

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F712647

LORI NOWAK, EMPLOYEE	CLAIMANT
DOLLAR TREE STORES, INC., EMPLOYER	RESPONDENT NO. 1
INDEMNITY INSURANCE OF NORTH AMERICA/SRS, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
GRAND DESIGNS, EMPLOYER	RESPONDENT NO. 2
FARMERS INSURANCE EXCHANGE, INSURANCE CARRIER/TPA	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 16, 2010

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

Claimant represented by the HONORABLE ZAN DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE JASON LEE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

## OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed April 2, 2010. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including November 11, 2007.
3. The claimant sustained a compensable back injury on said date.
4. The claimant's temporary total disability rate is \$426.00 and \$347.00 for permanent partial disability.
5. The claimant had previously worked for employer-respondent no. 2, on a part-time and/or seasonal basis until September, 2008.
6. The claimant was an employee of employer-respondent no. 2.
7. The evidence demonstrates that the claimant suffered neither a new injury/aggravation or recurrence injury after her admittedly compensable injury of November 11, 2007. Instead, the evidence shows that the claimant has suffered a continuance of her original injury of November 11, 2007.
8. The claimant proved her entitlement to temporary total disability for her back from September 19, 2008, until a date yet to be determined.
9. The claimant proved by a preponderance of the evidence her entitlement to additional medical treatment, from Dr. Chakales, her treating physician, in the form of an MRI and EMG studies.
10. The issue of an anatomical impairment rating is not ripe for litigation at this time.
11. All issues not litigated herein are reserved under the Act.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the April 2, 2010 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

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.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority's findings that the claimant is entitled to additional medical treatment. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

The claimant was working for the respondent employer as a manager. On November 11, 2007, she sustained an admittedly compensable injury to her low back. The claimant went to a chiropractor who requested an MRI. The chiropractor then referred the claimant to

Dr. Zachary Mason. Dr. Mason reviewed the MRI and found that the claimant had a slight disc bulge and degenerative disc disease. Dr. Mason opined that the claimant did not have a surgical problem and recommended that she continue conservative treatment with Dr. Krug, the chiropractor. The claimant was referred to Dr. Brent Sprinkle for pain management. Dr. Sprinkle concluded that the claimant had mild degeneration in her lumbar spine and agreed that the claimant did not need any surgery. Dr. Sprinkle released the claimant to full duty on February 5, 2008.

The claimant requested a change of physician and received one to Dr. Harold Chakales. Dr. Chakales ordered an EMG of the claimant's back and both legs and also gave the claimant some injections.

The claimant returned to Dr. Mason who was of the opinion that the claimant needed another MRI and he set the claimant up for an MRI. The claimant refused to attend the MRI and Dr. Mason released her, stating that he could not treat her if she was not going to be cooperative. The claimant returned to Dr. Chakales for additional treatment.

The evidence demonstrates that the claimant returned to work for Grand Designs in February 2008 and

worked there until September of 2008. She has not worked since that time.

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.

In my opinion, a review of the evidence demonstrates that the claimant cannot prove by a preponderance of the evidence that she is entitled to additional medical treatment. The claimant's first MRI shows that she has only degenerative changes. Dr. Mason reviewed the MRI and stated that it showed the claimant

had degenerative disc disease and a slight disc bulge. Dr. Sprinkle reviewed the MRI and concluded that the claimant had mild degenerative changes and has lumbar degenerative disc disease that was pre-existing. Both doctors have opined that the claimant is not a surgical candidate. However, Dr. Chakales seems to be of the contrary opinion.

My review of the evidence demonstrates that the claimant sustained a temporary aggravation of a pre-existing condition. She has been paid all of the benefits to which she is entitled. The claimant's MRI showed she had pre-existing degenerative disc disease and two doctors have opined that there is no surgical condition for which she could receive treatment.

Simply put, I cannot find, based upon the evidence after conducting a de novo review that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment. Accordingly, for all the reasons set forth herein, I must dissent from the majority's award of benefits.

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KAREN H. MCKINNEY, Commissioner