

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G002364

CLEMENCIA CONVERS,
EMPLOYEE

CLAIMANT

GIRL SCOUTS OF NORTHWEST ARKANSAS,
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 8, 2011

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

Claimant represented by the HONORABLE WESLEY A. COTTRELL,
Attorney at Law, Rogers, Arkansas.

Respondent represented by the HONORABLE PHILLIP CUFFMAN,
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 March 14, 2011. The administrative law judge found that the claimant did not prove there was a causal relationship between the claimant's compensable injury and the diagnosis of temporomandibular joint dysfunction (TMJ). After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion.

The Full Commission finds that the claimant proved that the diagnosis of TMJ was caused by her compensable injury.

I. HISTORY

The parties stipulated that Clemencia Convers, now age 56, sustained a compensable injury to her neck on May 8, 2008. The record indicates that the claimant was involved in a work-related motor vehicle accident on that date. The claimant testified on direct examination:

Q. And at the time of that motor vehicle accident, can you tell me what problems you were having immediately following that accident regarding your neck or mouth or head.

A. I didn't feel my legs at the moment because I tried to get out of the car and then I - the police officer asked me if I needed an ambulance and I said, "Yes." And excruciating headache. That's about it, you know, and the [left] shoulder.

The claimant was treated at Northwest Medical Center Bentonville on May 8, 2008. An initial assessment form indicated that there was no head trauma or loss of consciousness. It was subsequently noted on May 8, 2008, "Pain is located in the head, posterior neck. Reports a minor injury [and] has full range of motion above and below injury site, to the head [and] neck." A CT of the claimant's cervical spine was done on May 8, 2008, with the

following findings: "There is no evidence of fracture, dislocation or other evidence of an acute traumatic injury. IMPRESSION: Negative." The claimant was diagnosed with Acute Cervical Strain and was discharged home on May 8, 2008.

Dr. Garland M. Thorn, Jr. saw the claimant on June 2, 2008: "The onset was 1 week(s) ago. Context: MVA. She is also experiencing - headache - jaw pain - neck pain - paresthesias....Comments: crepittance in TMJ." Dr. Thorn's assessment was acute neck pain and heachache/cephalgia.

The claimant consulted with Dr. Michael W. Morse on June 3, 2008:

Clemencia Convers is a 63-year-old Latin female who I have been asked to see by Dr. Gary Thorn for headaches. She has had migraines in the past. She was involved in a motor vehicle accident on 05/08/08. She was the restrained driver of a Honda Accord that was hit without warning from the rear by a small vehicle, and that vehicle was then rear-ended by another vehicle and, again, pushed into her. There were no secondary collisions within her vehicle. She was not knocked unconscious. Her left shoulder was bruised from the seatbelt....At the time of the impact, she had numbness in her legs that lasted about 30 minutes, but that resolved.

She has a constant generalized headache in her occiput that is unrelated to her past history of migraines. She has no blindness or diplopia.

She does have symptoms of TMJ and it is difficult for her to chew. She has to cut her food in very small pieces. She states her jaw pops and hurts.

Her memory is not as good as it was before the accident. She has had to miss several days of work because she does not feel well....

She does have decreased range of motion of her cervical spine and some cervical paraspinal tenderness and spasm.

Dr. Morse's impression was "1. This patient has a whiplash type injury with primarily neck pain. She does relate a headache, but it seems primarily in her upper cervical spine. I would like to check an MRI of her cervical spine to make sure there is no underlying pathology....2. History of migraines. These seem to be under relatively good control."

An MRI of the claimant's cervical spine was performed on June 13, 2008: "There is a small amount of spondylitic change on the left at C6-7 causing mild neural exit foraminal narrowing. There is no disc herniation. The remainder of the study is normal."

The claimant returned to Dr. Morse on June 23, 2008:

I am seeing her for injuries incurred in a MVA that was apparently related to an on-the-job injury.
MRI of her cervical spine shows minimal spondylitic changes; therefore, her injury is a whiplash-type injury.

I have recommended that she see her chiropractor, The Roma Lisa Gray, for treatment of this. Her TMJ is so bad that she has difficulty eating. This is related to the MVA. I want her to see Dr. Scott Bolding, a maxillofacial surgeon. She also has headaches from the injury. She is not really a medicine taker, so I would like to wait and see how her TMJ and how her neck pain respond to therapy. I will see her back on a p.r.n. basis.

Dr. Scott Bolding, an oral maxillofacial surgeon, saw the claimant on August 25, 2008:

Pt referred by Dr. Morse for TMJ consult. Pt was in car accident on May 8, 2008 cannot remember hitting anything but after accident her jaws have been hurting, popping, catching, and locks at times. Having trouble eating and has headaches at least 2 to 3 times a week and ear is hurting on the right side....

Dr. Bolding diagnosed "Arthralgia of jaw."

The claimant followed up with Dr. Bolding on May 7, 2009:

Pt here for MRI review. She remains with severe pain and grinding noises in her left joint. Unable to eat, sharp headaches and extreme difficulty functioning. She cannot have a conversation without holding her jaw. She had a history of stomach cancer and she is concerned because she cannot chew her food. This all began with her automobile accident 1 year ago.

Dr. Bolding's MRI evaluation revealed the following examination findings with regard to the claimant's Left Mandibular condyle: "Anterior lipping," "Bone spur of the

condyle," "Bone to bone contact condyle to fossa," and "Flat condylar head," "Left Anterior Disc Displacement," and "Poor marrow signal of the condyle."

Dr. Bolding recommended the following: "Due to lack of occlusal support, I have recommended that she see Dr. Mike Carter to evaluate her dentures and plan 4 maxillary implant dentures and 4 mandibular implant dentures. We will plan left TMJ arthroplasty with planning on placing the implants at the time of the TMJ surgery. In addition, I will discuss with Mike about the possibility of making this an (sic) cross arch stabilization immediate provisionalization at the time of surgery. Dr. Bolding Surgical TX plan. 1. Left TMJ Arthroplasty with NWA. 2. 4 Maxillary Implants. 3. 4 Mandibular Implants."

Dr. Bolding wrote a Pre-Determination Letter to the respondent-carrier on May 7, 2009:

I am requesting an approval for the proposed treatment plan on my patient, Clemencia Convers, who has been experiencing problems with her temporomandibular joints after a motor vehicle accident.

Clemencia is a 54 year old female who was involved in a motor vehicle accident on 05/08/2008. She was driving the company's vehicle. She does not recall the details of the accident. Since the accident, she has been having severe jaw pain,

popping, grinding noises in her left joint. She is unable to eat, has sharp headaches and has extreme difficulty functioning. She takes Advil for pain. She has to hold her lower jaw in order to talk. Her occlusal bite is off due to the blow to the face. She is a denture wearer and is unable to keep [her] dentures in the appropriate place. Due to the lack of occlusal support, I feel it would be to her benefit to have dental implants. I have recommended for Clemencia to see Dr. Michael Carter, a general dentist for an evaluation for restorative work next week. She is scheduled to see Dr. Carter on May 20, 2009 at 4:30 pm. Please note Clemencia has a history of stomach cancer. She currently has problems chewing due to improper fit of dentures and problems with occasional jaw locking.

Her maximum incisal opening is 48 mm. CT scan of MRI done in the office on May 7, 2009 shows anterior lipping of left mandibular condyle with bone spur. The condylar head is flat due to the bone to bone contact of the left mandibular condyle to fossa. There is poor marrow signal of the condyle. The left anterior disc is displaced. MRI of the TMJ shows minimal thinning of the posterior band on the right temporomandibular joint. There is severe internal derangement of the left temporomandibular joint and degenerative changes involving the left mandibular condyle and eminence. See enclosed MRI report for further review.

My evaluation revealed the following diagnosis:
524.3 Articular Disc Disorder (reducing or non-reducing)
524.64 Temporomandibular joint sounds on opening and/or closing the jaw
524.62 Arthralgia of temporomandibular joint

This condition will require surgical intervention for correction....We anticipate to schedule surgery May 27th or June 3rd. A prior approval for

the proposed treatment plan is greatly appreciative (sic)....

On November 25, 2009, Dr. Bolding filled out a questionnaire provided him by the claimant's attorney. Dr. Bolding checked "Yes" after the statement, "1. It is my opinion that Ms. Convers' mouth injury (TMJ) was due to her accident." However, Dr. Bolding also wrote "Possibly." Dr. Bolding wrote "not sure" following the statement, "2. It is my opinion that her mouth injury is the major cause (more than 50%) of her need for medical treatment." Dr. Bolding wrote that the objective medical findings supporting his medical opinion were "based on clinical findings & history." Dr. Bolding checked "Yes" after the following statement: "4. It is my opinion to a reasonable degree of medical certainty that Ms. Convers' injury was related to her accident; is the major cause of her need for medical treatment; and is supported by objective findings."

The claimant's testimony indicated that the respondents had paid for all of the claimant's medical treatment except for chiropractic treatment provided by Dr. Gray and the surgery proposed by Dr. Bolding. The parties stipulated that there was "no dispute over medical services for the

claimant's compensable neck injury, except for the services of some unknown chiropractor."

A pre-hearing order was filed on May 5, 2010. The claimant contended that she sustained an injury which arose out of and in the course of her employment with the respondent-employer. The claimant contended that she was entitled to temporary total disability benefits, permanent partial disability, reasonably necessary medical treatment, and fees for legal services.

The respondents contended that "any chiropractic treatment received by the claimant was unauthorized and that the claimed TMJ is not related to her injury."

The parties agreed to litigate the following issues:

1. Whether the claimant also sustained a compensable injury in the form of TMJ, in the employment-related accident on May 8, 2008.
2. The claimant's entitlement to medical services for her TMJ.
3. The claimant's entitlement to the chiropractic services for her compensable neck injury by some unknown chiropractor.

The parties deposed Dr. Bolding on July 13, 2010. Dr. Bolding agreed with the respondents' attorney that he first examined the claimant on August 25, 2008, and Dr. Bolding testified regarding the objective findings he noted:

A. Well, my examination report is showing me that she's got a lower denture....She's got an upper denture and a lower partial denture....She has no teeth on the upper. She has, it looks like, three teeth on the lower remaining....

Q. Do you find in your practice that the wearing of dentures as extensive as this lady's would be something that in and of itself could lead to jaw problems and complaints of TMJ?

A. It possibly could. And then, you know, obviously, it can even be exacerbated by any type of injury as well....

Q. Now, tell me what the MRI disclosed.

A. She had significant anterior lipping of her left condyle; she had a bone spur of her left condyle, significant disc displacement, a poor marrow signal of the bone, essentially significant degeneration of that left condyle....

Q. Now, were any of these several things that you mentioned characteristic of TMJ?

A. Well, it's characteristic of degenerative arthritis, disc displacement. I mean, this is a pretty classic problem that she's got. Now, the underlying factor also is that she does not have good - a good bite. I mean, she's got poor dentures - or got bone loss with - with instability from a denture standpoint. So we have no way to protect that damaged condyle. So that's why we had also recommended to her to get implant over dentures to try to give us some support so that we wouldn't overload that joint before we corrected it....

Q. Did you say that, when I asked you if - if the various findings, the lipping, the bone spur and so forth, were characteristic of TMJ, did you say that - that it really is a degenerative condition she has?

A. Well, she - yes. Definitely degenerative.

Q. Well, would that, in your estimation, be something that would have been apt to have predated any auto accident that she would have been involved in, or this particular accident she mentioned?

A. Well, it's possible. I mean, you know, it's - it's possible that she could have some underlying jaw joint issues going on before the accident, but they were subclinical, so she really didn't have any symptoms whatsoever. But it's like someone that has a degenerative arthritis in their hip. Until they maybe play a basketball game or play tennis or step off the sidewalk incorrectly, it really - they were functioning because they had adapted, but then once they've done something to create the inflammatory process or exacerbated, it makes it - it creates the symptoms that has. So, you know, truthfully, she - she definitely had loss of teeth prior to the accident. She's had dentures prior to the accident. You know, I don't have any report of any TMJ issues prior to the accident, at least in my records.

Q. You're relying on that she tells you about the onset of her problems.

A. That is correct....We would assume if she did have TMJ problems prior to the accident, that she had problems or issues going on there. But, obviously, any - any potential accident would further exacerbate those problems. So without the - without - you know, and I know where you're at from a determination standpoint, and I don't know the answer to that. All I can tell you is based on what we've seen once we saw her.

Q. Now, is if of any significance - would it be of any significance if, in fact, as she, apparently, related to you at the time of that first visit in August of '08, that she didn't hit

anything with her face, head, jaw on the inside of the vehicle when she was struck?

A. No. That would not at all. And the literature documents that fairly well. The jaw joint is not - you know, it's essentially, a loose bone attached by soft tissues to the skull. So any type of significant blow that moves the body or the head and neck area where - there doesn't have to be a direct blow on the jaw, but just the - the significant force of a - a sudden stop or a sudden jolt a different way can stretch the ligaments or stretch the - the tissues within the joint to create the inflammatory process that she, ultimately, developed the symptoms on. So I see that very commonly....

After a hearing, an administrative law judge filed an opinion on March 14, 2011. The ALJ found that the claimant failed to prove that services provided by Dr. Gray were reasonably necessary. The claimant does not appeal that finding. The ALJ found that the claimant failed to prove she sustained a compensable injury to her jaw in the form of TMJ.

The claimant appeals to the Full Commission.

II. ADJUDICATION

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. *McDonald Equip. Co. v. Turner*, 26 Ark. App. 264, 766 S.W.2d 936 (1989). The basic test is whether there

is a causal connection between the two episodes. *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The determination of whether a causal connection exists is a question of fact for the Commission. *Carter v. Flintrol, Inc.*, 19 Ark. App. 317, 720 S.W.2d 337 (1986). It is not, however, essential that the causal relationship between the accident and disability be established by medical evidence. *Gerber Prods. v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). A finding of causation in a workers' compensation case does not need to be expressed in terms of reasonable medical certainty when there is supplemental evidence supporting the causal connection. *Heptinstall v. Asplundh Tree Expert Co.*, 84 Ark. App. 215, 137 S.W.3d 421 (2003).

An administrative law judge found in the present matter that the claimant did not prove she sustained a compensable injury in the form of TMJ. The administrative law judge specifically found, "she has failed to prove by the greater weight of the credible evidence the likely existence of any causal relationship between her TMJ and the employment-related motor vehicle accident of May 8, 2008, either directly or indirectly. Therefore, the claimant would not

be entitled to any benefits under the Act for her TMJ." The Full Commission does not affirm this finding.

The parties stipulated that the claimant sustained a compensable injury to her neck on May 8, 2008. The claimant was diagnosed with Acute Cervical Strain following the compensable injury. Dr. Thorn noted on June 2, 2008 that the claimant was suffering from pain in her jaw, and that the context was "MVA." Dr. Morse reported on June 3, 2008 that the claimant was suffering from symptoms of temporomandibular joint dysfunction (TMJ). Dr. Morse noted on June 23, 2008, "Her TMJ is so bad that she has difficulty eating. This is related to the MVA." Dr. Morse referred the claimant to Dr. Bolding, an oral maxillofacial surgeon. Dr. Bolding noted on August 25, 2008, "Pt was in car accident on May 8, 2008 cannot remember hitting anything but after accident her jaws have been hurting, popping, catching, and locks at times." Dr. Bolding diagnosed "Arthralgia of jaw." Dr. Bolding reported on May 7, 2009 that the claimant's TMJ symptoms "began with her automobile accident 1 year ago." Dr. Bolding planned to refer the claimant to Dr. Carter for oral surgery. Dr. Bolding informed the respondent-carrier on May 7, 2009 that the

claimant "has been experiencing problems with her temporomandibular joints after a motor vehicle accident."

The Full Commission recognizes Dr. Bolding's November 29, 2009 handwritten statement on the form provided by the claimant's attorney, on which form Dr. Bolding indicated that the claimant's TMJ symptoms were "Possibly" due to the motor vehicle accident. However, Dr. Bolding also explicitly checked "Yes" following the statement on the form, "4. It is my opinion to a reasonable degree of medical certainty that Ms. Convers' injury was related to her accident; is the major cause of her need for medical treatment; and is supported by objective findings." The record indicates that Dr. Bolding, an authorized treating physician, believed that the claimant's complaints were related to the compensable motor vehicle accident. Additionally,

Dr. Bolding's deposition testimony established a causal connection between the compensable motor vehicle accident and the claimant's TMJ complaints. Dr. Bolding credibly testified that even if the claimant had a pre-existing condition in her jaw, such a condition was "subclinical" and that the claimant did not have symptoms until after the

compensable motor vehicle accident. Dr. Bolding testified, "any potential accident would further exacerbate those problems." Dr. Bolding also testified that an absence of direct trauma to the claimant's face, head, or jaw was not medically significant. We reiterate Dr. Bolding's testimony, "The jaw joint is not - you know, it's essentially, a loose bone attached by soft tissues to the skull. So any type of significant blow that moves the body or the head and neck area where - there doesn't have to be a direct blow on the jaw, but just the - the significant force of a - a sudden stop or a sudden jolt a different way can stretch the ligaments or stretch the - the tissues within the joint to create the inflammatory process that she, ultimately, developed the symptoms on."

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved her temporomandibular joint dysfunction was a natural consequence flowing from the May 8, 2008 compensable injury. The Full Commission finds that there was a causal connection between the compensable injury and Dr. Bolding's treatment recommendations. We find that the treatment recommendations of Dr. Bolding, including all of his recommendations for

oral surgery, were reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a) (Repl. 2002). The administrative law judge's decision is reversed. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's award of benefits for the claimant's TMJ problems. In my opinion, the claimant has failed to meet her burden of proof. My review of the evidence demonstrates that the claimant's TMJ problems are not related to her motor vehicle accident.

The claimant testified that immediately following the accident, she could not feel her legs, that she had an excruciating headache, and some type of difficulty with her left shoulder. She made no mention of experiencing any

difficulties or symptoms involving her jaw. Although the claimant stated that her difficulties with her jaw initially began after the motor vehicle accident, she cannot state when these symptoms actually began. She also testified that, at some time after the accident, she also began having problems keeping her dentures in place.

In the initial emergency room medical records of May 8, 2008, there is no mention of any complaints involving the claimant's jaw. The first mention of any jaw complaints appears in Dr. Thorns' report of June 2, 2008. This was almost a month after the claimant's motor vehicle accident. In this report, Dr. Thorn noted not only complaints of headache and neck pain, but also jaw pain and paresthesias or numbness. There is no indication as to the location or area of this paresthesias. Even though Dr. Thorn stated that these complaints were in the "context" of a motor vehicle accident, he expressly described the onset of these symptoms as occurring one week prior to the June 2, 2008 visit.

In his initial report of June 3, 2008, Dr. Michael Morse stated:

She (the claimant) does have symptoms of TMJ and it is difficult for her to chew.

She has to cut her food in very small pieces. She states her jaw pops and hurts.

However, Dr. Morse gave no indication as to when these difficulties reportedly began. In his subsequent note of June 23, 2008, Dr. Morse stated:

Her TMJ is so bad that she has difficulty eating. This is related to the MVA. I want her to see Dr. Scott Bolding, a maxillofacial surgeon.

However, Dr. Morse gave no explanation whatsoever why he reached this conclusion.

In his report of August 25, 2008, Dr. Scott Bolding recorded the following history:

Patient referred by Dr. Morse for TMJ consult. Patient was in car accident on May 8, 2008, cannot remember hitting anything but after accident her jaws have been hurting, popping, catching, and locking at times.

Dr. Bolding made an initial diagnoses of "arthralgia" of the claimant's jaw. In his deposition, Dr. Bolding stated that a CT scan, which was performed on the claimant's jaw on May 8, 2008, showed significant resorption of the bone of the claimant's upper and lower jaw that would result in significant mobility of her dentures every time she chewed or bit together. Dr. Bolding further indicated

that the mobility of the claimant's dentures could, in and of itself, produce TMJ difficulties.

In his note dated May 7, 2009, Dr. Bolding stated:

Patient here for MRI review. She remains with severe pain and grinding noises in her left joint. Unable to eat, sharp headaches, and extreme difficulty functioning. She cannot have a conversation without holding her jaw. She had a history of stomach cancer and she is concerned because she cannot chew her food. This all began with her automobile accident one year ago.

Dr. Bolding indicated that his review of the claimant's MRI showed anterior lipping of the left mandibular condyle, a bone spur on the left mandibular condyle, bone to bone contact between the left mandibular condyle and the fossa and a flat left condylar head. Dr. Bolding stated in his deposition that these findings were characteristic of degenerative arthritis and a displacement of the left transmandibular joint disc. On May 7, 2009, Dr. Bolding again noted that the claimant had ill-fitting or unstable dentures. The claimant needed a replacement of her dentures in conjunction with a number of single teeth implants.

In a separate report, also dated May 7, 2009, Dr. Bolding requested authorization by the respondent carrier of

his proposed treatment program. In this report, Dr. Bolding attempted to explain the relationship between the claimant's employment-related motor vehicle accident of May 8, 2008, and her need for the purposed treatment. Dr. Bolding stated:

Her occlusal bite is off due to the blow to her face. She is a denture wearer and is unable to keep her dentures in the appropriate place. Due to the lack of occlusal support, I feel it would be to her benefit to have dental implants. (Emphasis mine)

This is clearly a mis-statement of the facts. The claimant's testimony and her medical records indicate that the claimant did not experience a blow to her face or jaw in the May 8, 2008 accident.

The multiple choice report that Dr. Bolding completed, which had been provided to him by someone, presumably claimant's counsel, is also evidence that the claimant's TMJ is not related to her motor vehicle accident. The first question asked for a yes or no response and asked whether the claimant's TMJ was "due to her accident." In his response to this question, Dr. Bolding checked the yes blank, but then qualified it by writing "possibly" next to the yes response. The second question inquired whether the

claimant's TMJ was the major cause of her need for medical treatment, to which Dr. Bolding responded "not sure". The next question requested the "objective findings" that supported Dr. Bolding's two previous medical opinions. In this response, Dr. Bolding wrote that his opinions were based on the clinical findings and the claimant's history. I note that a medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion, January 22, 1996 (Claim No. E417617). No matter how sincere a claimant's beliefs are that a medical problem is related to a compensable injury, such belief is not sufficient to meet the claimant's burden of proof. Killenberger v. Big D Liquor, Full Commission Opinion August 29, 1995 (Claim Nos. E408248 & E408249). The fourth question had essentially three parts, but only provided for a single yes answer. This question inquired if it were Dr. Bolding's opinion, within a reasonable period of medical certainty, that the claimant's TMJ was related to her accident, was the major cause of her need for medical treatment, and was supported by objective findings. In this

response to this question, Dr. Bolding checked the yes blank. However, in his deposition, Dr. Bolding explained why he marked the "yes" response:

Well, the answer is objective findings, yes. What-- you know, that--from my-- from my assessment from her objective findings, from her x-ray, her clinical findings, definitely she needs treatment, you know. And from a reasonable degree of medical certainty, that accident could definitely have created this injury based on the objective findings.

Further, Dr. Bolding's deposition was replete with words such as "could" and "possible" in describing the potential relationship between the claimant's TMJ and her motor vehicle accident of May 8, 2008. Medical opinions based upon "could", "may", "possibly", and "can" lack the definiteness required to satisfy Ark. Code Ann. §11-9-102(16) (B), which requires that medical opinions be stated within a reasonable degree of medical certainty. Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000). In Frances, the Arkansas Supreme Court expressly overruled a prior Court of Appeals decision to the extent that the Court of Appeals had held that such indefinite terms were sufficient to meet the requirements of Ark. Code Ann. §11-9-102(16) (B). The Arkansas Supreme Court held that

a doctor's opinion that an accident "could" produce a lumbar disc injury was insufficient to satisfy the standard of within a reasonable degree of medical certainty. Moreover, in Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000), the Arkansas Supreme Court held that a medical opinion based upon the theoretical possibility of a causal connection did not meet the standard of proof. In Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001), the Arkansas Supreme Court held that in order for a medical opinion regarding causation to "pass muster" such opinion must be more than speculation, and go beyond possibilities.

It is of note that Dr. Bolding expressed the opinion that it was also possible that the claimant's TMJ was simply the result of repeated wear and tear on the joint by he ill-fitting dentures.

The claimant testified that her dentures became loose and ill-fitting after the accident. Her denture had been held in place by two or three gold studs that had been placed in the roots of her remaining teeth to hold her lower dentures in place. This procedure had been done by a dentist in Colombia. These studs had fallen off but the

claimant did not indicate whether this was before or after the accident. She stated that she had unsuccessfully tried to sell the gold from these studs and apparently had subsequently discarded them. Dr. Bolding made no mention of this in his records.

After I consider the fact the claimant did not complain of jaw pain until one month after the accident; the fact the claimant did not hit her head or jaw during the accident; the fact claimant's dentures could have produced her TMJ problems; the fact the claimant's MRI findings were characteristic of degenerative arthritis; and the fact Dr. Bolding's opinion on causation did not meet the requirement of Ark. Code Ann. § 11-9-102(16)(B), but was based on an incorrect history provided to him by the claimant, I cannot find the claimant met her burden of proof. Accordingly, I find that the claimant's TMJ problems are not related to her motor vehicle accident. Therefore, I must dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER