and shoulder following a motor vehicle accident in November 1989. Swelling was noted in the claimant's low back in November 1989. The claimant continued complaining of low back pain in 1990. The claimant was assessed with back pain with leg numbness in 1992 and it was noted, "She has been seen by a neurologist who has done MRI scanning and not found a cause for this."

The claimant reported neck, back, and shoulder pain in April 1998, stating that she was hurt while restraining a client at Timber Ridge. The claimant reported that she took Soma for muscle spasms.

The claimant eventually became employed at Wal-Mart. The claimant testified that she worked in the respondent-employer's meat department, unloading boxes from pallets. The parties stipulated that the employment relationship existed at all relevant times, including November 24, 2006. The claimant testified, "I stepped my right foot over a

wooden pallet. And as I attempted to lift my left foot over, my left foot caught in the wooden pallet. And from there I just fell over to my right side on the concrete floor." The claimant testified that she at first did not feel like she was injured, but that her right foot began hurting and burning after approximately 15 minutes. The claimant testified that she began having trouble walking and that she reported the accident to two store managers. The claimant testified that a manager told her to go home. The claimant testified that she subsequently felt a shooting pain in her back radiating to her right leg.

The claimant received emergency medical treatment on November 26, 2006: "Reports fall at work, c/o lower back and right foot pain." A radiological examination was done on November 26, 2006, with the following findings:

There is moderate facet arthritis at L5-S1.
Lumbar vertebral body alignment is normal. There are no fracture, subluxation or destructive lesion seen. There is disc space narrowing at L5-S1. The remainder of the disc spaces are normal. There are 5 lumbar type vertebrae. Surgical clips in the right upper quadrant are consistent with prior cholecystectomy.

The impression was "1. Mild degenerative disc disease and moderate facet arthritis at L5-S1. 2. Otherwise negative exam."

A right lower extremity venous ultrasound was also done on November 26, 2006, with the following findings:

No thrombi are visible at any level. The veins compress completely with direct pressure. Normal Doppler flow is present at all levels, with normal response to augmentation and respiration.

The impression was "Normal venous Doppler of right lower extremity."

Dr. Joseph F. Farmer, an emergency department physician, saw the claimant on November 26, 2006:

This is a 45-year-old female who fell at work at Wal-Mart. She said she tripped over a pallet, landing on her back. She complains of severe pain in the low back and pain which radiates down the right leg to about the foot. She complains of some paresthesias and burning feelings in her feet, also....She has no prior history of back problems....

BACK: There is tenderness in the right sacroiliac notch. Straight leg raising test is positive on the right at 30. She has pain on performed Patrick maneuver.

EXTREMITIES: Examination of the right lower leg reveals some tenderness over the right calf.

DIAGNOSTIC/LABORATORY DATA:

Venous Doppler was negative for clots. X-rays of the lumbar spine show narrowing of the L5-S1 disk space. There are also some arthritic changes in this joint.

Dr. Farmer's impression was "Degenerative disk disease, acute exacerbation." The discharge diagnosis was "degenerative disc disease lumbar5 S1."

The claimant saw Dr. Scott Carle on November 27, 2006:

Patient states: "I was stepping over the corner of a pallet, my left foot was caught in the pallet and I fell on my right side hurting my leg, back and foot." ...

Lumbar: The straight leg raise testing was negative for any reproduction of sciatic nerve route (sic) irritation in the both the right and left lower extremities....

No evidence of asymmetrical muscle atrophy. No involuntary muscle spasm as identified by provider. Tenderness of the right SI joint. No ecchymosis....

Dr. Carle assessed the following: "1. Hip contusion. 2. Contusion buttock. 3. Sacroiliac strain. 4. Foot sprain." Dr. Carle assigned sedentary work restrictions, re-check in three days.

The claimant began treating with Eric Holifield, PT on November 27, 2006. Mr. Holifield's observations included "Tissue Appearance: no edema. Hip passive range of motion within normal limits." The claimant testified that she participated in two physical therapy sessions, but that a representative of the respondents denied further benefits after that.

On a form provided by the respondent-carrier dated November 29, 2006, Dr. Carle indicated, "No - I did not observe a discoloration or bruise on the patient's hip & buttock."

Dr. Kirk Watson, the claimant's family physician, noted on December 1, 2006, "45-year-old white female who was working at the Wal-Mart, I think in Chenal in West Little Rock. She fell on or about the 24th of November, apparently stepped into a wooden palate (sic) that was on the floor and got a foot caught and tripped and fell, straining her right side of the body, both upper and lower....she continues to have pain which radiates from the right SI joint area down through the buttocks, the back of the leg, to the level of the foot....She is really nontender in the paraspinous lumbar musculature....I think this woman has still got sciatica from the rotational strain. She's probably got some swelling in the musculature around the nerve." Dr. Watson took the claimant off work "over the next seven days." Dr. Watson signed an Excuse Slip, dated December 1, 2006, releasing the claimant to return to work on December 9, 2006.

The respondents' attorney cross-examined the claimant:

Q. I mean once Dr., your own doctor, family doctor of 20 years gave you a release to go back to work without any restrictions on it, you never presented back to the Wal-Mart store for duty. You never went back again, did you?

A. I wasn't able.

Q. Well, I know. But your own family doctor released you without restrictions.

A. I couldn't.

Q. But you made no attempt to go back, did you?

A. I couldn't.

Q. In your own mind you didn't feel you could, right?

A. I drove to my mailbox, and I went back, I couldn't drive that far.

The claimant's testimony indicated that she was financially unable to obtain additional medical treatment until April 2007. Dr. Watson examined the claimant's back on April 5, 2007 and noted, "There is pain to palpation in the low lumbar regions but not a great deal of spasm at this time." Dr. Watson assessed "Low lumbar pain with some right leg radiculopathy. She probably needs imaging studies done to assess for disc disease here."

The claimant testified that she saw a physician on television who discussed back problems, and that she contacted the physician, who arranged an MRI for the

claimant. An MRI of the claimant's lumbar spine was taken on October 10, 2007, with the following findings:

The vertebral bodies are normal in signal and height. There is no fracture, AVN or intraosseous destructive lesion. The cord is normal in signal and terminates at L1. The CSF signal is normal. There is no epidural hematoma or epidural abscess. The paraspinous soft tissues appear unremarkable. The aorta is normal in caliber. There is no retroperitoneal lymphadenopathy imaged on this examination. There is diffuse degenerative disease as detailed below.

T10-11 - L2-3: The intervertebral discs are variably desiccated, but there is no disc bulge, protrusion or extrusion. The spinal canal and neural foramina appear patent at these levels.

L3-4: The intervertebral disc is slightly desiccated with a very minimal disc bulge that has no significant neural foraminal extension. The spinal canal is patent measuring 11 mm in AP diameter despite facet arthropathy and hypertrophy of the ligamentum flavum. The neural foramina appear patent.

L4-5: The intervertebral disc is desiccated and collapsed with a very minimal disc bulge which has mild biforaminal extension. Also, there is a 6 mm area of high signal associated with the exiting right L4 nerve root. This may simply represent a nerve root sleeve cyst, however, a sleeve avulsion cannot be completely excluded and clinical correlation with the patient's radiculopathy is recommended. The left neural foramina are mildly compromised.

L5-S1: The intervertebral disc is slightly desiccated, but there is no disc bulge, protrusion or extrusion. The spinal canal and neural foramina appear patent.

Bilateral facet effusions, left greater than right, are noted. Mild facet arthropathy and hypertrophy of the ligamentum flavum is noted.

Dr. J. Wise gave the following impression: "1. 6 mm cystic structure associated with the right L4 nerve root which may represent a nerve root sleeve cyst, however, an avulsion cannot be completely excluded and clinical correlation is recommended with the patient's radiculopathy. 2. Other degenerative changes as detailed above."

On or about November 7, 2007, Dr. Watson filled out a form prepared by the claimant's attorney. Dr. Watson checked a line indicating there had been objective findings such as muscle spasms and wrote, "Pain to palpation R sacroiliac gluteals and hamstring. Muscular spasms in these muscles palpated." Dr. Watson indicated that he had prescribed anti-inflammatory medication. Dr. Watson opined that the claimant remained within her healing period and that the claimant was not working.

A pre-hearing order was filed on February 21, 2008. The claimant contended that she sustained a low back injury while working for the respondents. The claimant contended that she was entitled to reasonably necessary medical treatment, temporary total disability compensation, and a

controverted attorney's fee. The respondents contended that the claimant did not sustain a compensable low back injury. If the Commission found that the claimant sustained a compensable low back injury, then the respondents contended that the compensable injury "was only a temporary muscle strain, a soft tissue injury which has resolved." The respondents contended that the claimant was entitled to "only eight days of temporary total disability compensation, at which point she was returned to work. Respondent also contends that the claimant is entitled to medical for the eight-day period only, as all other medical treatment is related to the claimant's pre-existing condition."

The parties agreed to litigate the following issues:
"1. Compensability of claimant's alleged low back injury.
2. Reasonable and necessary medical treatment. 3.
Temporary total disability from November 27, 2006, to a date yet to be determined. 4. Controverted attorney's fee."

Dr. Brent Sprinkle provided an Independent Medical Evaluation on February 21, 2008:

I am seeing her at the request of an attorney, Todd Bassett, with the Bassett Law Firm. I have a letter from Mr. Bassett from January 14th asking for an independent medical evaluation and the most specific question asked was regarding the MRI scan from October 10, 2007 and the 6 mm area of high

signal intensity associated with right L4 nerve root felt to represent a nerve root sleeve cyst and my thoughts on this nerve root sleeve cyst with respect to causation.

Ms. Lambert suffered an injury while working for Wal-Mart on November 24, 2006 where she, in her own words, was in a meat cooler loading the cart and she stepped across a wooden pallet and apparently her left foot got hung up in the pallet....

She fell to the ground landing on her right side. She said she initially had pain in her low back and right buttocks area. Approximately six weeks after her injury she developed pain in her left leg. Today she has complains (sic) of numbness in both of her feet. Complains of weakness in both of her legs diffusely but worse on the right and she says it has been there for a year and two months. Her pain she says is severe. It can be sharp, dull stabbing, aching or burning sensation in her back....

She has not worked since her injury....

VASCULAR:

No significant edema or swelling is noted, and the skin temperature feels normal....

X-rays of lumbar spine show some mild degenerative disc disease and disc space narrowing at 5-1 and possibly a very slight spondylolisthesis at the 5-1 level. Hip joint spaces are relatively well maintained. I also reviewed her MRI of lumbar spine, report and films, that she was nice enough to make available today. There is this 6 mm cystic structure at the right L4 nerve root that has been interpreted as a nerve root sleeve cyst and evulsion injury cannot be completely excluded. There are some degenerative changes at the 3-4, 4-5, and 5-1 level that are likely pre-existing. There is no clear evidence of focal disc herniation and no clear evidence of focal nerve root impingement.

IMPRESSION:

1. Lumbar degenerative disc disease pre-existing.
2. Regarding the area of signal intensity associated with the right L4 nerve root I do not feel like this is consistent with a nerve root sleeve evulsion as she does not have hard neurologic findings to support that nor could I find in reviewing the records from Concentra or primary care physician where any hard exam findings were documented in the L4 nerve root pattern in the time of visits that were documented much closer to her date of injury including the ER visit with Dr. Joe Farmer. Nerve root sleeve cysts or areas of ectasia are frequently seen and are frequently benign chronic findings. Therefore, it is my opinion that this area of signal change is most consistent with a nerve root sleeve cyst and it is possible that an injury event could trigger the development of a nerve root sleeve cyst but I think the likelihood of that happening with her neurologic findings, exam findings, and her mechanism of injury, in my opinion with a reasonable degree of medical certainty, this nerve root sleeve cyst seen on her MRI in October 2007 was pre-existing. It appears in comparing her old records of physician notes and exam findings to today she has developed a number of new symptoms including more frequent left leg symptoms, more focal pattern of subjective complaints of numbness in her right leg and subjective complaints of diffuse numbness and tingling in both of her feet. There is specifically Dr. Carney's exam of 11/27/06 that noted normal deep tendon reflexes that were symmetrical at the knee and ankle and there was some tenderness of the right sacroiliac joint. There is a line in the history in Dr. Carney's note that says paresthesias along the lateral and dorsal foot at times and it is not specific which foot he is referring to. I suspect this was referring to the left foot as her left foot which was the foot caught in the pallet is where she had most of her initial pain complaints so in my conclusion this does not

support any involvement of the L4 nerve root and an intact patellar reflex after this injury certainly would support no evidence of a nerve root evulsion injury. The lack of presence of right sided neurologic findings support that there was no nerve root evulsion. He does specifically document under neurologic examination that there is no evidence clinically of a radicular root pattern. She is noted on 12/01/06 in Dr. Watkins' office to have pain radiating in the posterior aspect of her butt, leg, and foot. This would be consistent with a strain or spasm or trigger point in the deep buttocks muscles, specifically either gluteus medius or piriformis. This pattern is not at all consistent with L4 nerve root. Also there is some mention of complaint 07/21/92 of back pain with leg numbness. The note says she has been seen by neurologist who had MRI scanning and not found a cause for this. I do not have any MRI data from 1992 to review. There is record of a cervical strain injury while working at Timber Ridge in 1998. However, Ms. Lambert did deny every (sic) having had an MRI of the lumbar spine previous to 10/10/07.

3. It seems the most likely explanation at this point appears that there was a muscular soft tissue strain injury to her low back and buttocks muscles that should have resolved and has been I think reasonably adequately treated.

4. Her pattern of complaints today are a bit more extensive and in new areas than what was consistent with her previous injury. Therefore the major component of her current complaints on this visit today, I think, are more likely related to any current aggravations or her degenerative disc disease or potentially even new developments or new pathology that is not specifically related to her fall injury in November of 2006.

5. To evaluate her current complaints I do think an EMG nerve conduction study might be helpful as she has some features consistent with peripheral neuropathy. Repeat MRI of her lumbar spine might be helpful to make sure there have been no new disc herniations or spinal pathology that would

correlate with her more intense left sided symptoms. However, either of these diagnostic studies, I think, are more related to sequela that may have occurred to her since the time of her original work injury and I do not think the original work injury alone is enough to justify these diagnostic recommendations.

6. I think she has had reasonably adequate treatment for her original soft tissue and strain injury and is at maximum medical improvement from that.

7. I don't find anything objective to justify permanent impairment rating based on her soft tissue strain injury.

Dr. Marvin N. Kirk examined the claimant on March 11, 2008 and diagnosed "1. Herniated disc with sciatica. 2. Early neuropathy in her foot....I recommended this lady needs to see a pain doctor who put cortisone shot in to her spinal column. This is not a surgical problem at this point, but is a medical problem that has not been addressed."

Dr. D. Shane McAlister, a radiologist, corresponded with the respondents' attorney on April 9, 2008:

You had asked me to review a lumbar spine MRI. I received a CD with images labeled from Open MRI of Conway. The name on the images was Donna Lambert. It stated this was a female who is 46 years old. There was no date of birth. The physician on the outside of the CT was labeled Currie. This was performed on 10-10-07....

FINDINGS: There are no old studies for comparison. There is normal alignment of the lumbar vertebral column. There is desiccation of the L3-4, L4-5,

and L5-S1 intervertebral disc spaces presuming there are five non-rib bearing lumbar type vertebral bodies. There is mild annular disc bulging at L4-5 with minimal annular disc bulging at L3-4 and L5-S1. There is no focal disc protrusion or extruded disc fragment. There is no central canal stenosis. The neural exit foramina are well visualized. There is no demonstration of neural exit foraminal narrowing. There is no nerve root compression. There is no obliteration of the epidural fat around the exiting nerve roots. The conus medullaris is not enlarged. There is no pathologic marrow signal intensity arising from the vertebral bodies that would suggest bony metastatic disease or healing trauma. There is moderate degenerative facet arthropathy at all levels compatible with chronic degenerative changes within the facet joints. There is minimal fluid identified within several facet joints. There is no synovial cysts with nerve root impingement. There was a tiny amount of fluid signal intensity along the exiting nerve root on the right at L4-5. This is a normal variant.

In summary, these images do demonstrate degenerative disc disease with desiccation (loss of normal water) in the intervertebral discs at L3-4, L4-5, and L5-S1 with minimal loss of vertical height, mild annular disc bulging, and degenerative facet arthropathy. This constellation of findings is all compatible with chronic degenerative disc disease and degenerative joint disease commensurate with the patient's age. There is no demonstration of disc protrusion, extruded disc fragment, central canal stenosis, neural exit foraminal stenosis or nerve root impingement. There is also no pathologic marrow signal intensity that would suggest healing trauma or marrow infiltrative process.

A hearing was held on April 28, 2008. The claimant testified that she still suffered from acute pain symptoms

"In my lower back and on my spine, my right hip, and my right foot, on the inside of my right foot." The claimant testified that she had not worked since the injury and that she did believe she was able to return to work.

An administrative law judge filed an opinion on July 1, 2008. The administrative law judge found that the claimant proved she sustained a compensable injury to her low back on November 24, 2006. The administrative law judge found that the claimant proved she was entitled to all of the medical treatment of record and future reasonably necessary medical treatment. The administrative law judge found that the claimant proved she was entitled to temporary total disability compensation from November 27, 2006 to a date yet to be determined.

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 employee must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4) (E) (i); Ark. Code Ann. §11-9-704(c) (2) (Repl. 2002). 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, "5. The claimant proved by a preponderance of the credible evidence that she sustained a compensable injury to her low back while working for the respondent-employer on November 24, 2006." The Full Commission affirms this finding. The parties stipulated that the employment relationship existed on November 24, 2006. The claimant testified that she tripped on a store pallet and fell, and that she afterward felt pain in her right lower extremity

and lower back. The claimant testified that she reported the accident to two store managers. First, the Full Commission finds that the claimant did not prove she sustained any structural damage to her lumbar spine or any acute injury to her low back or lumbar spine which would require surgery. The radiological examination on November 26, 2006 showed mild degenerative disc disease at L5-S1 but was otherwise negative. Dr. Farmer reported on November 26, 2006 that x-rays of the lumbar spine showed narrowing at L5-S1 with arthritic changes in the joint. The Full Commission recognizes that Dr. Farmer's impression was "Degenerative disk disease, acute exacerbation," but this report cannot be relied on for an assertion that the claimant sustained structural damage to her lumbar spine or that she would require surgery. A lumbar spine MRI was taken nearly one year later, on October 10, 2007. The interpreting radiologist's impression was degenerative changes and a "6 mm cystic structure associated with the right L4 nerve root sleeve cyst." There is no probative evidence which demonstrates that the 6 mm cystic structure was caused by or resulted from the November 24, 2006 pallet incident. We note Dr. Sprinkle's subsequent expert opinion that this

"signal intensity" at L4 was pre-existing and was not the result of the workplace accident.

Nevertheless, the Full Commission notes that the claimant began treating with her family physician, Dr. Watson, on December 1, 2006. Dr. Watson informed the claimant's attorney that he had palpated muscle spasms during his physical examination of the claimant. It is well-settled that the presence of muscle spasms can constitute objective medical findings to support compensability. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). Dr. Sprinkle opined for the respondents that the claimant had sustained a muscular soft tissue strain injury to her low back and buttocks muscles.

The Full Commission finds that the claimant proved she sustained an accidental injury causing physical harm to her body, which injury arose out of and in the course of employment, and which required medical services and resulted in disability. The accidental injury, namely a muscular soft tissue strain, was caused by a specific incident identifiable by time and place of occurrence on November 24, 2006. The claimant established a compensable injury by medical evidence supported by objective findings not within

the claimant's voluntary control, that is, the muscle spasms palpated and reported by Dr. Watson.

B. 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.3d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12) (Repl. 2002). Whether or not an employee's healing period has ended is a question of fact for the Commission. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

In the present matter, an administrative law judge found that the claimant proved she was entitled to temporary total disability compensation "from November 27, 2006, to a date yet to be determined." The Full Commission finds that the claimant proved she was entitled to temporary total disability compensation from November 27, 2006 through February 21, 2008. We have determined *supra* that the claimant proved she sustained a compensable injury in the form of a muscular soft tissue sprain. The claimant did not

prove that she sustained any structural damage to her lumbar spine or any acute injury damaging a lumbar disk. The claimant testified that she was not able to return to her employment duties following the November 24, 2006 accidental injury. Dr. Watson opined on November 7, 2007 that the claimant remained within her healing period. Dr. Sprinkle thoroughly examined the claimant on February 21, 2008 and stated, "3. It seems the most likely explanation at this point appears that there was a muscular soft tissue strain injury to her low back and buttocks muscles that should have resolved and has been I think reasonably adequately treated....I think she has had reasonably adequate treatment for her original soft tissue and strain injury and is at maximum medical improvement from that."

It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, Dr. Sprinkle opined on February 21, 2008 that the claimant had sustained a muscular soft tissue strain injury, and that the claimant had reached maximum medical improvement. The Full Commission finds that Dr. Sprinkle's opinion is entitled to significant probative

weight. We find that the claimant reached the end of her healing period no later than February 21, 2008. Temporary total disability benefits cannot be awarded after a claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The Full Commission finds that the instant claimant remained within her healing period and was totally incapacitated from earning wages from November 27, 2006 through February 21, 2008. Dr. Kirk's diagnosis on March 11, 2008 of herniated disc with sciatica, and his opinion that the claimant's medical problem had not been addressed, is not entitled to any probative weight.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved she sustained a compensable injury, in the form of a muscular soft tissue strain, on November 24, 2006. The claimant proved she was entitled to temporary total disability compensation from November 27, 2006 through February 21, 2008. The claimant proved that all of the medical treatment of record provided through February 21, 2008 was reasonably necessary pursuant to Ark. Code Ann.

§11-9-508(a). The claimant did not prove that any treatment provided after February 21, 2008 was reasonably necessary in connection with the compensable soft tissue strain. Nor would any treatment after February 21, 2008 be reasonably necessary as pain management in accordance with *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(2)(Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

Commissioner McKinney 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. Specifically, I concur in the majority's opinion finding

that the claimant sustained a compensable injury in the form of a muscular soft tissue strain on November 26, 2006. However, I must respectfully dissent from the majority's finding that the claimant was entitled to temporary total disability compensation from November 27, 2006, to February 21, 2008. In my opinion, the claimant was only entitled to receive temporary total disability benefits from November 27, 2006, through December 9, 2006.

My review of the evidence demonstrates that the claimant's healing period ended on December 8, 2006. Dr. Watson saw the claimant on that date but did not extend her time off beyond December 9, 2006. There is nothing in the record to show that the claimant was unable to work or was unable to return to work on December 9, 2006, except for her own self-serving testimony. In fact, the claimant testified that she was aware that she had been released to return to work but she did not even attempt to return to work for the respondent employer.

Therefore, for all the reasons set forth herein, I must concur, in part, and dissent, in part, from the majority's opinion.

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's opinion. Specifically, I concur with the majority opinion's finding that the claimant sustained a compensable specific incident injury on November 26, 2006, and is entitled to all reasonably necessary medical treatment and temporary total disability benefits through February 21, 2008, the date that Dr. Brent Sprinkle opined that the claimant had reached maximum medical improvement. However, as I would award the claimant temporary total disability benefits and reasonably necessary medical treatment after February 21, 2008, I must respectfully dissent on these issues.

Based on a de novo review of the record, I find, as did the Administrative Law Judge, that the claimant is entitled to additional reasonably necessary medical treatment after February 21, 2008. The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. 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); Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Here, all of the claimant's doctors, specifically Drs. Watson and Kirk, and even Dr. Sprinkle, have recommended additional treatment for the claimant's symptoms. As

such, the majority's determination that the claimant is not entitled to additional reasonably necessary medical treatment is clearly in error.

Regarding temporary total disability benefits, again, all of the claimant's doctors have recommended additional medical treatment. The claimant testified that she has been in pain and unable to work since the date of injury. Therefore, as per the standards set out in Searcy Indus. Laundry, Inc. v. Ferren, 92 Ark. App. 65, 211 S.W. 3d 11 (2005) and Arkansas State Highway Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981), I find that the claimant is entitled to temporary total disability benefits until a date yet to be determined, not limited by the majority's erroneous determination that the claimant's healing period ended on February 21, 2008.

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

PHILIP A. HOOD, Commissioner