

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711266

ALINA SHACKELFORD,
EMPLOYEE

CLAIMANT

O'REILLY AUTOMOTIVE, INC.,
EMPLOYER

RESPONDENT

INDEMNITY INSURANCE CO. OF NORTH AMERICA,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 22, 2009

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

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

Respondent represented by the HONORABLE CURTIS NEBBEN,
Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed September 23, 2008.

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

1. The Arkansas Workers' Compensation
Commission has jurisdiction of this
claim.

2. The employer/employee/carrier relationship existed on September 21, 2007, when the claimant sustained a compensable injury to the thoracic spine.

3. The claimant's earnings were sufficient to entitle her to a compensable rate of \$220. For temporary total disability and \$165.00 for permanent partial disability benefits.

4. Respondents have paid some medical expenses.

5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment.

6. the claimant has failed to prove by a preponderance of th evidence that the treatment by Dr. Hart, Dr. Burson, and Dr. Qureshi was reasonable and necessary medical treatment and causally related to the work-related injury.

7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical benefits and indemnity benefits from September 21, 2007, until she returned to work on December 17, 2007.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant is entitled to reasonably necessary medical treatment and temporary total disability benefits for her compensable low back injury, and therefore, I must respectfully dissent.

A claimant is not required to establish the causal connection between a work-related incident and an injury by

either medical opinion or objective medical evidence. See, Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999). In fact, the Arkansas Courts have recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury, based upon evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962); Harris Cattle Co v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974). Here, on September 21, 2007, the claimant hurt her back while moving a starter. She notified her supervisor and was sent to Dr. Scott Carle. The first medical report from Dr. Carle states the diagnosis as "thoracic strain". However, page three of this report clearly shows an X-ray taken not of the thoracic spine, but of the lumbar spine. The claimant underwent physical therapy, and on September 27, 2007, Dr. Carle notes that the pain is spreading to the lumbar region. On October 3, 2007, the claimant underwent an MRI of her lumbar spine which showed bulging discs at the

L3-4 and L4-5 levels. This is less than three weeks from the date of the injury. The claimant then saw Dr. Thomas Hart, who referred her to a chiropractor. On December 7, 2007, the claimant was seen by Dr. Amir Qureshi who diagnosed her as having disc herniations as revealed in the October 3, 2007 MRI.

The majority, by affirming and adopting the opinion of the Administrative Law Judge states that the claimant was not credible because the claimant testified she did not have back pain prior to this incident, however the medical records indicate that she saw a chiropractor four days before the incident. This discrepancy is readily explained by the claimant, as she testified that the chiropractor visit was not for her lumbar spine, but for her shoulder. The medical records regarding this issue are illegible and cannot be relied on for the proposition that the claimant was actually seeing the chiropractor for her spine. Next, the Administrative Law Judge, affirmed and adopted by the majority, states that Dr. Carle and Dr. Hart both determined the claimant had a minor thoracic strain and released the claimant back to work. In fact, Dr. Thomas Hart found that claimant had "an acute lumbar sprain or

strain". He did not diagnose a thoracic condition. Based on the above, I find that the Administrative Law Judge and the majority have clearly misinterpreted the evidence of record.

Arkansas Code Annotated Section 11-9-508 (Repl. 1996) states that employers must provide all medical treatment that is reasonable necessary for the treatment of a compensable injury. What constitutes reasonable and necessary medical treatment under this statute is a question of fact for the Commission. Gansky v. Hi-Tech Eng'g., 325 Ark. 163, 924 S.W.2d 790 (1996); Geo Specialty Chem., Inc. v. Clinqan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Also, respondents are only responsible for medical services which are causally related to the compensable injury. Post-surgical improvement is a relevant consideration in determining whether the surgery was reasonable and necessary, Winslow v. D & B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000). While the Commission is empowered with the authority to weigh medical evidence and to examine the basis of an expert's opinion in deciding what weight to give it, it may not arbitrarily disregard the testimony of any witness. See, Crow v. Weyerhaeuser Co., 46 Ark. App. 295, 880 S.W.2d 320 (1993). Post-surgical

improvement is a relevant consideration in determining whether the surgery was reasonable and necessary. Winslow v. D & B Mech. In this case, the claimant reported her back injury to her employer and was sent to Dr. Carle. Dr. Carle released the claimant from his care a week later. Dr. Carle did not provide appropriate medical treatment for the claimant, and in fact, seems to have been confused as to what body part he was supposed to be treating. The claimant found medical treatment on her own, that ended with Dr. Quereshi, whose treatment provided her relief - in fact, got rid of her leg pain. I find that the medical treatment the claimant sought on her own, including that of Dr. Hart and Dr. Quereshi and referrals therefrom, represent reasonably necessary medical treatment.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant testified she was unable to work following this incident from November 1st through November 30th and she eventually found light-duty work with Wal-Mart. I find that the claimant is a credible

witness, and therefore she is entitled to the requested temporary total disability benefits.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner