

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704133

BETH ALLGOOD,
EMPLOYEE

CLAIMANT

ARKANSAS BLUE CROSS & BLUE SHIELD,
EMPLOYER

RESPONDENT

TRAVELERS PROPERTY & CASUALTY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 15, 2011

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

Claimant represented by the HONORABLE KENNETH A. OLSEN,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE PHILLIP
CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed December 7, 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 this claim.
2. The employer/employee/carrier relationship existed on or about March 30, 2007, when the claimant sustained a compensable lumbar spine injury.

3. Based on claimant's average weekly wage, she would be entitled to the maximum compensation rate for 2007.
4. The claimant has reached maximum medical improvement from her compensable injury.
5. The claimant has failed to prove that she is entitled to a permanent impairment rating in connection with her 2007 work injury.
6. The claimant has failed to prove that she is entitled to additional medical benefits at this time.

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

Therefore we affirm and adopt the December 7, 2010 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I find that the claimant is entitled to a permanent impairment rating for her compensable lumbar spine injury and additional medical treatment.

The claimant had a lumbar fusion in 2005. She fell at work on March 30, 2007, on her left side. She experienced worsening lumbar and radiating pain. She was treated on May 2, 2007. She had physical therapy and an MRI, which showed her prior surgery and post-surgical fibrosis on the left, as well as "contact of both exiting nerve roots secondary to bony osteophyte formation."

In the spring of 2008, the claimant was evaluated by Dr. Kravetz for back pain due to her March 2007 injury. He noted she had no significant complaints

after her 2005 surgery until her 2007 injury. He wanted to do a discography to evaluate her for surgical intervention. The discogram was performed on April 16, 2008, which showed internal disc derangement at L2-3, L3-4 and L5-S1.

The claimant returned to Dr. Kravetz on May 13, 2008. He felt that, because all three levels were painful, surgery would not be "particularly successful." He suggested a spinal cord stimulator. He recommended that she return to Dr. Turbeville for evaluation of the stimulator and of maximum medical improvement. He also suggested a second neurosurgical opinion.

The claimant saw Dr. Cathey on September 4, 2008 for an independent medical evaluation. The claimant reported that she had low back pain since 1992, for which she had a fusion in 2005 and some low back pain postoperatively. Her symptoms were aggravated by the work injury in 2007. She developed low back pain with radiation into her left leg. Prior to her fusion, she had left leg pain as well. Dr. Cathey also noted that the claimant had lost 80 pounds after gastric bypass surgery. He felt that her pain was secondary to a musculoskeletal injury which aggravated her pre-existing degenerative and operative changes. He stated

that she had reached maximum medical improvement of her 2007 injury. He stated that her symptoms were related to the alteration of her lumbar biomechanics and the degenerative changes in her spine. She was not a candidate for spinal surgery. Likewise, the spinal cord stimulator was not indicated. He issued a 12% impairment rating for her 2005 fusion, but none for her 2007 injury. He stated that she could return to work as she was able. He cautioned her about long term use of narcotic analgesics for "what is clearly a benign process." She was to follow up with her primary care physician for medical management of her chronic low back pain, as well as aggressive physical therapy and continued exercise and weight loss.

The claimant was seen by Dr. Mocek on October 23, 2008. He assessed PLS lumbar syndrome, lumbar radiculopathy, epidural fibrosis lumbar, and lumbar spondylosis. He recommended lumbar facet joint injections on the left side for her arthritis. If she had relief with the injections, he planned a left radiofrequency procedure. For her left hip and leg pain, he recommended consideration of the spinal cord stimulator.

On August 17, 2009, Dr. Mocek performed a myelogram. On lateral view there was evidence of moderate canal narrowing posterior to the L5-S1 disc. There was also evidence of disc degeneration with collapse at L5-S1. Dr. Mocek's impression was severe degenerative disc disease at L5-S1.

Dr. Seale performed an independent medical evaluation on December 1, 2009. She had low back pain and left buttock and leg pain as the result of a work injury on March 30, 2007. She currently had low back pain and right buttock and leg pain. The right sided pain began in October, after the myelogram. She continued to have left-sided pain as well. She had lost another 40 pounds. On exam of the claimant's lumbar spine, Dr. Seale noted severe lumbosacral spasms. Dr. Seale's assessment was a new onset right lower extremity radiculopathy in an S1 distribution starting in October, with normal myelogram in August 2008, chronic low back pain and left leg pain status post L4-5 fusion with normal myelogram, and chronic degenerative disc disease at L3-4 and L5-S1, with positive discograms at those levels. He wanted to review her CT myelogram films. He felt that her main complaint of right leg pain was not directly due to her work injury, "and she agrees with

this." He intended to review the CT myelogram and, if indicated, he would place her at maximum medical improvement and release her from the workers' compensation aspect of her treatment. He would then begin treating her October-onset symptoms. He did not plan to issue another impairment rating.

On December 9, 2009, Dr. Seale updated his report, after reviewing the CT myelogram, which showed no significant stenosis. There was mild to moderate bony stenosis bilaterally at L4-5. He did not see a solid fusion. The facets looked open bilaterally at L4-5. There was good bony growth through the cages, there, but it was unclear whether bone was growing into the endplates. He planned a bone scan and repeat CT myelogram. "When she had the previous CT myelogram, she was not having right leg pain at all, so there has been an obvious change." He went on to state that she was at maximum medical improvement for her March 2007 injury. He felt that her current difficulties were related to her 2005 fusion.

The claimant is entitled to additional medical treatment for her compensable injury. When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any

natural consequence that flows from that injury.

Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001). The basic test is whether there is causal connection between the two episodes. *Id.* A causal connection is established when the compensable injury is found to be "a factor" in the resulting need for medical treatment, even though the compensable injury is not the major cause of the disability or need for treatment.

Williams v. L&W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004). A claimant does not have to support a continued need for medical treatment with objective findings. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

Treatment intended to reduce, or enable a claimant to cope with, chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. Sec. 11-9-508. *Billy Chronister v. Lavaca Vault*, Full Commission Opinion filed June 20, 1991 (D704562).

This claim is similar to the claim in *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000), in that the claimant undisputedly suffered a compensable injury and in that there is a dispute as to whether there is a causal connection between the injury and the

medical treatment. As the court in *Estridge* explained, the claimant does not have to prove that the injury is the major cause of the need for treatment in the case of an accidental injury. Ark. Code Ann. § 11-9-102(4)(A)(i). While the claimant does have degenerative problems and a history of lower back pain and surgery, the medical records and the claimant's testimony show that the accidental injury at work on March 30, 2007, when she tripped and fell on her left side, either caused or precipitated the need for diagnostic and pharmaceutical treatment. As in *Estridge*, "that is clear." *Estridge*, 343 Ark. at 282. The medical records and the testimony show that the claimant had fusion surgery in 2005, and that while she had post-operative pain, by the time of her injury, she was not having significant complaints. There are no medical records showing a need for treatment in the time between her surgery and her work-related injury. However, after her fall, she required diagnostic care, physical therapy and pharmaceutical therapy.

Her current symptoms may have a root in her 2005 surgery, but the fact remains that she was doing well in the months prior to her 2007 fall, but afterwards, she was not. The claimant's pain has not

resolved, and she requires continued pain management, due to her work-related injury. I note Dr. Cathey's comment that the "process" was "benign." This is a ridiculous statement, in that, she is obviously in pain and limited in her activities and, therefore, her condition is neither harmless nor favorable.

The claimant is also entitled to an impairment rating and concomitant permanent partial benefits. Table 75 of the Guides to the Evaluation of Permanent Impairment (4th Ed. 1993) 3/113, states that a single-level lumbar spinal fusion without residual signs or symptoms coincides with a 9% impairment to the whole person, while such a fusion with residual symptoms is equal to a 12% impairment. I submit that the claimant sustained a 9% impairment due to her 2005 surgery. I also submit that, at the time of her 2007 fall, which was the major cause of her change from asymptomatic to symptomatic, she sustained an additional 3% permanent impairment due. The 3% is derived from the difference between a fusion without residual symptoms and one with residual symptoms. The claimant is entitled to permanent partial disability benefits based upon that 3%, because her compensable injury caused those residual symptoms.

I would award additional medical treatment and a permanent impairment rating of 12%, 3% of which is caused by the compensable injury.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner