

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F809517

DAVID McCOLLISTER, EMPLOYEE	CLAIMANT
PAM TRANSPORT, INC., EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 29, 2011

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed September 1, 2010.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the prehearing conference conducted on January 14, 2010, and contained in a pre-hearing order filed January 19, 2010, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his admittedly

compensable work related injury.

3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.

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.

Thus, we affirm and adopt the 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

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional reasonably necessary medical treatment for his back and neck, supported by objective findings. I also find that the claimant is entitled to temporary total disability benefits from March 12, 2009 until a date yet to be determined.

The medical evidence shows that there are objective findings that support a lumbar and cervical spine injury, as shown by two separate MRIs. On October 13, 2008, the claimant had an MRI on the cervical spine, thoracic spine, and the lumbar spine. This MRI confirmed, "abnormal anterior cervical spinal cord signal extending from C5 to C7". Regarding the lumbar spine, it showed, "the discs are normal other than the L3-4 and L5-S1 which show bulge and protrusion respectively." Because of the claimant's continuing problems, on May 13, 2009, another lumbar spine MRI was performed, which showed the problems, "broad-based central and right lateral disc herniation at L4-L5 level." "At L2-L3 level, there is a mild disc bulge with very minor degree of lateral recess stenosis." "At L5-S1 level, minimal disc bulge is present." It should also be noted that, on another cervical MRI performed on June 16, 2009, cervical spine

problems were again found, "C4-C5 level a very minor disc bulge is seen with slight narrowing of the left neuroforamen." "At C5-C6 level mild broad based disc bulge is seen with slight narrowing of the left neuroforamen." "At C6-C7 level another mild central disc herniation is seen with minimal encroachment upon the neuroforamina."

These consistent results clearly show that there are objective findings of injury to the cervical and lumbar spine, rather than mere subjective pain complaints from the claimant. Furthermore, the dizziness the claimant complained of is clearly related to the injury he sustained in the fall at work. The claimant testified that he had been completely healthy before the fall but, after the fall, had neck pain, back pain, leg numbness, dizziness, spots before his eyes, and problems walking, sitting, and standing. There is no evidence that the claimant ever had any problems with his neck, back, or legs before the fall. It was found in Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497

(1958):

If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the refusal to make an award.

It is apparent, when looking at the evidence, that the

claimant's need for more treatment for his compensable back and neck injury is reasonable and necessary, and related to the work injury. He had no problems with his neck or back prior to this work accident. The majority, by affirming and adopting the decision of the Administrative Law Judge, relies heavily on the opinion of Dr. Michael Cullen. Dr. Cullen released the claimant at MMI on March 12, 2009. At that time, he describes the claimant as still complaining of a lot of pain and dizziness. It was found in Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982) that the healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Clearly, in the case at bar, the condition has not been fully addressed, and the disability is certainly not stable. As such, I find that the claimant remains in his healing period. The evidence of record, particularly the testimony of the claimant, shows that the claimant remains disabled from work. Since the claimant remains in his healing period and is totally disabled from work, I find that he is entitled to temporary total disability benefits from March 12, 2009 until a date yet to be determined.

At the time of his release by Dr. Cullen, the claimant was still experiencing all of the same problems, and clearly was not at MMI. In fact, three other doctors that the claimant saw

after Dr. Cullen did not release him at MMI, but suggested further treatment. Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. §11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); and See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). When the claimant last saw Dr. Herman Dick on July 15, 2009, he opined that the lumbar herniated disc problem should be addressed by a neurosurgeon, and referred him to Dr. George DePhillips. He was seen by Dr. DePhillips on August 3, 2009, and the recommendations were to begin physical therapy, and to see Dr. Sharma regarding pain management and injection procedures. When the claimant saw Dr. Samir Sharma on August 24, 2009, it was recommended that he return in two weeks for epidural injection of L5, S1. None of these physicians agreed with the assessment of Dr. Cullen that the claimant was at MMI, and all agreed there is further treatment needed and available. As such, I find that the claimant is entitled to additional reasonably necessary medical treatment for his admittedly compensable neck

and lumbar injuries.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner