

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407353

DIRK LAWHON,
EMPLOYEE

CLAIMANT

GEORGIA-PACIFIC CORPORATION,
EMPLOYER

RESPONDENT NO. 1

SEDGWICK CLAIMS MANAGEMENT SERVICES,
TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND

RESPONDENT NO. 2

OPINION FILED JULY 8, 2011

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

Claimant represented by the HONORABLE MICHAEL W. BOYD,
Attorney at Law, Magnolia, Arkansas.

Respondents No. 1 represented by the HONORABLE SUSAN M.
FOWLER, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY L.
KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed February 15, 2011. The administrative law
judge found that the claimant proved he was entitled to
additional medical treatment and additional temporary total
disability benefits. After reviewing the entire record de

novo, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained compensable injuries to his neck, cervical spine, and thoracic spine. The claimant proved that the medical treatment of record was reasonably necessary in connection with his compensable injuries. The claimant proved that he was entitled to temporary total disability benefits from January 16, 2008 until November 4, 2010.

I. HISTORY

The record indicates that Dirk Lawhon, now age 46, became employed with Georgia-Pacific in September 1989. The parties stipulated that the claimant sustained a compensable injury to his thoracic spine on June 30, 2004. The claimant testified that while pushing bark into a feeder using a heavy metal rod, "I just felt like I had either tore something or pulled a muscle or something. Something just - it hurt real bad right here in the base of my neck and in my shoulder blades[.]"

The claimant received medical treatment on July 2, 2004 and was assessed with back pain. The claimant was assessed with back strain on July 3, 2004. A Georgia-Pacific form

dated July 3, 2004 indicated that the claimant was "temporarily unable to return to work," estimated return to work date "1-2 days." Dr. Edward A. Gresham stated on July 13, 2004, "I did a T-spine x-ray and it shows no abnormalities. He is tender in the upper T-spine area....Since he has had no improvement with physical therapy, no improvement with anti-inflammatories and it has been two to three weeks I have recommended orthopedic evaluation."

An x-ray of the claimant's cervical spine was done on July 15, 2004:

No acute fracture or subluxation is identified. The cervical disc spaces appear preserved. The prevertebral soft tissues and odontoid are within normal limits. Incidentally noted is a small amount of calcification in the anterior spinous ligament at the C6-7 level.
IMPRESSION: Unremarkable cervical spine.

A cervical spine MRI on July 15, 2004 showed the following:

No acute fracture, subluxation, spinal cord abnormality, focal disc herniation, or spinal or foraminal stenosis is identified.
IMPRESSION: Normal cervical spine.

A thoracic spine MRI on July 15, 2004 showed the following:

No acute fracture, subluxation, bony destruction, focal disc herniation, or spinal cord abnormality is identified.

IMPRESSION: Normal thoracic spine MRI.

A Functional Capacity Evaluation was done on July 22, 2004, at which time a physical therapist noted, "Patient appears to have moderate muscle spasms in the cervical paraspinals." The physical therapist gave the following recommendations: "The patient reports that he has to use a 30-40 lb rod in a push/pull type of activity vertically at waste (sic) level for hours at a time. This activity would put his physical demand level in the med/heavy category (sic) due to the longjivity (sic) and type of action. It is the recommendation of this therapist that the patient be placed in a work hardening program to strengthen the muscle groups that are necessary to preform (sic) this type of work over a long duration of time."

A physical therapist signed a Georgia-Pacific medical attention form on July 22, 2004 which indicated that the claimant was "Fit for Duty." The medical attention form indicated that a prescription was given for Work Hardening. The claimant was also diagnosed with cervical and thoracic strain. A physical therapist's evaluation on July 26, 2004 indicated that muscle spasms were palpated in the claimant's

cervical spine. Dr. Gresham assessed neck and back pain on August 6, 2004. A physical therapist noted on August 20, 2004 that the claimant had received four weeks of work-hardening therapy for return to work, and that the claimant had met all goals and was ready for return to work.

The record indicates that the claimant informed Dr. Gresham on August 23, 2004 that he was "Ready to RTW - 90% better." Dr. Gresham assessed "back pain improved" and released the claimant to return to regular work effective August 23, 2004. The claimant testified that he returned to work for the respondent-employer, but that he was not physically able to perform all of his work duties.

The claimant returned to Dr. Gresham on May 11, 2005: "Patient is a 40-year-old who continues to have back pain....It is just lateral to the spine and medial to the right scapula. There is no erythema. No atrophy. There is full range of motion....I have recommended if the symptoms continue we ought to get orthopedic evaluation. He has already had MRI. He can use his ibuprofen and return here p.r.n. This was an occupational injury."

Dr. Edward H. Saer evaluated the claimant on September 29, 2005: "Mr. Lawhon is a 41-year-old, right hand dominant

man who had a work injury on June 30, 2004. He was using a heavy metal rod to push some bark down through a hole. He was doing this repetitively when he noted pain in his neck and upper back. He has had continued symptoms since that time."

Dr. Saer's impression was "Probable strain/sprain....I do not think he is going to need any surgical treatment. The patient, however, wants to try to get the films for us to review because he does not feel comfortable with the radiologist's interpretation. It sounds like he has had primarily a soft tissue injury that is not going to be amenable to any surgical treatment anyway. PLAN: I would like him to see Dr. Sprinkle for further evaluation and management in any event. He may continue his current job duties."

Dr. Saer informed Dr. Gresham on September 29, 2005, "I think he has probably had a soft tissue injury. I do not see anything that makes me suspect that he is going to need any surgical treatment for this. I am going to ask him to see Dr. Sprinkle for his evaluation and further recommendations on how to best manage this non-operatively."

Dr. Brent Sprinkle began treating the claimant on November 16, 2005. Dr. Sprinkle noted that the claimant complained of cervical and thoracic pain which "has been going on since June of 2004." Dr. Sprinkle's impression was "1. Thoracic somatic dysfunction. 2. Thoracic myofascial pain syndrome. 3. Thoracic pain....I did OMT to the thoracic spine. Post manipulation his pain is almost completely resolved. He has not felt this good in a year-and-a-half. He is very pleased with this result." Dr. Sprinkle returned the claimant to work at full duty and stated, "He may need a repeat manipulation at the followup visit."

Dr. Sprinkle signed a work status report on November 16, 2005 indicating that the claimant "may return to full-duty with no restrictions." Dr. Sprinkle performed a trigger-point injection and OMT on December 8, 2005 and stated "He can work at full duty now." The claimant resumed physical therapy and continued follow-up visits with Dr. Sprinkle. Dr. Sprinkle's impression on February 2, 2006 was "1. Cervical degenerative disc disease. 2. Cervical myofascial pain. 3. Thoracic myofascial pain, improved....He can continue working at full-duty."

Dr. Sprinkle noted on March 17, 2006, "The pain is resolved. The trigger point injections helped the last time. The Lidoderm patches help a little bit." Dr. Sprinkle's impression was "1. Thoracic myofascial pain. 2. Thoracic degenerative disc disease, now resolved. PLAN: 1. I will just see him back as needed. 2. He can continue work at full-duty."

On July 25, 2006, Dr. Sprinkle completed a questionnaire provided by the respondent-carrier. Dr. Sprinkle indicated that the claimant had been released to full-duty work with no restrictions. Dr. Sprinkle opined that the claimant had reached maximum medical improvement on March 17, 2006. Dr. Sprinkle opined that the claimant had not sustained any permanent anatomical impairment and that he had released the claimant from his care.

The claimant followed up with Dr. Sprinkle on March 7, 2007: "I last saw him March 2006. Trigger points and manipulation have helped him. He has had a recurrence of interscapular pain." Dr. Sprinkle's impression was "1. Thoracic degenerative disc disease. 2. Thoracic myofascial pain. 3. Thoracic somatic dysfunction." Dr. Sprinkle's treatment plan included, "Did OMT and trigger point to the

bilateral rhomboids. Post injection and manipulation he is feeling quite a bit better....He can continue working regular duty."

Dr. Sprinkle's impression on July 3, 2007 was "1. Cervical degenerative disc disease. 2. Possible cervical disc herniation." Dr. Sprinkle planned additional diagnostic testing and restricted the claimant to light duty.

Dr. Darin K. Wilbourn provided an Independent Medical Evaluation on October 10, 2007. Dr. Wilbourn's diagnosis was "Central disc protrusions at C5-6 and C6-7 with annular tear at C6-7 with abutment of the left C7 nerve....The injury Mr. Lawhon sustained on June 30, 2004 caused his current symptoms....In my medical opinion, the disc protrusions at C5-6 and C6-7 are the major contributing causes of Mr. Lawhon's current complaints." Dr. Wilbourn recommended a Functional Capacity Evaluation and a series of epidural steroid injections followed by physical therapy. Dr. Wilbourn stated that the claimant could continue light duty.

An MRI of the claimant's cervical spine was performed on October 22, 2007, with the following conclusion:

"Dominant findings are noted at the C6-7 level, with a small central protrusion with associated small central annular rent, resulting in light contouring of the ventral cord. There are also minimal mixed biforaminal protrusions at this level resulting in abutment of the exiting left C7 nerve. Please see report for other pertinent findings." An MRI of the claimant's thoracic spine was also performed on October 22, 2007, with the following conclusion: "Normal MRI of the thoracic spine."

The claimant followed up with Dr. Sprinkle on November 6, 2007: "I last saw him back in July with MRI that was not done until October. He has a small central protrusion at C6-7 and small annular tear possibly. This could be part of the worsening of his current symptoms. I think this is something that has been aggravated by his work." Dr. Sprinkle's impression was "1. Cervical degenerative disc disease. 2. Cervical myofascial pain." Dr. Sprinkle planned additional conservative treatment and stated, "I think we certainly could make an argument for him to be off work or significantly restrict his duties or hours for severe aggravations....He had to work graveyard shift last night so really couldn't potentially do a full graveyard

shift and be awake to be evaluated the same day so it is reasonable for him to be off work for that window of time to come and see me since his symptoms are so aggravated."

Dr. Sprinkle assigned sedentary work restrictions on November 6, 2007. Dr. Robert E. Powers performed a cervical epidural steroid injection on November 12, 2007. Dr. Powers indicated on a Georgia-Pacific form dated November 12, 2007 that the claimant was "temporarily unable to work."

Dr. Sprinkle's impression on November 27, 2007 was "1. Cervical degenerative disc disease. 2. Cervical myofascial pain. 3. Cervical disc herniation at C6-7." Dr. Sprinkle planned conservative treatment and stated "3. Restrict him to 45 pounds lifting and 8 hour shifts." Dr. Brent Walker performed a cervical epidural steroid injection on December 4, 2007. Dr. Powers performed a cervical epidural steroid injection on January 3, 2008.

The claimant agreed on cross-examination that his last day of work for the respondent-employer was January 15, 2008. The claimant testified that he was scheduled to return to Dr. Sprinkle on January 30, 2008. The claimant testified, however, that his appointment was cancelled by a case manager, Royce Duncan. Dr. Gresham noted on February

7, 2008 that the claimant was "still fighting neck pain....W.C. cancelled his appt." Dr. Gresham noted that the claimant had been "off work x 1 month," and Dr. Gresham assessed chronic neck pain.

Royce Duncan, RN, a medical case manager, informed the claimant's attorney on February 20, 2008, "Dirk was recently scheduled for a Functional Capacity Evaluation (FCE) that was ordered by his treating physician, Dr. Brent Sprinkle. Dirk did not attend this appointment. Dr. Sprinkle has requested this FCE to determine Dirk's functional ability to perform his job duties. I would like to speak with you regarding this FCE and a possible date to reschedule the evaluation."

Dr. Gresham saw the claimant on February 25, 2008 and assessed chronic neck pain. Dr. Gresham signed a work excuse advising the claimant to remain off work from February 7, 2008 through March 17, 2008. The record indicates that the claimant treated with Dr. Barry V. Thompson beginning February 28, 2008. Dr. Thompson's assessment included acute neck pain "resulting from an injury 4 years ago....He remains temporarily totally disabled from work from 01/15/08."

On March 5, 2008, the claimant's attorney replied to Royce Duncan's February 20, 2008 correspondence and stated in part, "I have recommended my client not participate in a Functional Capacity Evaluation due to his current health condition."

A labor relations leader for the respondent-employer corresponded with the claimant on March 10, 2008:

On January 4, 2008 we received a letter from your treating physician, Dr. Sprinkle that you were able to return to work with restrictions. On January 12, 2008 you returned to work following the above-noted restrictions. On January 15, 2008 you reported to the Mill Nurse, Veronica Cameron-RN, that you were unable to work, and since that date you have not returned to work. We recently received notes from Dr. Gresham and Dr. Thompson where you chose to receive treatment on your own; however, we still consider your absences from January 15, 2008 to be unexcused, and at this time the Company cannot justify your continued leave. You must report to Veronica Cameron in the Safety office by the end of the business day, Monday, March 17, 2008 to discuss your return to work. If you do not meet with Veronica by that date, we will consider you to have voluntarily resigned your position.

Meanwhile, Dr. Gresham referred the claimant to Dr. Tim Burson, who saw the claimant on March 18, 2008: "Mr. Lawhon is a 42-year-old gentleman with neck pain since June 30, 2004....We reviewed his MRI studies. I do not see anything surgical....He was not pleased with this but I explained

that if I saw anything that would help him we would proceed but the studies are relatively negative. He has not had a CT myelogram. I feel that the yield is very low and most likely we would not see anything. He wants to proceed. We will obtain this study and call him with the results. I doubt there is anything surgical to offer."

A cervical myelogram was performed on March 24, 2008, with the following impression: "Essentially normal cervical myelogram. A post myelogram CT will be performed and will be reported separately." A post-myelogram CT of the claimant's cervical spine was taken on March 24, 2008, with the following impression: "There are no definite abnormalities seen on this cervical myelogram. Specifically, no evidence of disc herniation or canal or foraminal stenosis."

The claimant followed up with Dr. Sprinkle on March 26, 2008:

This has been a challenging case. I have seen Mr. Lawhon on a number of occasions and he has historically done fairly well. His imaging studies are not overly impressive. He seems to have some underlying anxiety and it seems to be a poor responder to treatment. However, he did have an MRI that did show an annular rent and degenerative changes and calcification at C6-7 longitudinal ligament supporting degenerative disc disease at this level and he has trouble

tolerating cervical extension so the only other treatment option I could think of is to try to target cervical facets which could have potentially been aggravated by his work and try to reduce symptoms from that level with facet injections and consideration for radiofrequency ablation....

I realize that an external review of this case looks like there may be a lot of underlying Waddell type pathology. However, I also see quite a number of worker's compensation patients and I think I have a pretty good sense of what is more legitimate and what is not and I just can't come to the conclusion that Mr. Lawhon's complaints are not genuine. Just before we determine he is truly at maximum medical improvement with nothing else further to offer I would like to try at least the Lyrica and consideration of facet injections....

Dr. Thompson referred the claimant to Dr. Vincent R. Forte. Dr. Forte's impression on April 16, 2008 was "1. Severe myofascial pain. 2. Rule out cervical facet dysfunction. 3. Some cervical disc disease." Dr. Forte's treatment recommendations included cervical medial nerve branch blocks, consideration of rhizotomy, and consideration of trigger point injections in conjunction with physical therapy. Dr. Forte performed cervical medial branch nerve blocks on April 21, 2008 and April 28, 2008. Dr. Forte performed cervical medial branch neurotomies x 5 on June 2, 2008.

Dr. Sprinkle provided the following note on July 24, 2008:

This is in response to a letter sent to me by attorney with Roberts Law Firm regarding Mr. Lawhon....
Question number one. I agree his initial MRI studies were normal. Question number two. Yes I agree these findings on MRI October 2007 are new findings....I agree it would be speculative to say that the October 2007 MRI findings are related to the accident in June of 2004....
It is hard to relate continued treatment to the June 30th injury when he had a normal MRI....
On further review on 07/15/04 cervical spine x-ray did note some small amount of calcification in the anterior spine at C6-7. This, in my view, would be somewhat supportive of some very early degenerative changes in the cervical spine. If anything, his initial injury in 2004 may have aggravated some very minimal early degenerative changes but certainly did not cause that and I could not state with a reasonable degree of medical certainty that it was the sole cause or the major cause of the disc abnormalities found in October of 2007. Mr. Lawhon was initially pretty responsible to treatment for his cervical and thoracic strain injury. Over time he became less and less responsive to treatment. I think it is reasonable to conclude that this decreased responsiveness to treatment is probably associated with the more noticeable degenerative changes that have occurred in the cervical spine. I cannot conclude that the development of degenerative changes in the cervical spine are solely related from his original work injury in 2004....

Dr. Wilbourn corresponded with the respondents' attorney on August 8, 2008 and stated in part, "Within a reasonable degree of medical certainty, the Claimant's

current need for medical treatment is causally related to the June 30, 2004 injury."

Dr. Bernie G. McHugh, Jr. arranged another MRI of the claimant's cervical spine, which was performed on February 5, 2009 with the following findings:

Multiple sagittal and axial images through the cervical spine shows C2-3, C3-4, and C4-5 to be normal. At C5-6, there is a minor bulging annulus without significant sequelae. C6-7 and C7-T1 are unremarkable. Visualized bone marrow signal and spinal cord signal are unremarkable.

Dr. McHugh noted on April 21, 2009, "We will tentatively schedule ACDF at C6/C7 for 5-8-2009." Dr. McHugh performed an anterior cervical discectomy and fusion at C6-7 on May 8, 2009. The pre- and post-operative diagnosis was "Degenerative disc disease at C6-7."

The claimant followed up with Dr. McHugh on June 16, 2009: "He is still having some significant cervical pain and discomfort however he is turning his neck a lot better. The pain is decreased according to the patient." Dr. Thompson noted on June 17, 2009, "Just went for follow up yesterday with Dr. McHugh on disc surgery. Had disc removed and fusion 6 weeks ago yesterday. States his neck is some better, able to hold head up better, still having discomfort in right shoulder and right scapula."

The parties deposed Dr. Sprinkle on September 29, 2009. Dr. Sprinkle testified in part, "I cannot say within a reasonable degree of medical certainty that the injury of '04 caused the changes that were discovered in '07."

A pre-hearing order was filed on August 19, 2010. The claimant contended that he had been denied medical treatment and temporary total disability benefits. The claimant contended that he was permanently and totally disabled.

The respondents contended that all appropriate benefits had been paid. The respondents contended that "the claimant's most recent treatment of his thoracic and cervical spine is unrelated to the compensable injury of June 30, 2004. The compensable injury is not the major cause of any disability alleged by the claimant or the major cause of his need for additional medical treatment."

The parties agreed to litigate the following issues:

1. The claimant's entitlement to additional temporary total disability benefits to a date yet to be determined.
2. The claimant's entitlement to permanent and total disability benefits.
3. The claimant's entitlement to additional medical benefits.
4. The claimant's entitlement to travel expenses.
5. Controversion and attorney's fees.
6. All other issues are reserved.

Dr. McHugh filled out a questionnaire on November 4, 2010 indicating that the claimant had not reached maximum medical improvement. However, Dr. McHugh also indicated that the claimant had sustained an impairment rating of "15-18% whole person." Dr. Thompson stated on November 8, 2010, "Dirk Lawhon has been disabled from work since 01/15/08."

A hearing was held on November 17, 2010. The claimant testified that the surgery performed by Dr. McHugh had improved mobility in the claimant's neck and had decreased the pain in the claimant's right shoulder. The claimant testified that Botox injections provided by Dr. Forte had improved the claimant's physical condition. The claimant testified, however, that he was not physically able to return to work.

An administrative law judge filed an opinion on February 15, 2011. The administrative law judge found, among other things, that the claimant proved he was entitled to additional medical treatment and additional temporary total disability benefits.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Act 796 of 1993, as codified at 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 has the burden of proving by a preponderance of the evidence that he 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 parties stipulated that the claimant sustained a compensable injury to his thoracic spine on June 30, 2004. The Full Commission finds that the claimant proved by a preponderance of the evidence that he

also sustained a compensable injury to his neck and cervical spine on June 30, 2004. The claimant testified that he felt the sensation of a tear or pulled muscle in the base of his neck and between his shoulder blades while pushing a heavy metal rod at work on June 30, 2004. A physical therapist noted on July 22, 2004 that the claimant appeared to have "moderate muscle spasms in the cervical paraspinals." The claimant was assessed with cervical and thoracic strain on July 22, 2004. On July 26, 2004, another physical therapy evaluation indicated that "muscle spasms were palpated" in the claimant's cervical spine. It is well-settled that muscle spasms constitute objective medical findings. See *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999), citing *University of Ark. Med. Sciences v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997).

The parties stipulated that the claimant sustained a compensable injury to his thoracic spine on June 30, 2004. The Full Commission finds that the claimant also proved by a preponderance of the evidence that he sustained a compensable injury to his neck and cervical spine on June 30, 2004. The claimant proved by a preponderance of the evidence that he sustained an accidental injury causing

physical harm to his neck and cervical spine. The accidental injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident which was identifiable by time and place of occurrence on June 30, 2004. The claimant established a compensable injury by medical evidence supported by objective findings not within the claimant's voluntary control, namely, the reports of muscle spasms palpated in the area of the claimant's neck and cervical spine. The Full Commission finds that these objective medical findings were causally related to the June 30, 2004 compensable injury to the claimant's neck and cervical spine.

B. 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) (Repl. 2002). The employee 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.

Hamilton v. Gregory Trucking, 90 Ark. App. 248, 205 S.W.3d 181 (2005).

An administrative law judge found in the present matter, "The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment and associated travel." The Full Commission affirms this finding. The instant claimant sustained compensable injuries to his neck, cervical spine, and thoracic spine on June 30, 2004. The claimant subsequently treated with Dr. Gresham, Dr. Saer, Dr. Sprinkle, Dr. Wilbourn, Dr. Powers, Dr. Walker, Dr. Burson, Dr. Thompson, Dr. Forte, and Dr. McHugh. The Full Commission recognizes that the impression from a cervical spine MRI on July 15, 2004 was "normal cervical spine." However, Dr. Wilbourn provided an Independent Medical Evaluation on October 10, 2007 and diagnosed disc protrusions at C5-6 and C6-7 with an annular tear at C6-7. Dr. Wilbourn opined that the June 30, 2004 compensable injury was the cause of the claimant's pain symptoms. Dr. Sprinkle opined in November 2007 that the claimant's work had aggravated the condition of the claimant's cervical spine. Dr. Wilbourn informed the

respondents' attorney in August 2008, "Within a reasonable degree of medical certainty, the Claimant's current need for medical treatment is causally related to the June 30, 2004 injury."

It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the Full Commission finds that the causation opinions stated by Dr. Wilbourn and Dr. Sprinkle in October 2007, November 2007, and August 2008 are entitled to significant probative weight. We find that the claimant proved all of the medical treatment of record provided him was reasonably necessary in connection with the June 30, 2004 compensable injury to the claimant's neck/cervical spine and thoracic spine. The evidence of record and the claimant's testimony indicated that the claimant's physical condition improved following surgery provided by Dr. McHugh on May 8, 2009. Post-surgical improvement is a relevant consideration in determining whether or not surgery was reasonably necessary. *Winslow v. D & B Mech. Contractors*, 69 Ark. App. 285, 13 S.W.3d 180 (2000). The Full Commission finds that surgery provided by

Dr. McHugh was reasonably necessary in connection with the claimant's compensable injury.

C. 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). The healing period ends when the employee is as far restored as the permanent character of the injury will permit. *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The determination of when the healing period has ended is a question of fact for the Commission. *Id.*

An administrative law judge found in the present matter, "4. The claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits from the date last paid to a date yet to be determined." The Full Commission finds that the claimant proved he was entitled to temporary total disability benefits beginning January 16, 2008 and continuing until November 4, 2010.

The Full Commission has determined that the claimant proved he sustained compensable injuries to his neck,

cervical spine, and thoracic spine on June 30, 2004. The claimant initially treated conservatively for his compensable injuries and was released to return to work on or about August 23, 2004. The claimant testified that he returned to work but was not able to perform all of his manual-labor duties. The claimant sometimes required the assistance of co-workers on the job. The claimant generally continued working for the respondent-employer until January 15, 2008. Dr. Thompson stated on February 28, 2008, "He remains temporarily totally disabled from work from 01/15/08." The Full Commission therefore finds that the claimant was within a healing period for his compensable injuries and was totally incapacitated from earning wage beginning January 16, 2008.

The claimant underwent an anterior cervical discectomy and fusion on May 8, 2009. The claimant experienced some post-surgical improvement in his symptoms. Dr. McHugh opined on November 4, 2010 that the claimant had not reached maximum medical improvement. Nevertheless, Dr. McHugh also opined that the claimant had sustained a permanent anatomical impairment rating. Permanent impairment is any permanent functional or anatomical loss remaining after the

healing period has been reached. *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994), citing *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Temporary total disability benefits cannot be awarded after a claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987).

The Full Commission therefore finds in the instant matter that the claimant's healing period for his compensable injuries ended no later than November 4, 2010. We therefore find that the claimant proved he was entitled to temporary total disability benefits beginning January 16, 2008 until November 4, 2010.

Based on our *de novo* review of the entire record currently before us, the Full Commission finds that the claimant proved he sustained compensable injuries to his neck, cervical spine, and thoracic spine. The claimant proved that the medical treatment of record provided was reasonably necessary in connection with the claimant's compensable injuries. The claimant proved that he was entitled to temporary total disability benefits from January 16, 2008 until November 4, 2010. The respondents are

entitled to a credit for any temporary disability benefits already paid, and the respondents are entitled to an appropriate offset in accordance with Ark. Code Ann. §11-9-411(Repl. 2002). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2002). For prevailing in part 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

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment and additional temporary total disability

benefits. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

The claimant sustained an admittedly compensable injury on June 30, 2004. After that injury, the claimant was treated with trigger point injections and physical therapy. He also completed a work hardening program, and was released to return to full duty on August 23, 2004. The claimant did not seek additional medical treatment until May 11, 2005, after having worked full duty during that period from August 23, 2004, through May 11, 2005.

The claimant began treating with Dr. Sprinkle for neck and thoracic pain. Dr. Sprinkle released him to full duty on March 16, 2006. The claimant sought treatment from Dr. Sprinkle who provided trigger point injections and manipulations and released the claimant in April of 2007.

The claimant returned to Dr. Sprinkle in July of 2007, and had another MRI. The MRI, at that time, showed that the claimant had a herniated disc in his neck. It is of note that the claimant had an MRI after the injury on July 15, 2004, that was read as normal. The finding of the herniated disc in the claimant's neck in July of 2007, was

made three years after the claimant's compensable injury. Dr. Sprinkle treated the claimant with ESI injections and returned the claimant to light duty on January 3, 2008. The claimant reported on January 15th that he was unable to perform light duty and failed to show up for work the next day. In fact, the claimant never returned to work for the respondent employer. The claimant was to undergo a functional capacity evaluation, but he refused to go. The claimant is currently on Social Security Disability and has stated that he has no intention of returning to work.

In my opinion, the evidence demonstrates that the claimant was returned to full duty on August 23, 2004, and was able to do work. The MRI the claimant underwent in July of 2004, showed that the claimant's neck was normal. It was three years later when the claimant was diagnosed with a herniated disc in his neck. The claimant testified that he is able to perform physical exercises and he assists in housework and chores such as laundry, dishwashing, and vacuuming. The claimant's exercises include riding a stationary bike and walking on a treadmill. In my opinion, the claimant cannot demonstrate that he is entitled to additional temporary total disability benefits. The

claimant is not in his healing period and is not incapacitated from earning wages. Therefore, I must respectfully dissent from the award of additional temporary total disability benefits.

The claimant has also asked for additional medical treatment. In my opinion, the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment. The claimant received trigger point injections and physical therapy after his June 30, 2004 injury, and was released to full duty in August of 2004. The claimant did not request medical treatment again until May 11, 2005. The claimant came under the treatment of Dr. Sprinkle who, again, released him to full duty on March 17, 2006. The claimant continued to work full-duty for another year without requesting additional treatment. It was not until July of 2007 that the claimant was diagnosed with a herniated disc in his neck. This is obviously a new finding three years after the claimant's original June 30, 2004 injury. The MRI in 2004 yielded a normal reading.

Dr. Sprinkle has opined that the claimant's continued need for treatment was not related to his June 30,

2004 injury. Dr. Sprinkle stated that he "cannot conclude that the development of degenerative changes in the cervical spine are solely related from his original work injury in 2004." The claimant had degenerative changes in his neck. Dr. Sprinkle noted that

"... On further review on 7/15/04, the cervical spine did show some small amount of calcification in the anterior spine at C6-7. This, in my view, would somewhat supportive of some very early degenerative changes in the cervical spine. If anything, his initial injury in 2004 may have aggravated some very minimal early degenerative changes, but certainly did not cause that, and I cannot state with a reasonable degree of medical certainty that it was the sole cause or the major cause of the disc abnormalities found in October of 2007.

After considering the opinion of Dr. Sprinkle, I find that the claimant cannot demonstrate that his continued need for treatment is causally related to the June 30, 2004 compensable injury. As such, I must respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER