

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F904515

MISTY MIDDLETON,  
EMPLOYEE

CLAIMANT

BRADFORD HOUSE LLC,  
EMPLOYER

RESPONDENT

CANNON COCHRAN MANAGEMENT  
SERVICES, INC.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 17, 2010

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

Claimant represented by the HONORABLE MARK FREEMAN,  
Attorney at Law, Fayetteville, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed May 21, 2010. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that the claimant proved she sustained a compensable injury to her back. The claimant proved she was entitled to

reasonably necessary medical treatment and temporary total disability benefits.

I. HISTORY

Misty D. Middleton, age 26, testified that she began working as a CNA for the respondent-employer in February 2009. The parties stipulated that the employment relationship existed on all relevant dates. The claimant testified that she sustained an accidental injury on April 17, 2009: "I was transferring Peggy Rogers from the bed to a wheelchair....I was facing her at the foot of the bed, and once I put her belt on - we have safety belts that we use - and I had her, and she had me and I had a good hold of her. Well, when I went to pivot, she went completely limp when I was already in a pivot, so it was either drop her or me get hurt." The claimant testified that she "heard a pop" and felt pain in her middle to lower back.

The claimant began treating at The Clinic at Commerce Centre on or about April 17, 2009, where it was indicated that the claimant's symptoms began that day. The patient history indicated, "transferred pt from bed to chair. Pt went limp. Hurt back while pivoting - felt pop." The handwritten diagnosis appeared to be Acute Back Pain with sciatica. The claimant was treated

with medication and bed rest for three days. The claimant's testimony indicated that she did not return to work the next day, April 18, 2009. The claimant testified, "I just stayed at home on a heating pad and vice versa, ice, heat, ice." The claimant testified that she returned to work "probably within a couple of days, maybe a day or two," and that she worked "the whole shift." The claimant testified that she worked at light duty for approximately "three days in a row."

An x-ray of the claimant's thoracic spine was done on April 23, 2009, with the finding, "No abnormalities noted." Dr. Gary L. Moffitt examined the claimant at Arkansas Occupational Health Clinic on April 23, 2009 and reported:

At the request of and authorization by Bradford House Care Center, we are seeing Ms. Misty Middleton. Ms. Middleton is seen today with complaint of pain in her upper and lower back. While at work on the 17<sup>th</sup> she was helping to transfer a resident that weighed approximately 200 pounds. She states the resident went limp and she had to hold her up to keep her from falling. She was twisted whenever she did this and she felt a pop occur in her middle back and it was associated with severe pain. It has been radiating up to her neck and into her lower back....She did not fall and sustain any trauma. She called her personal physician who she states was unable to see her at that time, but called in some Flexeril for

her which she has been taking but she states has not made a lot of difference. She then saw a chiropractor and was adjusted from what I can tell. She states it helped for a short period of time and then the pain came back. She has been taking Tylenol as well and she is also on Ativan....

She has some tenderness to palpation in her upper and lower back on both sides. It seems to be worse on the left. There is some muscle tightness present as well. She has worsening of her pain with twisting types of movements and with extension. She has normal reflexes in her upper and lower extremities. X-rays were found to be normal as well.

I think she has a thoracic facet strain. I would recommend physical therapy. She is given a prescription for Hydrocodone APAP 5-325, 1-2 every four hours as needed for pain. She may continue to work. She should not lift, push or pull with over five pounds of force. She will need to go from sitting, standing to walking on an as needed basis. She will need to limit bending and twisting at the waist. She is to be seen again in two weeks.

Dr. Moffitt examined the claimant on April 28, 2009 and noted, "Examination of her upper back revealed tenderness to light touch throughout the entire upper back without any evidence of muscle tightness or spasming. She complained of pain with any movement of her neck or upper back with passive range of motion testing....Diagnosis is thoracic facet strain....She is quite upset that she is hurting as much as she has been

and I told her that I thought if she would ever start physical therapy that this might be helpful to her. She may continue to work with the same restrictions...."

A physical therapist examined the claimant at Lee Physical Therapy on April 29, 2009 and noted, "There is palpable guarding of the left thoracolumbar paraspinals. There is no lateral shift or deformity noted of the spine." The claimant was seen at The Clinic at Commerce Centre on or about April 29, 2009, at which time it was noted, "Ms. Middleton needs to be off work on bed rest x 3 days - An MRI has been scheduled for her." A note at The Clinic on May 1, 2009 indicated, "may not return to work until MRI is evaluated." The record indicates that Dr. A. D. Bicak requested an MRI of the claimant's lumbar spine, which was performed on May 1, 2009 with the following findings:

The last defined disc space is labeled L5-S1 for this report. If surgical correction is planned, plain film correlation is recommended. There is mild curvature of the lumbar spine without spondylolisthesis or compression deformity. No marrow edema is present.

The conus medullaris extends to the L1 level and is negative.

The intervertebral discs are well hydrated without extruded or sequestered disc fragments. There is no neural foraminal or central canal compromise.

IMPRESSION:

1. NO EXTRUDED OR SEQUESTERED DISC FRAGMENT.
2. NO COMPRESSION DEFORMITY OR WORRISOME MARROW REPLACING LESION.

A claim representative corresponded with the claimant on May 4, 2009:

This letter is to inform you of the status of your workers' compensation claim.

It has been determined after thorough review of your claim, to deny any further treatment on your workers' compensation claim for your back due to you have been non-compliant on your workers' compensation claim.

We will honor the charges to AR Occupational Health Clinic and Lee Physical Therapy through April 29, 2009, but nothing further. You will be responsible for these charges and any future charges. We will not honor any wages due to missed time from work....

The claimant began treating with Dr. Cyril A. Raben on May 26, 2009. Dr. Raben noted in part, "She had an on the job injury on 4-17-09 in which she was transferring a patient and heard a 'pop.' She has had pain ever since....She presents to us today for definitive care to include further therapeutics and/or evaluation, radiographic or other. This is a new onset finding for her. She had never had a problem with back or leg pain before. Her main complaint seems to be that she has a foot drop. She's not able to bring her left

foot up to ambulate. This is very limiting as far as her activity."

The impression from an EMG Report on June 8, 2009 was "Normal electrodiagnostic study of the bilateral lower extremities and corresponding lumbosacral paraspinal musculature."

Dr. Raben ordered an MRI of the claimant's thoracic spine, which was performed on June 25, 2009 with the following findings:

There is normal alignment of the thoracic vertebrae. There is subtle disc space narrowing and desiccation at T6-7 with mild posterior bulge centrally. This flattens the anterior thecal sac and approaches the anterior aspect of the thoracic cord without cord impingement or cord edema. No worrisome cord atrophy is present. The remaining intervertebral discs are hydrated without extruded or sequestered fragments. There is no high-grade central canal or neural foraminal compromise. Multilevel endplate deformities suggest degenerative Schmorl's nodes versus changes related to underlying sickle cell disease in the proper clinical setting.

IMPRESSION:

1. Mild disc desiccation and small central bulge at T6-7 flattening the anterior thecal sac and approaching the anterior thoracic cord without cord impingement or cord edema.
2. Endplate changes characteristic of degenerative Schmorl's nodes versus sickle cell related changes in the proper clinical setting.

Dr. Raben noted on July 21, 2009, "This 25 yr old female presents for follow up of mid back pain and MRI results. She states she is not going to physical therapy because of money. Pain level today is 3/10....Misty has had an MRI scan of her thoracic spine which is found to be essentially normal. Her EMG nerve conduction studies were normal." Dr. Raben signed the following Return to Work note on July 21, 2009: "Misty Middleton is under my care. She is permitted to return to work on July 22, 2009, with the following restrictions: no restrictions or limitations." Dr. Raben's diagnosis on July 22, 2009 was "L-Spine pain....We'll go ahead and give her a release back to work. She wants a prescription for a TENS unit. We'll get that set up for her also."

The claimant testified on cross-examination that she did not return to work following Dr. Raben's release on July 22, 2009. The claimant was seen at Northwest Medical Center Bentonville on October 19, 2009: "Pt reports mid lower back pain. Injured at work last April has been having intermittent pain since. No new injury or trauma." Physical examination of the claimant's back on October 19, 2009 showed "Right straight leg lift negative. Left straight leg lift negative. Bilateral

paralumar tenderness is noted. Paralumar spasm is palpable bilaterally." The clinical impression was "1. Degenerative Disc Disease." The claimant was given prescriptions for medication and was discharged.

A pre-hearing order was filed on November 24, 2009. The claimant contended that she sustained a compensable injury to her back on April 17, 2009. The claimant contended that she was entitled to reasonably necessary medical treatment and temporary total disability benefits. The respondents contended that the claimant's condition was "not documented by objective medical findings" and that the claimant did not sustain a compensable injury. The respondents contended that "the employer had light duty available but the claimant refused to perform it."

The parties agreed to litigate the following issues:

1. Compensability of an injury to the claimant's low back.
2. Related medical.
3. Temporary total disability from April 20, 2009 until a date yet to be determined.
4. Fees for legal services.

Following a hearing, an administrative law judge filed an opinion on May 21, 2010. The administrative law judge found that the claimant failed to prove she

sustained a compensable injury. The claimant appeals to the Full Commission.

## II. ADJUDICATION

### A. Compensability

Ark. Code Ann. §11-9-102(4) (Repl. 2002) provides:

(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i) (Repl. 2002).

The employee must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4) (E) (i) (Repl. 2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In the present matter, the Full Commission finds that the claimant proved she sustained a compensable

injury. The claimant contended that she sustained an accidental injury on April 17, 2009. The claimant essentially testified that she heard a pop in her back while attempting to keep a patient from falling. The record corroborates the claimant's testimony. It was noted at The Clinic on April 17, 2009 that the claimant felt a pop in her back while transferring a patient from a bed to a chair. The claimant was diagnosed with acute back pain. Dr. Moffitt, a company physician, examined the claimant and diagnosed "thoracic facet strain." A physical therapist examined the claimant on April 29, 2009 and noted "palpable guarding of the left thoracolumbar paraspinals." In the present matter, we find that the physical therapist's report of "palpable guarding" was based on the physical therapist's examination and observation of the claimant's back. The report of "guarding" in the present matter was therefore an objective medical finding not within the claimant's voluntary control. See *The Steak House v. Weigel*, 101 Ark. App. 81, 270 S.W.3d 365 (2007). In addition, palpable paralumbar spasm was detected during a hospital examination of the claimant on October 19, 2009. It is well-settled that muscle spasms constitute objective medical findings establishing an injury. *Kimbrell v.*

*Arkansas Dep't of Health*, 66 Ark. App. 245, 989 S.W.2d 570 (1999).

We find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she sustained an accidental injury causing physical harm to the body. The injury arose out of and in the course of the claimant's employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on April 17, 2009. The claimant established a compensable injury by medical evidence supported by objective findings not within the claimant's voluntary control. The objective findings in the present matter were the "palpable guarding" noted by the physical therapist on April 29, 2009, and the "palpable" paralumbar spasm reported at Northwest Medical Center on October 19, 2009.

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). "Healing period" means "that period for healing of an

injury resulting from an accident.” Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period has not ended so long as treatment is administered for healing and alleviation of the condition and continues until the employee is as far restored as the permanent character of the injury will permit. *Arkansas Highway & Transp. Dep’t v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670 (1993). Whether an employee’s healing period has ended is a question of fact for the Commission. *Johnson v. Rapid Die & Molding*, 46 Ark. App. 244, 878 S.W.2d 790 (1994).

In the present matter, the Full Commission has determined that the claimant proved she sustained a compensable injury on April 17, 2009. The claimant was diagnosed with acute back pain following the compensable injury. The claimant testified that she returned to work “probably within a couple of days, maybe a day or two” following the April 17, 2009 accidental injury. The parties agreed to litigate the issue of the claimant’s entitlement to temporary total disability benefits from April 20, 2009 until a date to be determined. Dr. Moffitt saw the claimant on April 23, 2009 and diagnosed thoracic facet strain. Dr. Moffitt indicated on April 23, 2009 that the claimant could

return to restricted work. The record does not support the claimant's implicit contention that the respondent-employer did not offer appropriate modified work duties as of April 20, 2009. Dr. Moffitt again opined on April 28, 2009 that the claimant was able to return to restricted work duties.

On April 29, 2009, a treating physician took the claimant off work and placed the claimant on bed rest for three days. The evidence in the present matter therefore demonstrates that the claimant remained in a healing period for her thoracic strain and was totally incapacitated from earning wages as of April 29, 2009. The claimant subsequently underwent additional diagnostic testing and began treating with Dr. Raben. Electrodiagnostic testing of the claimant's bilateral lower extremities on June 8, 2009 was normal. A thoracic MRI on June 25, 2009 showed normal alignment of the thoracic vertebrae, with mild disc desiccation and a small central bulge at T6-7. Dr. Raben, an orthopaedic surgeon, released the claimant to return to work with no restrictions or limitations as of July 22, 2009. The evidence in the present matter demonstrates that the claimant remained within a healing period and was totally incapacitated from earning wages from April 29,

2009 through July 22, 2009. The record does not show that the instant claimant remained within a healing period or was totally incapacitated from earning wages any later than July 22, 2009.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant failed to prove she sustained a compensable injury. The Full Commission finds that the claimant proved she sustained a compensable injury to her back. We find that the claimant proved she was entitled to temporary total disability benefits from April 29, 2009 through July 22, 2009. We find that the claimant proved all of the treatment of record was reasonably necessary in connection with the compensable injury, in accordance with Ark. Code Ann. §11-9-508(a) (Repl. 2002). Said reasonably necessary treatment of record included use of a TENS unit and physical therapy, as recommended by Dr. Raben. The instant claimant proved she was entitled to such treatment even after the end of her healing period on July 22, 2009. See *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-

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

IT IS SO ORDERED.

---

A. WATSON BELL, Chairman

Commissioner McKinney concurs in part and dissents in part.

**CONCURRING AND DISSENTING OPINION**

I must respectfully dissent from the majority opinion finding that the claimant sustained a compensable injury which is established by objective medical findings. In my opinion, I find that the well-reasoned decision of the Administrative Law Judge should be affirmed.

The majority finds that the guarding noted by the claimant's physical therapist on April 29, 2009, as well as, muscle spasms reflected in the emergency room records from October 19, 2009, are sufficient to establish objective medical findings of injury. I do not agree. First with regard to the physical therapist notation of guarding, I cannot find that this is sufficient to arise to the level of objective medical

evidence. The majority finds that the report of guarding was based upon the physical therapist "examination and observation" of the claimant. In The Steak House v. Weigel, 101 Ark. App. 81, 270 S.W.3d 365 (2007), the Court of Appeals held that the finding "'guarding is an objective finding' - sweeps too broadly" and further held "muscle guarding is sometimes involuntary and sometimes voluntary." Therefore, the Court remanded that claim to the Full Commission to reexamine the medical evidence to determine whether the guarding was voluntary or involuntary. In the present claim, it is impossible to determine whether the guarding noted by the claimant's physical therapist was voluntary or involuntary. While he noted "palpable guarding of the left thoracolumbar paraspinal" he also noted "no lateral shift or deformity" of the spine and that her "DTRs were brisk and equal." In addition, the therapist was unable to perform a thorough examination due to the claimant's subjective pain complaints. Based upon this physical examination, reasonable minds cannot conclude that the guarding noted by the therapist was involuntary rather than voluntary. All of the claimant's objective tests yielded negative results. Claimant complained of pain and the therapist stopped

his examination. As noted by the Court of Appeals in The Steak House v. Weigel, supra, "...some medical authorities indicate that guarding can be a voluntary response to pain, and thus would be a subjective finding." Accordingly, based upon the record presently before the Commission, I cannot find that the physical therapists notation of palpable guarding was an involuntary response. Therefore, it is not sufficient to arise to the level of objective medical findings.

I further find that the notation in the emergency room of muscle spasms on October 19, 2009, is not sufficient to establish the existence of a compensable injury on April 17, 2009. Throughout the claimant's medical records there is no verifiable documentation of any objective findings of injury. Claimant's diagnostic tests continuously yielded negative findings of injury. Admittedly, the claimant complained of pain and requested muscle relaxers from her treating physician, but there are no correlating objective findings to substantiate the claimant's pain complaints. Muscle spasms first noted six months after the claimant's injury are, in my opinion, too far removed from the injury to be an objective medical finding supportive of that injury. Therefore, I cannot

agree with the majority finding that a such a notation six months after the injury is sufficient to satisfy the objective medical findings of an injury.

However, were I to find that the claimant sustained a compensable injury, a finding I specifically do not make, I find that the claimant has failed to prove by a preponderance of the evidence that she remained within her healing period or was totally incapacitated from earning wages after July 22, 2009. Therefore, I concur in this finding.

---

KAREN H. MCKINNEY, COMMISSIONER

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

**CONCURRING AND DISSENTING OPINION**

After my de novo review of the entire record, I concur with the majority opinion in the findings that the claimant proved that she has proven by a preponderance of the evidence that she sustained a compensable injury to her low back, and that all the treatment of record was reasonable and necessary, including the TENS unit and physical therapy recommended

by Dr. Raben. I also concur that the claimant is entitled to temporary total disability benefits from April 28, 2009 to July 22, 2009. I must respectfully dissent from the majority opinion, because I find that the claimant is also entitled to temporary total disability benefits from July 22, 2009 to a date yet to be determined.

1. COMPENSABILITY - OBJECTIVE FINDINGS

In order to prove the compensability of an injury, the injury must be established by medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D). While I agree with the result reached by the majority opinion, I write separately on this issue to identify other objective findings in the record, and to support the finding that the claimant's guarding was objective.

A. Muscle Guarding

On April 29, 2009, Jon Lee, the physical therapist, evaluated the claimant. He observed that she was not tender to superficial palpation of her back, but she was tender to deep palpation at the thoracolumbar junction. Her motion was limited in the thoracic and lumbar spine, more in extension and rotation left. He noted "palpable guarding of the left thoracolumbar

paraspinals." In Steak House v. Weigel, 101 Ark. App. 81, 87, 270 S.W.3d 365 (2007), the Court of Appeals stated that muscle guarding "can be beyond the patient's control or within the patient's control. This issue is therefore a matter of fact on which the Commission should make a specific finding case by case based on the medical evidence." The facts surrounding the physical therapist's examination of the claimant support a finding that the guarding was involuntary. Most importantly, if the claimant was voluntarily guarding, she would have also voluntarily complained of tenderness to superficial palpation of her back. However, she only reported tenderness on deep palpation. This strongly suggests that the claimant's guarding was not intentional or manipulated.

B. Muscle Spasm

i. Prescriptions of Flexeril

(A) Called-in prescription

The claimant testified that she called Dr. Bicak who called in a prescription for Flexeril, without examining her first. He had seen her recently, and she explained her injury to him. She went in to see him within a few days or a week of calling him. He referred her to the specialist. She called him, looking for a

second opinion (Dr. Moffitt having given the first), and she had the ability to pay for it.

While there is no record of the phone call and prescription of Flexeril, the claimant clearly testified that it occurred. Certainly, a phoned-in prescription of Flexeril without an examination by the physician or other care-giver cannot be proof of muscle spasms under the Estridge v. Waste Management, 343 Ark. 276, 281, 33 S.W.3d 167 (2000) case and its progeny.

(B) Prescription on April 29, 2009

On April 29, 2009, the claimant was seen by Dr. Bicak, for back pain, leg pain and numbness, dysesthesias and swollen feet after a work-related incident. Her vital signs were noted, including a temperature of 97.5 degrees, blood pressure of 130/85, a pulse rate of 86, respirations of 16 and weight at 170. She appeared to be alert, in moderate pain, female and Caucasian. The doctor noted midline lower back pain, buttock numbness and burning pain in her legs bilaterally. He diagnosed acute back pain with bilateral sciatica. He prescribed Flexeril, Vicodin, and another medicine, and planned a lumbar MRI. Dr. Bicak took the claimant off work and put her on bedrest for three days, noting that an MRI was scheduled.

The record clearly supports a finding that on April 29, 2009, Dr. Bicak performed an objective examination of the claimant and prescribed Flexeril. That prescription of Flexeril, a muscle relaxer, is objective evidence of muscle spasm. The Arkansas Supreme Court, in Estridge v. Waste Management, 343 Ark. 276, 281, 33 S.W.3d 167 (2000), stated that evidence of a prescription (Flexeril) to be taken as needed for muscle spasm was sufficient to satisfy the requirement of objective findings. The Court stated that the respondents' argument that the prescription was a direction and not a medical finding was "absurd" and that a "doctor would not prescribe medication directed to be taken 'as needed for muscle spasm' if he did not believe muscle spasms were existent." There is no evidence to the contrary in this claim.

(C) Observations by Dr. Bicak

Dr. Bicak also noted that, on May 7, 2009, he examined the claimant and observed cervical and cervical/thoracic muscle soreness and muscle spasm in her back. The observation of muscle spasm certainly satisfies the objective finding requirement. Estridge, supra.

(D) Observations by Dr. Wulz

On October 19, 2009, the claimant presented to the emergency room with low back pain which she related to the April work incident. On examination, Dr. Wulz noted bilateral paralumbar tenderness and palpated bilateral paralumbar spasm. She received prescriptions for Robaxin for muscular pain and spasm and Naprosyn for pain, a referral to Dr. Musick, and an intramuscular steroid injection. Again, the claimant has satisfied the requirement of objective findings with a doctor's observation of muscle spasm.

C. MRI

Dr. Raben ordered an MRI of the claimant's thoracic spine on June 16, 2009 which was performed on June 25, 2009 which showed:

... There is subtle disc space narrowing and desiccation at T6-7 with mild posterior bulge centrally. This flattens the anterior thecal sac and approaches the anterior aspect of the thoracic cord without cord impingement or cord edema. .. Multilevel endplate deformities suggest degenerative Schmorl's nodes versus changes related to underlying sickle cell disease in the proper clinical setting.

These are objective findings. The claimant had a mild disc bulge at T6-7 which flattened the anterior thecal sac and approached the thoracic spinal cord. The claimant also had degenerative disc disease

or changes related to sickle cell disease. These are findings over which the claimant had no control.

2. COMPENSABILITY - CAUSAL CONNECTION

The claimant has presented multiple objective findings establishing the injury to her back. Because I have identified objective findings unmentioned in the majority opinion, I will also write separately to address the causal connection which the claimant established, which tied the April 2009 injury, the objective findings, and her need for treatment together. She testified that she had never had any of these symptoms before that date, but that after that date, she could no longer work or do household activities due to her symptoms. The claimant's need for treatment and her disability arose very soon after the accident and are logically attributable to it, with nothing to suggest any other explanation for her condition, and there is no evidence, certainly no substantial evidence, to deny the causal connection. Min-ark Pallet Co. v. Lindsey, 58 Ark. App. 309, 315, 950 S.W.2d 468 (1997), citing Hall v. Pittman Constr. Co., 235 Ark. 104, 357 S.W.2d 263.

The claimant's complaints remain consistent. The claimant was not taking a muscle relaxer or pain reliever prior to April 17, 2009, but has required the

use of such medications regularly since that time. The claimant had a diagnosis of degenerative disc disease based upon an MRI. This pre-existing condition was asymptomatic prior to the work-related incident, and the claimant was able to do her physically demanding job. However, after the incident, the claimant became symptomatic and unable to do her job. To repeat, these degenerative changes were asymptomatic before the accident. At the time of the accident and in the days following, the claimant developed symptoms in her back, legs and, not too much later, in her upper back and neck. The Supreme Court's analysis in Estridge v. Waste Management, 343 Ark. 276, 281, 33 S.W.3d 167 (2000) applies exactly to the current facts:

An accidental injury is defined as caused by a specific incident and is identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). For an accidental injury, it is not necessary that the claimant prove that the injury is the major cause of the disability or need for treatment. While it is undisputed that appellant has degenerative disease, the accidental injury at work either caused or precipitated the need for medication and surgery - that is clear.

The Estridge claimant had objective findings of lumbar problems, for which surgery was performed, in which it was discovered that the claimant did not have herniated discs but did have degenerative problems. The

Court stated that therefore, "a causal connection did exist between the lifting at work and the findings at surgery."

The current claimant was asymptomatic until the accident, at which time diagnostic treatment was rendered which discovered degenerative conditions in her thoracic spine. Absent the work-related accident, the claimant's thoracic degenerative condition would not be symptomatic. Absent the work-related accident, the claimant's back and legs would have remained asymptomatic. The accidental injury at work either caused or precipitated the need for medication and treatment. That is clear. Supra.

### 3. REASONABLE AND NECESSARY MEDICAL TREATMENT

Again, I write to clarify that the claimant has proven that the physical therapy and TENS unit prescribed by Dr. Bicak is reasonable and necessary treatment to which she is entitled and for which the respondents are responsible to now provide. I also find that further conservative treatment recommended by Dr. Wulz on October 19, 2009, including prescriptions for pain relievers and muscle relaxers, intramuscular steroid injection, and a referral to Dr. Musick for evaluation, are also reasonable and necessary treatment

of the claimant's ongoing compensable injury for which the respondents are now responsible to provide.

4. TEMPORARY TOTAL DISABILITY

The claimant was placed on light duty on April 23 and again on April 28. The CNA record and her testimony showed that the claimant worked up to April 27. There is no evidence that she worked after that date. The claimant was taken off work completely on April 29 by Dr. Bicak. Dr. Raben released the claimant on July 21, 2009, at her request, despite her need for physical therapy, medications and a TENS unit. In October, the claimant sought treatment in the emergency room. Certainly, the claimant was totally incapacitated from earning wages from April 28, 2009 until July 21, 2009. I also find that the claimant was totally incapacitated from July 21, 2009 to a date yet to be determined, because the claimant was released despite no change in her condition or her ability to work. I also find that the claimant remains within her healing period, because there is treatment prescribed and recommended for her to improve her condition, which she has not received. The claimant's symptoms continued from the date of the injury through the date of the hearing. I find that the claimant should receive

temporary total disability benefits from July 22, 2009 to a date yet to be determined, in addition to the benefits awarded in the majority opinion.

After my de novo review of the entire record, I concur with the majority opinion in the findings that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her low back, and that all the treatment of record was reasonable and necessary, including the TENS unit and physical therapy recommended by Dr. Raben. I also concur that the claimant is entitled to temporary total disability benefits from April 28, 2009 to July 22, 2009. I must respectfully dissent from the majority opinion, because I find that the claimant is also entitled to temporary total disability benefits from July 22, 2009 to a date yet to be determined.

For the foregoing reasons, I concur, in part, but must respectfully dissent, in part, from the majority opinion.

---

PHILIP A. HOOD, Commissioner