

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F709292 & F801267

GENE A. CAPPS,  
EMPLOYEE

CLAIMANT

BENTON SCHOOL DISTRICT,  
SELF-INSURED EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOC. WCT,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 11, 2010

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 GUY A . WADE,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's order and opinion filed December 9, 2009. The administrative law judge found that the claimant proved additional medical treatment and prescription medication was reasonably necessary. The administrative law judge found that the claimant proved he remained in his healing period and was unable to earn wages from April 8, 2009 to a date to

be determined. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he was entitled to additional medical treatment as recommended by Dr. Baskin. We find that the claimant proved he was entitled to temporary total disability benefits through May 21, 2009.

I. HISTORY

Gene Alan Capps, age 32, testified that he became employed with the Benton School District in October 1996. Mr. Capps testified that he performed custodial and maintenance work. The parties stipulated that the claimant sustained a compensable injury on June 27, 2007. The claimant testified that he slipped and fell on the right side of his back. The claimant testified that he felt pain "around the shoulder blade, center part of my back, up into my neck, arm." The claimant testified that he missed "a little bit" of work as a result of the June 27, 2007 accident.

The parties stipulated that the claimant sustained a compensable injury on August 21, 2007. The claimant testified that while pulling out bleachers in a school

gymnasium, "something popped in my back, and that was it. I was down. I couldn't do nothing."

Dr. Lisa Barker examined the claimant on August 30, 2007:

Mr. Capps is a 30-year-old white male, who works for the Benton School District. He presents with a chief complaint of low back pain. He injured his back after a fall there at school onto some bleachers in June or July. Did not go to the ER or a PCP at that time. His back pain improved and then a few weeks later he was pulling some bookshelves out at the school and hurt his back in the same place and again had the same lower back pain, worse on the right side of his back. The pain does not radiate. No numbness or tingling in his lower extremities....Then last week he was pulling out some bleachers at the school, and the pain has increased since then, and he is having trouble walking secondary to the pain and cannot bend over. He said it got a little better over the weekend, because he was not having to bend over and pull on things, but once he went back this week, it has just increased....He did state that he had a pulled muscle 8 to 9 years ago on the job and was treated with muscle relaxer and with some rest he improved....

**X-ray:** L spine - two views. Normal vertebral spaces. No acute fracture or mass seen.

Dr. Barker assessed "1) Low back pain probably secondary to muscle strain....4) He is to be off work for the next 1 week. 5) He is to use rest, ice or heat on his back and he can also use some Ibuprofen as needed. 6) Do

not limit his activity to just lying in bed. I asked him to be sure and move around as much as he could."

The claimant followed up with Dr. Barker on September 5, 2007: "He was injured on the job and saw me in clinic on 8-30 with low back pain and was diagnosed with back muscle strain. He said the pain has improved and he does not have any radiation down his legs....He describes the pain as a pulling type of pain and has trouble sleeping at night because he cannot lay down on his back. He has been off work for the past 1 week." Dr. Barker assessed "1) Back pain, probable muscle strain." Dr. Barker kept the claimant off work one more week and gave the claimant a prescription for physical therapy.

An MRI of the claimant's cervical spine was performed on October 29, 2007, with the following impression:

- 1) Mild degenerative changes at the C6-7, as well as the C4-5 and C5-6 levels as noted. No gross compromise of the cervical cord or neural exit foramina are seen at any level however.
- 2) Mild positional changes of the head and the cervical spine may reflect a component of underlying muscular spasm.

A thoracic spine MRI was done on October 29, 2007, with the following impression:

- 1) Minimal rightward apex curvature of the spine centered in the mid thoracic region. This could

reflect minimal scoliosis, positional change or changes related to spasm.  
2) In the lower thoracic region there is some minimal osteophyte formation anteriorly.  
3) No intrinsic abnormality of the thoracic cord is seen at any level, and there is no extrinsic compromise of the thoracic cord at any level.

Dr. Barker's assessment on October 29, 2007 was "1) Right mid back pain, right lower back pain, right shoulder pain with numbness and tingling." Dr. Barker's plan for treatment was "1) Awaiting MRI results. 2) Continue physical therapy, Lortab, Flexeril and Neurontin. 3) Off work another two weeks. Return in one week for recheck or sooner if any problems."

A neurosurgeon, Dr. Brad A. Thomas, evaluated the claimant on November 27, 2007:

Mr. Capps is a very pleasant, 30-year-old, right-handed male who presents with a four-month history of pain just under his right scapula. He reports that this happened on August 30, 2007. He was stripping some floors at work of paint and slipped. Since that time, his right mid back has had significant pain. The pain is increased with walking and motion, and improved with rest. The pain is constant and he gives it a 6-7 on a 1-10 scale. He has had physical therapy.

**Medications:** He has currently been taking Ultram, Flexeril and Neurontin. These have offered him only minimal relief....

**Imaging Studies:** The patient has a cervical and thoracic MRI. I have reviewed both of these. There are no significant disc herniations or

stenosis, or neural compression in either the cervical or thoracic MRI.

**Assessment and Plan:** After a full examination and evaluation of his imaging, I feel like the patient's main problem is basically in the lateral aspect of his right thorax just below the scapula. I do not feel like this is associated with any neural compression. It is possibly a muscle strain. I have recommended that he see an orthopedic surgeon to evaluate his right shoulder and scapula. He is going to call his case manager and see which orthopedic physicians in Benton see Worker's Compensation cases. Once he gets this name, he is going to call us and we are happy to call and make an appointment for him.

An orthopedic specialist, Dr. Jerry J. Lorio, saw the claimant on December 13, 2007:

He is a 30-year-old custodian from Benton Jr High with a right upper extremity shoulder girdle injury. It started bothering him in June of 2007. His first incident was that he slipped on some stripper and the second one he bent over pulling on some bleachers and scraping gum. He has seen a PT, Dr. Lisa Barker at Family Practice Associates and Brad Thomas in Little Rock. He has had cervical spine MRI showing degenerative changes at multi-levels and thoracic spine MRI. Symptoms are that of a parascapular pain syndrome with radiation down the arm.

Dr. Lorio assessed "Parascapular pain syndrome with radiation. Perhaps this is a brachial plexus injury. Perhaps there is some component of carpal tunnel....I reviewed his studies and he does have mild degenerative changes at C4-5, C5-6 and C6-7 on cervical spine MRI. My

plan would be to continue with his present pain management that Dr. Barker is doing. Get some upper extremity nerve conduction studies with an EMG consult by Dr. James Thomas a local neurologist. We will put him on the call back list for all results, but a lot of this seems to be muscular. I do not think the shoulder joint itself is involved."

Dr. James E. Thomas carried out electrodiagnostic studies on January 4, 2008 and gave the following conclusion: "NCV/EMG exam of the upper extremities revealed findings suggestive of only a mild, right carpal tunnel syndrome. There was no evidence seen to suggest cervical radiculopathy or brachial plexopathy. Clinical correlation is advised."

The claimant testified that, following his visit with Dr. Thomas, "workers' comp cut me off and said that I was able to return back to work." The claimant testified, "My right arm would tingle, my fingers would cramp and hurt and tingle, plumb up into my neck, shoulder. I went to my home care doctor, Mr. Johnston." Dr. Greg Johnston, Benton Family Clinic, saw the claimant on May 27, 2008:

He injured his back. In August he fell and injured his shoulder and back but really didn't make any complaints but it never did feel right and then as he was pulling out bleachers he had

severe pain in his back in the lumbar area at the posterior axillary line. He saw a WC doctor, Dr. Parker, and I am not sure exactly where the clinic was, but he never got better and eventually had a MRI scan toward the end of last year and it was essentially normal. This was of his thoracic and cervical spine but his pain today is really in the lower lumbar area at the posterior axillary line....He had nerve conduction studies done and this didn't show any radiculopathy but did show mild carpal tunnel syndrome. WC would not cover that. Now he has a mild carpal tunnel syndrome and he says his hands are going to sleep. He has gotten an attorney who is basically trying to get his WC to cover his medical issues including the carpal tunnel syndrome. He is saying that he continues to get worse as far as his back and his hand and the way he sees things is that no one is really doing anything. The only medication that helps is Skelaxin. He took Hydrocodone for a while but hasn't taken anything for sometime. Exam: Unremarkable deep tendon reflexes upper and lower extremities. Negative straight leg raise. No positive findings on heart or lungs.

Dr. Johnston's assessment was "Mild carpal tunnel syndrome in January. Normal MRI studies of his neck and thoracic spine last year with a chronic pain syndrome. Chronic back pain. He has been out of work for 9 months and he does not feel that he can return to his place of employment. At some point in time he will need a MRI of the lumbosacral spine. I will try him on Meloxicam, get him back on Skelaxin. He will return in two weeks to see if he has improved, if not, we may have to consider the MRI scan."

The claimant testified that the respondents "paid for one prescription from Mr. Johnston....after that prescription, they wouldn't pay for any more."

Dr. Johnston's assessment on June 10, 2008 was "Chronic back pain related to a strain last summer with mild carpal tunnel syndrome that is symptomatic on the right hand side. He tried an anti-inflammatory drug and it did not help so the next step would be a dose of steroids and if the dose pack does not help then I would like to try Lyrica and if the Lyrica does not help then he will have to be evaluated by a pain management clinic. He certainly had time to heal and he appears to be disabled from this injury because of the amount of chronic pain that he has."

Dr. Johnston stated on June 10, 2008:

Mr. Capps is a patient of mine who was injured in the mid-portion of 2007. At that time, he sustained a strain to the perispinous muscle group between the right scapula and the lumbosacral spine. He continues to have so much pain in this area that he does not feel he can do any pulling, pushing or lifting. He is also in the process of being worked up for carpal tunnel syndrome. He is having extensive symptoms of numbness in the right hand. Again, he does not feel that he can use his right hand to do any pushing, pulling, lifting, etc.

Therefore, he will indefinitely be unable to work until a solution is found or he recovers.

Dr. Johnston noted on July 1, 2008, "He has chronic back pain. He is disabled at this time. The steroid didn't help and he wants to try Lyrica. We talked about that. I will put him on 50 mg at bedtime for one week and then 50 mg b.i.d. for two weeks and then he will return for a recheck. If he doesn't have enough improvement he will take 75 mg b.i.d."

The claimant began treating with Dr. M. Carl Covey on August 18, 2008:

He gives a 1 year history of pain on the right side under the shoulder to the waist. Activities such as sleeping, bending makes his pain worse.

He states that he fell down three steps at work on his right shoulder and back. This injury occurred at work. He improved and then he was moving furniture and would re-injure himself and improve. The last injury was 8-21-07 when he was moving bleachers and sustained an injury again....

Upper Extr:

Intact, symmetric DTR's. Normal motor and sensory function. Negative Tinel and Phalen maneuvers (sic). Right hand dominant. External rotation of the right arm is painful. There is tenderness in the area of T6 through T8 that is quite exquisite. He has mid thoracic axial pain and pain in the intercostal grooves from immediate paraspinal on the right all the way to the anterior axillary line in the 6,7,8 and maybe 9<sup>th</sup> ribs....

Back:

No SI joint tenderness. No interspinous tenderness. No paraspinal tenderness or spasm. Pain unchanged with flexion and extension....

Dr. Covey assessed "Likely intercostal neuralgia on the right." Dr. Covey noted on August 18, 2008, "The above named patient is currently under my care for treatment of his pain in the area of T6 through T8 with a neuralgia type pain. We have scheduled him for a series of three thoracic epidural injections. He will remain off work at least until after the injections."

Dr. Covey performed a thoracic translaminar epidural steroid injection on September 19, 2008. The pre- and post-operative diagnosis was "Thoracic axial pain, thoracic radicular syndrome. Radiculitis Lower Limb. Spondylosis, Thoracic." The claimant testified with regard to the September 2008 injection, "It helped. It really did. It helped....I was good for about two weeks....Then my pain started coming back gradually, a little bit each day, it would get a little worse, a little worse."

The record indicates that the respondents paid temporary total disability benefits through April 7, 2009.

Dr. Covey wrote on May 4, 2009:

Mr. Gene A. Capps is under my care for thoracic spine degenerative disc disease. He has undergone a series of thoracic epidural steroid injections.

He reports that he got about 60% relief from his neck and shoulder pain after completing the series of injections. He continues to complain of mid back pain and muscle spasms. He reports that at this time he will be unable to return to his job in the capacity that he was in prior to injury. He is still continuing physical therapy. He is prescribed several medications that he reports give him relief: baclofen, gabapentin, Mobic, and tramadol....

On a form provided by the claimant's attorney, Dr. Covey indicated on May 18, 2009 that the claimant was "instructed to remain off from any work activity whatsoever."

Dr. Barry D. Baskin, a physical medicine and rehabilitation specialist, provided an Independent Medical Evaluation on May 21, 2009:

Mr. Capps is referred to me by Arlette Fennell, Claims Specialist with Ramsey, Krug, Farrell, and Lensing for an IME....I am asked to evaluate the patient's medical records and examine the patient and express opinions regarding the patient's work status and any permanent partial impairment that he may have as a result of his accident.

**CHIEF COMPLAINT:** Right thoracic pain.

**HISTORY OF PRESENT ILLNESS:** This is a 31 year old gentleman from Benton, Arkansas who works as a custodian for the Benton School District. He states that he hurt his back on two different occasions. In June of 2007 he fell while stripping floors in the gym. He states that he didn't seek treatment at that time but subsequently on August 21, 2007, he was pulling bleachers out in the gym and began experiencing

pain in the right scapula area in the mid thorax....Mr. Capps has remained off work. He states that he is in too much pain to go back to work. He states that Dr. Covey has prescribed medications, including Tramadol 50 mg q 6 hours, Mobic 7.5 mg daily, Gabapentin 300 mg 1 to 3, three times daily and Baclofen 10 mg, 1 to 2, three times daily. He states that these drugs are waiting at Walgreen's and he has not picked them up because Worker's Comp has not approved them and he states that he has been told that these drugs cost \$370.00....

**PHYSICAL EXAMINATION:** Mr. Capps is a pleasant 6 feet tall, 270 pound, young, Caucasian gentleman in no apparent distress. BP: 130/92. Pulse: 92. Respiration: 20. He is afebrile. He walked into the office under his own power without an assistive device. He has a normal gait pattern....His neuromuscular exam reveals cranial nerves to be intact. His deep tendon reflexes are 2+ and symmetric upper and lower extremities bilaterally. He has negative Hoffman's reflex bilaterally. Withdrawal plantar response. He has no clonus. He has good muscle function in the upper and lower extremities. He has no muscle atrophy in any extremity noted. He has good grip strength bilaterally. He has normal sensation throughout the upper and lower extremity to pinprick, light touch and proprioception. Cervical spine reveals good muscle tone and full range of motion in flexion, extension, lateral bending and rotation. His thoracic spine reveals no scapular winging. He has full scapular excursion. He is tender in the area just below the right medial scapula. There is no spasm and the muscles are supple. He has no tenderness along the spinus processes in the cervical, thoracic or lumbar spine. Lumbar spine is without spasm. He has full range of motion in the lumbar spine flexing down to 95 or 100 degrees at the waist, extending to 15 to 20 degrees with good rotation and lateral bending. MRI is reviewed.

There is minimal cervical degenerative disc disease. There is no evidence of any foraminal stenosis or canal stenosis. Thoracic spine is unremarkable.

**IMPRESSION:** Mr. Capps is a nice gentleman referred for an Independent Medical Evaluation pertaining to injuries on or around August 21, 2007 when he states that he was pulling bleachers out in the gym. He had previously had a fall while stripping floors in June of 2007. His diagnosis has been one of thoracic strain type injury to the muscles. He has had extensive physical therapy at Saline Memorial Medical Center and subsequently with Saline PT. He has recently completed 25 sessions of physical therapy and states that he is scheduled to complete 15 more. He has been off work since around the time of his injury. He has had neurologic evaluation revealing mild carpal tunnel syndrome, which is not related to his injury. He has had neurosurgical evaluation which did not reveal any surgical issues. He had evaluation of his shoulder, which has improved. He does not complain at all of any shoulder pain at this time and his chief complaint, which is verbalized to me and also drawn on his pain drawing is only one of pain in the right thoracic spine area. His neurologic examination is normal. He has had a series of three epidural steroid injections by Dr. Covey. These did not provide lasting benefit. He states that he has been happy with Dr. Covey's care. He has, what appears to be, some misconceptions about his back, notably with his comment that he was told his discs were "crumbling apart". I certainly do not see this in any of Dr. Covey's notes. The MRI reports indicate no significant spinal abnormalities. Mr. Capps interestingly has had a similar injury some years ago in the right rhomboid region. This was felt to be a muscular strain. Ultimately that resolved. He did miss a couple of weeks of work with that. Mr. Capps admits that he has applied for disability retirement. By examination, Mr.

Capps does not have any objective findings. On his MRI from the cervical and thoracic spine, he does not have any objective findings that would correlate with his symptoms.

He does have some scoliosis with a mid thoracic convexity to the right. I explained to him that this was likely the result of his growth phase as a teenager. It is my impression that Mr. Capps has sustained a thoracic muscle strain. He has had, what appears to be, some chronic myofascial pain or soft tissue pain in the muscle and soft tissue of the mid thoracic spine. These conditions usually resolve within 6 to 8 weeks. Mr. Capps has been provided with extensive physical therapy, extensive physician visits and most recently injection therapies by Dr. Covey. Per the AMA Guidelines Fourth Edition under Arkansas Worker's Compensation Law, Mr. Capps does not have any permanent partial impairment. I would suggest a functional capacity evaluation be performed and Mr. Capps return to his previous employment. I do not believe he is permanently disabled from his injuries to the thoracic spine. He would benefit from a home exercise program of appropriate stretching to the muscles of the thoracic spine and the scapular girdle. One other consideration that might be of benefit in this gentleman's chronic back pain would be a limited session of chiropractic manipulation to the thoracic spine given his scoliosis and myofascial pain to see if some manipulation of the thoracic vertebra around the mid thoracic spine would help alleviate some of his pain. I would limit this to no more than 10 to 12 sessions.

This concludes my Independent Medical Evaluation on Gene Capps....

The record indicates that the respondents controverted further benefits after the claimant refused to participate in a Functional Capacity Evaluation.

A pre-hearing order was filed on August 26, 2009. The claimant's contentions were listed as follows: "1. Entitlement to additional medical treatment. 2. Entitlement to payment for prescription medication. 3. Entitlement to additional TTD benefits (dates to be provided). 4. Entitlement to attorney's fees."

The respondents' contentions were, "1. Respondents contend everything has been paid that was reasonable and necessary and related to the compensable injuries. 2. Respondents contend the claimant has reached the end of his healing period. 3. Respondents contend the claim has been controverted."

The parties agreed to litigate the following issues:

1. Additional medical.
2. Additional TTD benefits.
3. Prescription medication.
4. Attorney's fee.

On a form provided by the claimant's attorney, Dr. Covey wrote on September 15, 2009 that he recommended the following treatment for the claimant: "PT - truncal stabilization program. Meds: baclofen, gabapentin, meloxicam, tramadol." Dr. Covey opined that the recommended treatment was the result of the claimant's "Workers' Compensation injuries of June 27, 2007 and August 21, 2007."

Dr. Covey agreed that the claimant "should remain off work from any work activity whatsoever."

Randall Green, a physical therapist, stated on October 6, 2009:

Mr. Gene Capps has been a patient at Saline County Physical Therapy in Benton, Arkansas for treatment of thoracic spondylitis and radiculitis. Chief Complaints were right sided back pain, (R) upper extremity symptoms of tingling and numbness, and muscle spasms in (R) back and shoulder girdle. This was related to a work injury in June 2007 and again in August 2007. He was seen for 40 P.T. visits from March 16, 2009 until June 17, 2009. At that time he had completed all approved worker's compensation visits. On June 29, 2009 we received a referral from Dr. Carl Covey to implement a long term trunk stabilization program for an additional 3x/wk x 6wks visits. These visits were not approved by worker's compensation and therefore Mr. Capps was discharged from P.T. At time of discharge, Mr. Capps had shown intermittent relief of symptoms and pain in general, spasms were decreased from severe to moderate. It was believed that Mr. Capps would benefit from continuing P.T. treatments as apposed (sic) to no treatment at all.

A hearing was held on October 14, 2009. At that time, the claimant contended that he was entitled to treatment and prescriptions recommended by Dr. Covey. The claimant contended that he was entitled to temporary total disability benefits from April 8, 2009 until a date to be determined.

An administrative law judge filed an opinion on December 9, 2009. The administrative law judge found that

the claimant proved "additional medical and prescription medicine" was reasonably necessary in connection with the compensable injury. The administrative law judge found that the claimant proved "he remained in his healing period and unable to earn wages from April 8, 2009, to a date to be determined." The respondents appeal to the Full Commission.

## II. ADJUDICATION

### A. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The claimant must prove by a preponderance of the evidence that he is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005).

An administrative law judge found in the present matter, "The claimant has proven by a preponderance of the evidence that the additional medical and prescription

medicine is reasonable and necessary and related to the compensable injury." The Full Commission finds that the claimant proved he was entitled to additional medical treatment as recommended by Dr. Baskin. The parties stipulated that the claimant sustained a compensable injury on June 27, 2007. The claimant testified that he slipped and fell on the right side of his back. The parties stipulated that the claimant sustained another compensable injury on August 21, 2007. The claimant testified that he felt a pop in his back while pulling out bleachers.

Dr. Barker examined the claimant on August 30, 2007, noted that a lumbar x-ray was normal, and assessed "1) Low back pain probably secondary to muscle strain." An MRI of the claimant's cervical spine and thoracic spine was performed in October 2007. Dr. Thomas, a neurosurgeon, reviewed these imaging studies and opined in November 2007, "There are no significant disc herniations or stenosis, or neural compression in either the cervical or thoracic MRI....I feel like the patient's main problem is basically in the lateral aspect of his right thorax just below the scapula. I do not feel like this is associated with any neural compression. It is possibly a muscle strain." Dr.

Lorio, an orthopedist, reported in December 2007 that the claimant's imaging studies showed multi-level degenerative changes. Dr. Lorio recommended that the claimant continue treating with Dr. Barker.

The claimant began treating with his family physician, Dr. Johnston, on May 27, 2008. Dr. Johnston's assessment included "Normal MRI studies of his neck and thoracic spine last year with a chronic pain syndrome. Chronic back pain." Dr. Johnston reported in June 2008 that the claimant had "sustained a strain to the perispinous muscle group between the right scapula and the lumbosacral spine." The claimant began injection treatment with Dr. Covey on August 18, 2008. The claimant testified that treatment with Dr. Covey provided temporary relief.

Dr. Baskin provided an Independent Medical Evaluation on May 21, 2009. Although the claimant testified that Dr. Baskin's evaluation consisted of nothing more than "shaking my hand," the evidence demonstrates that Dr. Baskin appropriately reviewed the claimant's medical records and performed an expert and thorough physical examination of the claimant. Dr. Baskin reported, "It is my impression that Mr. Capps has sustained a thoracic muscle strain. He has

had, what appears to be, some chronic myofascial pain or soft tissue pain in the muscle and soft tissue of the mid thoracic spine. These conditions usually resolve within 6 to 8 weeks." Dr. Baskin opined, "He would benefit from a home exercise program of appropriate stretching to the muscles of the thoracic spine and the scapular girdle. One other consideration that might be of benefit in this gentleman's chronic back pain would be a limited session of chiropractic manipulation to the thoracic spine given his scoliosis and myofascial pain to see if some manipulation of the thoracic vertebra around the mid thoracic spine would help alleviate some of his pain. I would limit this to no more than 10 to 12 sessions."

Dr. Covey subsequently opined that he recommended a physical therapy "truncal stabilization program" along with the medicines Baclofen, Gabapentin, Meloxicam, and Tramadol. Randall Green, a physical therapist, stated in October 2009 that the claimant had completed 40 visits of physical therapy. Mr. Green stated that Dr. Covey had recommended more physical therapy in the amount of three visits weekly for six weeks.

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, the Full Commission finds that Dr. Baskin's opinion is more credible than the opinion of Dr. Covey or Randall Green, and we find that Dr. Baskin's opinion is entitled to significant evidentiary weight. The record demonstrates that the claimant sustained a muscle strain in his thoracic area and scapular area. No examining or treating physician has opined that the claimant is a candidate for surgery. Dr. Baskin credibly opined that the claimant's strain injuries should have resolved after six to eight weeks. The medical evidence corroborates Dr. Baskin's opinion. The claimant did not prove that he was entitled to continued treatment by Dr. Covey or Randall Green. Instead, the Full Commission finds that the claimant proved he was entitled to a limited session of chiropractic manipulation as recommended by Dr. Baskin. The claimant did not prove he was entitled to continued prescription medication at the respondents' expense. We therefore affirm as modified the administrative law judge's award of additional medical treatment.

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.2d 392 (1981). The healing period continues until the employee is as far restored as the permanent character of the injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). The determination of the end of the healing period is a question of fact for the Commission. *Id.*

An administrative law judge found in the present matter, "4. The claimant has proven by a preponderance of the evidence that he remained in his healing period and unable to earn wages from April 8, 2009, to a date to be determined." The Full Commission finds that the claimant proved he remained in his healing period and was totally incapacitated to earn wages through May 21, 2009. The parties stipulated that the claimant sustained compensable injuries on June 27, 2007 and August 21, 2007. Dr. Barker

began treating the claimant in August 2007 and diagnosed muscle strain. Dr. Thomas opined in November 2007 that the claimant had sustained a muscle strain in the right thorax below the scapula. Dr. Johnston reported in June 2008 that the claimant was suffering from chronic back pain related to a strain "to the perispinous muscle group between the right scapula and the lumbosacral spine." The record indicates that the respondents paid temporary total disability benefits through April 7, 2009. Dr. Covey informed the claimant's attorney in May 2009 that the claimant was instructed to "remain off from any work activity whatsoever."

Dr. Baskin performed an Independent Medical Evaluation on May 21, 2009. Dr. Baskin reported, in corroboration with the medical evidence of record, that the claimant had sustained a thoracic muscle strain which should have resolved between six to eight weeks. Dr. Baskin opined that the claimant did not have a permanent physical impairment. Dr. Baskin suggested a functional capacity evaluation and "return to his previous employment." The claimant refused to participate in a functional capacity evaluation.

The Full Commission finds that the claimant reached the end of his healing period for the compensable injuries no later than May 21, 2009. We find that Dr. Baskin's opinion releasing the claimant to return to work is entitled to significant evidentiary weight. We find that Dr. Baskin's opinion releasing the claimant to work is more credible than Dr. Covey's statement that the claimant should refrain from any work activity. Although the claimant continues to complain of pain, the persistence of pain not of itself prevent a finding that the healing period has ended, provided that the underlying condition has stabilized. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The Full Commission finds that the claimant's post-injury physical condition stabilized no later than May 21, 2009. Temporary total disability cannot be awarded after the claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987).

The Full Commission's finding that the claimant's healing period has ended is not inconsistent with our award of additional medical treatment as recommended by Dr. Baskin. It is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has

ended, if the medical treatment is geared toward management of the claimant's injury. *Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved he was entitled to additional medical treatment as recommended in Dr. Baskin's May 21, 2009 independent medical evaluation. The claimant did not prove he was entitled to any additional treatment with Dr. Covey or medications prescribed by Dr. Covey. The claimant proved he was entitled to temporary total disability benefits through May 21, 2009. The Full Commission therefore affirms the administrative law judge's opinion as modified. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing in part on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

---

A. WATSON BELL, Chairman

---

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority's findings that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment and he also remained in his healing period from April 8, 2009 through May 21, 2009. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

In my opinion, the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment. The claimant has undergone treatment with Dr. Barker, who was unable to discover the specific cause of the claimant's problems. She ordered an MRI, which yielded normal results. She referred the claimant to Dr. Brad Thomas, a neurosurgeon who did not believe he could offer any assistance and determined that surgery was not indicated. Dr. Thomas referred the claimant to Dr. Jerry Lorio, an orthopedic surgeon. Dr. Lorio did additional testing but further treatment was not recommended by Dr. Lorio either.

The claimant began treating on his own with his family physician, Dr. Johnston, and requested a change of

physician to Dr. Covey. Dr. Covey has recommended additional treatment which is what the claimant is requesting at this time. This includes six more weeks of a different type of physical therapy as well as some prescription medication.

Dr. Baskin, performed an independent medical evaluation of the claimant. Dr. Baskin's report reflects that the claimant was cooperative at the examination and then recites the numerous tests performed as part of the neuromuscular exam. The claimant's reflexes were tested in both the upper and lower extremities as well as "Hoffman's Reflex;" "Withdrawal plantar response," "muscle function," "atrophy," "grip strength," "sensation," through both the "upper and lower extremity to pinprick, light touch and proprioception." In addition, the claimant was determined to have "good muscle tone" and "full range of motion in flexion, extension and lateral bending and rotation". The claimant did not have any "scapular winging" and "no spasm" with supple muscles. The claimant also had no "tenderness along the cervical, thoracic or lumbar spine and no lumbar spine spasms." The claimant, however, denied that Dr. Baskin ever touched him in order to perform this

examination. In fact, in questioning not only by counsel, but further denied this in questions by the Administrative Law Judge. Dr. Baskin's note points out that the claimant has had several sessions of physical therapy in the past. It also indicates that the claimant's neurologic exam revealed mild carpal tunnel but this was not work-related. The neurosurgical evaluation did not reveal any surgical issues and the neurologic examination was "normal".

Dr. Baskin noted that the claimant had several misconceptions about his back particularly commenting that his discs were "crumbling apart." The MRI, however, did not reveal any "significant spinal abnormalities." Dr. Baskin further noted that the claimant did not "have any objective findings." On the MRI, from a cervical and thoracic standpoint, the claimant did not have any objective findings which correlated with the claimant's "symptoms."

In Dr. Baskin's opinion, the claimant had a "thoracic muscle strain." which should have resolved "within six to eight weeks." The claimant was not permanently disabled and is not entitled to any impairment as set out within the AMA Guides, Fourth Edition.

Further, the evidence indicates that the claimant's documented complaints are not consistent. When the claimant was initially seen and treated, he complained to Dr. Barker of low back pain in addition to the thoracic spine and shoulder pain. The claimant denied ever complaining or having low back pain in relation to either injury in January or August of 2007. Further, the claimant claimed he obtained short-term relief following injections while in physical therapy and nothing has provided long-term relief. It appears all of the claimant's complaints are subjective except for a few muscle spasms early on. Subsequent evaluations have yielded little, other than the claimant's subjective complaints of pain.

When I consider Dr. Baskin's opinion and Dr. Covey's recommended treatment, I give more weight to Dr. Baskin's opinion. The Commission has a duty to translate the evidence on all the issues before it into findings of fact. Weldon v. Pierce Bros. Const. Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996). Moreover, the Commission has the authority to resolve conflicting evidence and this extends to medical testimony. Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996). The Commission has the duty

of weighing the medical evidence as it does any other evidence, and the resolution of any conflicting medical evidence is a question of fact for the Commission to resolve. Emerson Electric v. Gaston, 75 Ark. App. 232, 58 S.W.3d 848 (2001); CDI Contractors McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993); McClain v. Texaco, Inc., 29 Ark. App. 218, 780 S.W.2d 34 (1989).

Although the Commission is not bound by medical testimony, it may not arbitrarily disregard any witness's testimony. Reeder v. Rheem Mfg. Co., 38 Ark. App. 248, 832 S.W.2d 505 (1992). However, it is well established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d 93 (2002). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. McClain, supra.

The Commission is never limited to medical evidence in arriving at its decision. Moreover, it is well within the Commission's province to weigh all the medical

evidence and determine what is most credible. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. Id. In addition, the Commission has the authority to accept or reject a medical opinion and determine its medical soundness and probative force. Green Bay Packaging v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 695 (1999). The Commission's resolution of the medical evidence has the force and effect of a jury verdict. McClain, supra.

The claimant's complaints are all subjective complaints. No medical tests have yielded any objective findings. Therefore, when I consider the evaluation of Dr. Baskin, the opinion of a neurosurgeon as well as an orthopedic surgeon that there was nothing they could find, plus the fact that the MRI yielded normal results, I cannot find that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment. Accordingly, I must dissent from the majority's opinion.

The majority has awarded additional temporary total disability.

The claimant underwent an MRI which was normal and revealed no "abnormality of the thoracic cord." He was then evaluated by Dr. Lorio, finding that he did not believe the "shoulder joint itself" was involved. The EMG nerve conduction study was performed which found "no evidence" to "suggest cervical radiculopathy." In addition, the evaluation performed by the neurosurgeon, Dr. Brad Thomas, is consistent with the evaluation of Dr. Baskin that indicated only a "muscle strain." The only thing the claimant has is his subjective complaints of pain. These continued complaints are not supported by any of the medical testing performed.

The evidence shows that the claimant has made no effort to return to work in any capacity. In fact, he has instead applied for and begun receiving retirements benefits from the respondent employer. The claimant is clearly not motivated in locating or performing any work even though there is no medical support for any of his subjective complaints. No specialist has determined the claimant's entitlement to additional treatment, other than the

claimant's chosen physician, Dr. Covey. Neither Dr. Lorio, an orthopedic surgeon or Dr. Brad Thomas, a neurosurgeon, have recommended any additional treatment. The claimant has not proven that he is totally disabled from any type of work. Simply put, I cannot find that the claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits. Accordingly, I must dissent from the majority's award of benefits.

---

KAREN H. MCKINNEY, COMMISSIONER