

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700988

STEVEN R. DIDDLE, EMPLOYEE CLAIMANT

WESTWOOD HEALTH &
REHABILITATION, INC., EMPLOYER RESPONDENT

ARKANSAS SELF-INSURANCE TRUST/CANNON
COCHRAN MANAGEMENT SERVICES, INC.,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED MARCH 30, 2010

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

Claimant represented by the HONORABLE KENNETH L.
OSBORNE, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MICHAEL E.
RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

This matter is currently before the Full
Commission on remand from the Arkansas Court of Appeals.
In an opinion delivered January 20, 2010, the Arkansas
Court of Appeals reversed and remanded the decision of
the Full Commission which had affirmed and adopted the
decision of the Administrative Law Judge. The Court
reversed the Full Commission due to an erroneous finding

of fact concerning the claimant's work restrictions and other inconsistencies in the Administrative Law Judge's opinion which the Full Commission affirmed and adopted, with Commissioner Hood's dissent. The Court of Appeals directed the Full Commission to fully examine the evidence presented. Pursuant to the Court's remand, and based on our de novo review of the entire record, the Full Commission finds that the claimant has demonstrated by a preponderance of the evidence that he is entitled to additional medical treatment for the compensable injury to his back sustained while working for the respondent on July 19, 2006 and to temporary total disability benefits from August 25, 2007 until a date to be determined.

EVIDENCE

The parties stipulated that the claimant sustained a compensable back injury on July 19, 2006.

The claimant testified that he is a licensed practical nurse, employed by the respondent employer as a treatment nurse and supervisor from January 2006 until September 1, 2006. He worked a sixty-hour week. Prior to July 19, 2006, he had no back problems or treatment. On July 19, 2006, the claimant injured his back when he

caught a two hundred thirty pound patient who fell while being transferred from a bed to a shower chair. When the claimant caught the resident, his back popped, sending a sharp pain up his back and down his left leg. The certified nurse assistant heard his back pop.

The claimant testified that, on July 19, he reported his injury to Debbie Clark, the director of nursing, who told him to take it easy on July 19, and, if necessary on July 20, to report the injury to Valerie Terry, who handles workers' compensation for the facility. The claimant did report the injury to Terry the next day, as instructed, and on July 20, he was sent to Dr. Vandergriff, an occupational doctor, with pain in his back and left leg, and numbness into his left leg to his toes. Dr. Vandergriff took x-rays, gave the claimant muscle relaxers, and told him to use hot and cold packs and do exercises for a week. He was returned to work, light duty, on his sixty-hour week schedule. His pain never improved, staying "pretty constant with periods of sharp pains," with any excessive activity including sitting, standing, and stooping.

The claimant testified that he returned to Dr. Vandergriff on July 28, and that after that, he did not

get more treatment until December 27, 2006 when he went to the emergency room. At the hearing the claimant was asked why he went to the emergency room instead of the doctor to whom the respondents had sent him:

A: I would- - I would - - was getting the runaround, basically. I would go to Valerie Terry, who was the workmen's comp person at work; ask to go back to the doctor. She would tell me to call the doctor's office and get an appointment. I would call them and they would say. Well, she has to - - Valerie has to call and authorize it. And they were back and forth, back and forth.

Q: And when - - when you went through those channels, were you ever able to get another appointment after July 28th?

A: No.

The claimant testified that he went to the emergency room six or eight times, and that he was referred by the emergency room physicians to Dr. Raben, a neurologist. Ultimately, the claimant saw Dr. Knox, with the approval of respondent employer. MRIs were performed, and a myelogram and surgery were recommended.

As a treatment nurse, the claimant's job required him to lift patients and stoop over to treat them. His patients needed treatment for wounds, amputations, bed wounds and other things of that nature. The claimant had to lift the patients up out of bed,

turn them over to treat them, move them to prevent bed wounds and other tasks. The claimant tried to work as instructed, but the continuous lifting and pulling prevented his back from getting better. He continually felt pain with periods of sharp pain from excessive standing, sitting, or stooping over, which his job required him to do during his scheduled 60 hour work weeks. The claimant tried to continue with his work until September when he could no longer continue. He was in pain, and he could not perform his job to satisfy his own standards, so he left this employment.

The claimant testified that he attempted to go back to work, after he left the respondent employer. He took a nursing position at Fayetteville Health & Rehab where he worked around October and November of 2006 but had to leave because of the job requirements. This job required him to push a medicine cart then stoop and reach to the bottom of the medicine cart to gather pills and supplies needed for his patients. The claimant tried, but was unable to perform the job without stopping to rest which would unacceptably disrupt the schedule of the patients' medications.

The claimant left Fayetteville Health & Rehab to work at Beverly Health Care as a treatment nurse in December and into January of 2007. His job requirements were essentially the same as at the respondent employer. The claimant had to tend to the wounds of the patients, which required some lifting and pulling. He tried to do this lifting and pulling, but it caused the sharp pains he had felt when he worked for respondent Westwood. He left Beverly and tried to work at Fayetteville Health & Rehab again in January, but he was unable to continue.

The claimant filed for unemployment after leaving Fayetteville Health & Rehab and received unemployment benefits until August 25, 2007. He was still unemployed and unable to work due to his back injury at the time of the hearing. The claimant testified that he was able to do "very little of anything" around the house and that he wanted to get his back fixed so that he could return to work.

The claimant testified that the only back injury he ever had was on July 29, 2006. He did not injure himself elsewhere before or after his employment with the respondent employer. He specifically denied an injury on January 3, 2007.

Medical Records

On July 20, Dr. Cathleen Vandergriff treated the claimant and noted his report that he felt a pop in his back after transferring a resident. X-rays of his lumbar spine showed no acute abnormalities. The doctor noted paraspinal muscle spasms. She prescribed a pain reliever, muscle relaxer, exercises, and the application of ice and heat and released the claimant to work with a ten pound lifting restriction.

On July 28, Dr. Vandergriff again saw the claimant and observed muscle spasm. She prescribed a pain reliever and muscle relaxer, referred the claimant to physical therapy, and continued with the ten pound lifting restriction. On August 1, 2006, Dr. Vandergriff prescribed physical therapy three times per week for two weeks for the claimant's low back pain with lumbar paraspinal muscle spasm. A notation on the physical therapy order show that the therapy was approved by Jamie Starr with the workers' compensation carrier. Other notations on the order include "8/2 2:00 N/S" and "8/24 unavailable."

The claimant next received treatment on December 27, 2006, at the Northwest Medical Center of

Washington County emergency room. The records reflect that he reported back pain for two months, caused by lifting a patient. The emergency room physician's notes show that the claimant reported he had radiating back pain and paresthesia for six weeks from lifting a patient at work. These notes indicate the claimant had muscle spasm, decreased range of motion and pain down the right leg, as well as a positive straight leg raise in the left leg. The diagnosis was an acute herniated disc at L4-5 of the claimant's spine and acute myofascial strain. X-rays showed an unremarkable lumbar spine. The claimant was given prescriptions for Flexeril, Vicodin, and Prednisone, and follow up was recommended with Dr. Cyril Raben.

On January 27, 2007, the claimant returned to the emergency room, reporting that he had a lifting injury to his back in July and that he was seen in the emergency room in December 2006 with a diagnosis of a herniated disc. He complained that his left hip was locking up, walking was painful and he had pain shooting down his right leg. Decreased range of motion and lumbar and paraspinal tenderness were observed. The medications prescribed were Vicodin, Prednisone and

Valium. The claimant was taken off work two days. Chiropractic therapy was suggested.

On February 13, 2007 the claimant presented to the emergency room, complaining of back pain burning and radiating into his legs. On physical exam, decreased range of motion and muscle spasm were observed. The diagnosis was a herniated nucleus pulposus. A notation indicates that the claimant injured himself lifting a patient at work. The report also reflects "Hx back injury at work, 1/3/7 seen in ER. Tx and referral to Dr. Raben," but that the claimant was unable to follow up with Dr. Raben due to workers' compensation issues. At this same visit a report signed by the nurse indicates that the claimant had no known recent injury, and that the claimant suffered a previous back injury "a few months ago" but the chief complaint was chronic low back pain. A recent injury of December 27, 2006 was noted. On the same page, the nurse recorded that the "initial injury was in 7/06; pt is a nurse & injured himself while assisting a 300 lb. pt who slipped."

In an April 12, 2007 letter, Dr. Knox wrote that he evaluated the claimant's back and left leg pain on that date. The claimant had reported the onset of

back pain in July 2006 while at work as a nurse at for the respondent employer. The pain worsened progressively, extending into his left hip and leg, down to his ankle. He also reported to Dr. Knox that he had a cortisone injection in December without benefit and no physical therapy. Dr. Knox stated that he observed "significant paraspinal muscle spasm with restricted range of motion, primarily in extension." Dr. Knox took new lumbar x-rays, which showed no evidence of fracture but significant disc space settling at L4-5. He suspected a significant bulging disc at L4-5, which he wanted to investigate with an MRI scan.

The claimant was seen in the emergency room on May 25, 2007. He reported to the emergency room staff that he injured his back at work in July 2006 and that he was under treatment by Dr. Knox. He stated that he was waiting to have an MRI performed, but that insurance was causing delay. Muscle spasm and decreased range of motion at the L4-L5 level were observed. The claimant was again diagnosed with a herniated nucleus pulposus, prescribed Flexeril for his muscle spasms and Vicodin and Ultram for pain, and instructed to follow up with Dr. Knox.

On June 22, 2007, the claimant returned to the emergency room. He again reported the July 2006 work injury and chronic pain since that time. He reported pain radiating into his left leg and muscle spasms. The diagnosis was lumbosacral strain, and an MRI was recommended. The claimant was instructed to follow up with his physician and was prescribed Lortab and Ultram for pain.

On July 15, 2007, the claimant presented to the emergency room, reporting radiating pain due July 2006 work injury. He also reported that he had seen Dr. Knox in April 2007 but that the recommended MRI was not done. Muscle spasm, decreased range of motion due to pain, vertebral point tenderness in the lumbosacral spine and positive straight leg raising on the left were observed. The diagnosis was a herniated disc. The nurse's report of this date indicates the claimant had reported his care under Dr. Knox, that he injured his back at L4-L5 at work transferring a patient, and that he had chronic back pain aggravated by mowing his yard. Prescriptions for Lortab and Tramadol for pain were given.

The claimant returned to the emergency room on August 8, 2007. He complained of pain going into his legs which started four days prior, with no recent injury. He gave a history of chronic back pain which started the year before, at work. The claimant saw Dr. Knox for his herniated disc, but the emergency room record notes that the claimant reported that "workman's comp will not allow pt to see him again?" The report indicates that the claimant has lower lumbar spine tenderness and point tenderness. The claimant was diagnosed with lumbosacral strain. He was prescribed Vicodin and Ultram for pain.

The claimant underwent an MRI scan of his lumbar spine on August 27, 2007 at the request of Dr. Knox, with a history of low back pain and herniated nucleus pulposus, which revealed:

1. Disc desiccation at L4/5 and L5/S1.
2. Small left paracentral disc herniation L4/5.
3. Mild generalized bulging annulus at L5/S1.
4. Spondylosis at L4/5 and L5/S1.
5. Mild bilateral facet hypertrophy at L4/5 and L5/S1.
6. Mild left neural foraminal narrowing at L4/5.

The claimant again returned to the emergency room on August 31, 2007. He gave a history of back pain radiating into his legs which started July 19, 2006, that the claimant was injured at work while transferring a patient, and that he has filed for workers' compensation. The report also notes that the claimant's recent MRI revealed pathology at L4-5 and L5-S1 and that the claimant was treated by Dr. Knox with steroid injections. The report indicates that there is pain radiating into the left leg. The diagnosis was lumbar disc syndrome at L5-S1. The claimant was instructed to follow up with Dr. Knox and was prescribed tramadol and hydrocodone for pain.

The claimant returned to Dr. Knox on October 3, 2007. Dr. Knox noted that he recommended an MRI scan in April, but that the claimant was not able to get an MRI scan until late August due to the workers' compensation carrier. Dr. Knox stated that the MRI showed a significant disc bulge at L4-5 and a small left paracentral disc herniation which Dr. Knox suspected was the cause of the problems. Dr. Knox ordered a myelogram to further define the problem. If the myelogram showed

"overt evidence of compressive pathology," surgical decompression would be considered. The x-ray performed on this date showed "significant disc space collapse at L4-5, with a McNab traction spur and concomitant facet settling."

Dr. Knox took the claimant off work on October 22, 2007. On November 13, 2007, Dr. Knox clarified that the claimant's work restrictions were unchanged from April 2007.

Dr. Knox wrote another letter on December 4, 2007 discussing the claimant's L4-5 disc herniation and that it was causing the claimant's pain problems but not his recent complaints of urinary incontinence. Dr. Knox again recommended the myelogram to determine if surgical decompression would be necessary.

The claimant underwent an MRI scan on February 28, 2008 because of his back pain and incontinence, which showed early multilevel spondylosis, most pronounced at L4-5 with a left parasagittal broad-based disc protrusion adjacent to the descending left L5 nerve root which is slightly displaced, and mild L4-5 and L5-S1 neural foraminal narrowing.

ADJUDICATIONReasonable and Necessary 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). 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. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

It is the function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Wal-Mart Stores, Inc. v. Stotts, 74 Ark. App. 428, 49 S.W.3d 667 (2001). When the Commission weighs medical evidence and the evidence is conflicting, its resolution is a question of fact for the Commission. 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. Allen Canning Co. v. Woodruff, 92 Ark. App. 237, 212 S.W.3d 25 (2005).

The claimant consistently presented to Dr. Vandergriff, the emergency room physicians and Dr. Knox with a history of an injury in June lifting a patient at work, with complaints of low back pain, radiating pain, numbness, which increased as time passed. Muscle spasms have been observed by his physicians since July 2006. The claimant has been consistently diagnosed with a herniated nucleus pulposus at L4-L5 and a bulging disc at L5-S1 since he began treating at the emergency room. MRI scans show these injuries. There is no credible evidence that the claimant suffered an intervening injury. The claimant had no history of back problems prior to his compensable injury and credibly testified that he suffered no other injury after that date. Dr. Knox stated in his reports of October 3 and 22, and December 4, 2007 that he recommended a myelogram to determine if a surgical decompressive procedure is necessary to relieve the claimant's pain from the disc herniation. The Commission finds that the claimant has proven by a preponderance of the evidence a causal

connection between the compensable injury and the treatment received in July 2006 by Dr. Vandergriff and from December 2006 forward from the emergency room physicians and Dr. Knox. The Commission finds that the treatment the claimant received from June 19, 2006 to date, for his low back pain, now chronic, and his herniated nucleus pulposus, including the emergency room care and Dr. Knox's treatment, was reasonable and necessary medical treatment of his admittedly compensable injury. The Commission further finds that further care by Dr. Knox including the recommended myelogram is also reasonable and necessary treatment.

The Commission credits the testimony of the claimant that he attempted to get treatment for his back after his July visit to Dr. Vandergriff and that he was unable to get that treatment through the respondent employer or the respondent carrier. He testified that he got "the run-around" from the respondents and was unable to get appointments scheduled and approved. There is no evidence to refute this testimony. The claimant presented in December 2006 with the same complaints and history that he presented in July 2006.

No doctor changed the claimant's ten pound lifting restriction. The Commission finds that the break in treatment from July to December 2006 was a result of the difficulties the claimant met in scheduling treatment. The Commission finds that the break in treatment does not demonstrate that the claimant did not need treatment during that time.

The Commission notes that there is a medical record which suggests a new injury. The claimant went to the emergency room on February 13, 2007. There are notations that the claimant injured his back in a January 3, 2007 injury. The report also reflects that the initial injury was in July 2006 while the claimant was assisting a patient. This report states the claimant was treated at the emergency room and referred to Dr Raben but was unable to treat with Dr. Raben because of workers' compensation issues, which is consistent with the claimant's December 27, 2006 visit to the emergency room. There is no mention of a January 3 injury at the time of the claimant's visit to the emergency room on January 27, 2007. The claimant denied any incident or injury in January 2007 at the hearing.

All of the other reports consistently state that the claimant injured his back while lifting a patient in July 2006, and every report shows the same symptoms. The Commission gives more evidentiary weight to all of the other reports than to this one inconsistent report of February 13, 2007. There is no evidence to corroborate that anything at all occurred on January 3, 2007, while there is credible and substantial evidence that the claimant suffered low back pain due to his compensable injury of June 19, 2006, with consistent complaints, symptoms and objective findings from that date forward.

The record shows that, on August 1, 2006, Dr. Vandergriff ordered physical therapy three times a week for two weeks. Interestingly, there is no record of physical therapy being provided, other a handwritten notations on the order itself, which indicate that at some point, the respondent carrier approved the order. Also on the order are two other handwritten notation, one "8/2 N/S" and the other, "8/24 unavailable." The claimant reported to Dr. Knox, on April 12, 2007, that he had not received any physical therapy, and at the

hearing, the claimant testified that when he first saw Dr. Vandergriff, she performed x-rays, prescribed muscle relaxers, and instructed him to use cold and hot packs and to do "their exercises" for a week. He did not testify that he had physical therapy, or that he was offered physical therapy. He testified that he only saw Dr. Vandergriff on July 20 and 28, 2006. The physical therapy order was August 1, 2006. There are no other medical records until December 2006. The only conclusions that can be drawn from this evidence is that Dr. Vandergriff ordered physical therapy which was not performed. There is no indication that the claimant was aware that the therapy had been ordered or scheduled. While "N/S" probably means "no show," there is no evidence that the claimant was aware of this appointment. The only way to explain "8/24 unavailable" is to resort to speculation. In fact, to draw any conclusion from Dr. Vandergriff's order, other than that she in fact ordered physical therapy, is to resort to speculation. There is no evidence that appointments were scheduled and communicated to the claimant, and there is only one notation that could be construed, with

a large dose of speculation, to indicate an appointment existed at all, and that is "8/2 N/S." The Commission finds that the fact that Dr. Vandergriff's physical therapy order went unfulfilled is not evidence of any lack of compliance or need on the claimant's part. In fact, the unfulfilled physical therapy order is more consistent with the claimant's testimony that he experienced difficulty in arranging treatment through the respondents.

Temporary Disability Benefits

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages; temporary partial disability is that period within the healing period in which the employee suffers only a decrease in the capacity to earn the wages he was receiving at the time of the injury. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. 11-9-102 (12). The question of when the healing period has ended is a factual determination for the Commission. K II Constr. Co. v.

Crabtree, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

Temporary total disability is not available for any week for which a claimant receives unemployment insurance benefits. Ark. Code Ann. Sec. 11-9-506.

In the present matter, the respondents did not provide any disability compensation to the claimant. The claimant worked for the respondents until September 1, 2006. He took employment with other nursing homes until January 2007 when he was unable to continue working and began drawing unemployment benefits which he received until August 25, 2007.

The claimant is entitled to temporary total disability from August 25, 2007 when the claimant's unemployment compensation was terminated, to a date to be determined. The claimant is still in his healing period, as there is treatment available and necessary to improve his condition, including the myelogram which Dr. Knox has recommended to determine whether a surgical decompression is appropriate for the claimant.

The claimant has proven by a preponderance of the evidence that he has been totally incapacitated to earn wages since prior to August 25, 2007 when his

unemployment benefits ended. The claimant was never released from his lifting restriction of no more than ten pounds, although his testimony showed that nursing was a physical employment requiring lifting in excess of that amount, moving and assisting patients. He attempted to return to work as a nurse in different capacities but was unable to tolerate the prolonged or repeated standing, stooping and lifting. After many delays in treatment and increased symptoms, Dr. Knox stated that the claimant would "remain off work" on October 22, 2007 at least until a follow-up appointment after the myelogram was performed. The Full Commission finds that the claimant was totally incapacitated from earning wages since prior to August 25, 2007.

The claimant has shown by a preponderance of the evidence from the medical records and his credible testimony that he is still in his healing period and suffers a total incapacity to earn wages, and therefore the claimant is entitled to temporary total disability benefits from August 25, 2007 to a date yet to be determined.

Based on our de novo review of the entire record, and pursuant to the remand from the Court of Appeals, the Full Commission finds that the claimant proved that he is entitled to additional treatment, including the recommended myelogram, and that he is entitled to temporary total disability compensation from August 25, 2007 until a date to be determined.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in

accordance with 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

This claim is presently before the Commission on Remand from the Court of Appeals. In an opinion delivered January 20, 2010, the Court of Appeals reversed and remanded this claim finding that the Commission made an erroneous factual finding with regard to the claimant's work release on July 28, 2006. In this regard, the Full Commission found that the claimant was released to return to work without restrictions on July 28, 2006, when in fact the claimant had been

released to return to work with the same restrictions imposed upon the claimant on July 20, 2006, of no lifting over 10 pounds. The Court therefore reversed our finding and remanded this claim for the Full Commission to more fully examine the evidence.

The claimant sustained a compensable injury on July 19, 2006, when he was injured transferring a patient onto a shower chair. The claimant reported the incident and was sent by respondents to Dr. Kathleen Vandergriff the next day. The AR-3 completed by Dr. Vandergriff recorded a history of injury as "Pt states he was transferring a resident that gave out while moving & pt. felt his back pop. C/o LBP." Dr. Vandergriff's examination revealed the presence of paraspinal muscle spasms for which she prescribed medication, exercise and ice and heat, and she released the claimant to return to work with no lifting over 10 pounds. The claimant returned for a follow-up appointment the following week. Again, Dr. Vandergriff noted paraspinal muscle spasms and she adjusted the claimant's medication. Dr. Vandergriff also ordered x-

rays of the claimant's lumbar spine which revealed "No acute abnormalities." In addition, Dr. Vandergriff referred the claimant for physical therapy three times a week for the next two weeks and noted that the claimant's next appointment would be determined per the physical therapy. Again, Dr. Vandergriff released the claimant to return to work with the same lifting restrictions. The Lowell Medical Center Arkansas Occupational Health Clinic Physical Therapy Department script for physical therapy bears a hand written notation that physical therapy was approved by the carrier. Another hand written notation on this record states 8/2 2:00 indicating the date and time of the claimant's first physical therapy appointment. An "N/S" circled on this report is shorthand for no show. Further handwritten notations state "8/24 - unavailable." The only conclusion that can be drawn from this report is that Dr. Vandergriff ordered physical therapy, the carrier approved the treatment, but that the claimant failed attend.

The claimant continued to work for respondent employer for several months until he took a job with Fayetteville Health & Rehabilitation around the end of September or beginning of October 2006. Claimant worked there for only a few weeks before he left to take a position with Beverly Healthcare of Rogers in November of 2006. Claimant left Beverly in January of 2007, drew unemployment until August 2006, and has not worked anywhere since.

The claimant did not seek any additional medical treatment until December 27, 2006, when he visited Northwest Medical Center emergency room. The ER triage records indicated that the claimant stated that while lifting a patient at work he had some numbness down his left leg and pain in the lower back. The Triage assessment also contained complaints regarding the skin; however there is no indication that any treatment for these skin complaints was initiated. Under the heading "2nd Assessment" the claimant was noted to have complaints of back pain times 2 months. Likewise the

physician record from this emergency room visit records a chief complaint of back pain times 6 weeks, that started 6 weeks ago. Upon examination, the claimant was noted to have decreased range of motion and muscle spasm with pain at 45 degrees upon straight leg raising testing of the left leg. X-rays were taken and a radiological report was generated which indicates five views of the lumbar spine of the claimant were taken and the impressions were, "unremarkable lumbar spine." The claimant was diagnosed with an acute myofascial strain and an acute herniated disc at L4-5.

On January 27, 2007, the claimant reported to the Washington Regional Medical Center emergency room where he complained of lower back pain. He gave a history of a back injury in July, and stated that he was "seen at Springdale a month ago where they x-rayed my back", and reported that he had a "herniated disc." Claimant further complained that his left hip was locking up and that pain was shooting down his right leg. The claimant also reported the "onset of symptoms

as gradual" and that the "onset was six months ago." Upon examination, the claimant was noted to have normal range of motion in the lower extremities, normal gait, and a normal motor and sensory exam. The claimant was assessed with low back pain and released from the emergency room, given instructions to be off work for two days, and told to consider chiropractic therapy. The claimant was prescribed Vicodin, Valium, and Prednisone at that time.

On February 13, 2007, the claimant reported to the Northwest Medical Center emergency room and was again seen by Dr. Peter Ball where his chief complaint purports to be a "back injury at work on (sic) January 3, 2007." The medical records indicate that he reported a recent injury that occurred while "lifting a patient at work." An emergency nursing record was also generated that day with a chief complaint of "lower back pain." It indicates that it is chronic and indicates a recent injury occurred on "December 27, 2006." The nursing record also reports that the claimant indicates an

initial history of a "back injury in July 2006 from lifting a patient who slipped." At this time, Dr. Peter Ball prescribed medications for the claimant and released him from the emergency room.

A letter from D. Luke Knox, M.D. was sent to Peter Ball, M.D. on April 12, 2007, which reflects that the claimant was seen in the neurosurgical clinic on April 12, 2007, for consultation of back and left leg pain that was requested by Dr. Peter Ball. Dr. Knox notes that, "the claimant's examination is remarkable in that he had a positive straight leg raising test on the left. It was mildly positive on the right. He had diminished sensation over the entire left leg. He had no evidence of long track findings. He had significant paraspinal muscle spasm with restricted range of motion, primarily in extension. His reflexes were otherwise felt to be physiological." Dr. Knox also noted that while the claimant was at the clinic he had the claimant redo his lumbar spine films which had demonstrated no evidence of fracture but he notes there was significant disc space

settling at L4-5. Dr. Knox suspects that he has a significant bulge at L4-5 and further notes that he would like the claimant to undergo an MRI scanning for further evaluation.

On May 25, 2007, the claimant reported to the Northwest Medical Center emergency room. The emergency physician's record indicates a chief complaint of back pain and states that the claimant reported a "back injury in July 2006." The claimant was diagnosed with a herniated disc and was given medications.

On June 22, 2007, the claimant reported to the Northwest Medical Center ER and the emergency room physician's records indicate that his chief complaint is back pain with an "injury at work" in "July 2006." The claimant was diagnosed with a back strain and prescribed medications. On July 15, 2007, the claimant again reported to the Northwest Medical Center emergency room and the emergency physician's records indicate his chief complaint to be back pain which started in "July 2006." The claimant was diagnosed with a herniated disc and he

received medications. On August 8, 2007, the claimant reported to the Northwest Medical Center emergency room. Reports associated with that visit reference a chief complaint of back pain which started "four days ago." He also reports an injury which occurred "last year on a job." The claimant was diagnosed with a back sprain and given medications.

On August 27, 2007, the claimant received an MRI of the lumbar spine that was performed by Steven Harms M.D. The impression of that MRI are as follows:

1. Disc desiccation at L4/5 and L5/S1.
2. Small left paracentral disc herniation L4/5.
3. Mild generalized bulging annulus at L5/S1.
4. Spondylosis at L4/5 and L5/S1.
5. Mild bilateral facet hypertrophy at L4/5 and L5/S1.
6. Mild left neural foraminal narrowing at L4/5.

On August 31, 2007, the claimant reported to the Northwest Medical Center emergency room and the

emergency physician's records indicate his chief complaint is back pain that started on "July 19, 2006." The claimant reports that he was "injured at work and he has filed for workers' compensation." At that time he was ordered to follow up with Dr. Knox and was given prescriptions.

On October 3, 2007, the claimant was seen at the Neurosurgery Clinic of Northwest Arkansas by Dr. Luke Knox. Dr. Knox reviewed the claimant's MRI scan and noted that it showed significant disc bulge at L4/5 and says that "it was read out as demonstrating a small left paracentral disc herniation" which Dr. Knox suspects is the culprit of his complaints. He further recommends that the claimant undergo a myelogram prior to recommending any surgical intervention.

On October 22, 2007, Dr. D. Luke Knox completed a letter to the claimant's employer stating that he was under his professional care and should remain off work through a follow up visit with him. In a following report on December 4, 2007, Dr. Knox

indicates that he would like to have a myelogram and notes that the patient is becoming somewhat frustrated due to his consistent difficulties and pain syndrome.

A second MRI was performed on February 28, 2008, revealing:

1. Early multilevel spondylosis as described above, most pronounced at L4-5 with the left parasagittal broad based disc protrusion which lies adjacent to the descending left L5 nerve root which is slightly displaced.
2. Mild L4-5 and L5-S1 neuroforaminal narrowing.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291).

When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. K II Constr. Co. v. Crabtree, 78 Ark. App. 222, 79 S.W.3d 414 (2002); Ark. State Hwy. Trans Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

The healing period is statutorily defined as that period for healing of an injury resulting from an accident. Dallas County Hosp. v. Daniels, 74 Ark. App. 177, 47 S.W.3d 283 (2001). The healing period ends when the employee is as far restored as the permanent nature of his 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. Crabtree, supra; Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The question of when the healing period has ended is a factual determination for the Commission. Arkansas Highway & Trans. Dep't. v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993); Mad Butcher, supra.

The persistence of pain may not in and of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. McWilliams, supra; Mad Butcher, supra. Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. McWilliams, supra; J.A. Riggs Tractor v. Etzkorn, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

The claimant sustained an admittedly compensable injury in July of 2006. He reported this

injury and was provided prompt medical attention. Claimant was diagnosed with a strain and released to return to work with a 10 pound lifting restrictions. Upon his follow-up visit the following week, x-rays were ordered which revealed a normal lumbar spine. Claimant's treating physician ordered physical therapy which was approved by the carrier. The claimant failed to attend any of the physical therapy visits, and did not seek any further medical treatment until after he had left respondent employer's employment and worked for two other healthcare facilities. Thus, following the relatively minor compensable injury, the claimant worked for at least six months at three separate facilities carrying out the duties of a treatment nurse. While working during these six months, the claimant had to exert physical force that could have resulted in his current back difficulties. Given that the claimant failed to attend physical therapy, his ability to work for two other healthcare facilities, and his failure to seek any other medical treatment until after working for

these two other facilities, it is more likely than not that the claimant's minor compensable injury is not causally related to his need for medical treatment in December of 2006 and following. The temporal relationship of the claimant's pain complaints and medical treatment is closer to his employment with his other employment than with the respondents.

Accordingly, I find that the claimant's need for medical treatment are related to something other than his compensable injury

Moreover, as did the Administrative Law Judge, I do not find that the claimant's testimony that he tried to obtain medical treatment but that he was given the "runaround" to be credible. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence

and to determine the true facts. Id. 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 that it deems worthy of belief. Id. First this statement is in direct conflict with the physician's order for physical therapy, which was indeed approved by the carrier. The claimant, not the respondents, neglected to follow through with this treatment. Being that the treatment was ordered, approved and authorized, the claimant's failure to follow through with this treatment implies that the claimant did not feel the treatment was necessary. Moreover, the claimant in this matter is a nurse and knows or should have known the importance of following medically prescribed treatment if he was in need of treatment. Furthermore, being a nurse, the claimant knew that treatment was available to him at the emergency room should he need treatment that was being denied him by the respondents. The claimant did not seek any such emergency room treatment until

after he had left the respondent's employment and worked for at least two other employers. Accordingly, I find that the claimant's testimony that he needed medical treatment during this period of time but that he was given the "runaround" to be incredible. I find it highly unlikely that if the claimant needed treatment between July and December that he would not go to the emergency room. The claimant has demonstrated his propensity to seek medical attention from not one but two separate emergency rooms when he was in need of treatment.

Therefore, I simply cannot find that the claimant was in need of treatment from his July 2006 compensable injury after he was released by Dr. Vandergriff and given a prescription for physical therapy which the claimant did not even use. I further find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits for these same reasons. The claimant has failed to establish by a preponderance of the evidence that any medical treatment and disability associated therewith

are causally related to his compensable injury.

Therefore, I find that the decision of the Administrative Law Judge must be affirmed and that this claim for additional benefits must be denied and dismissed.

KAREN H. MCKINNEY, Commissioner