

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H101867**

THURN K. APPLE, EMPLOYEE

CLAIMANT

**WHITE RIVER AREA AGENCY ON AGING, INC.,
EMPLOYER**

RESPONDENT

**AGING SERVICES FUND,
RISK MANAGEMENT RESOURCES,
TPA/INSURANCE CARRIER**

RESPONDENT

OPINION FILED JANUARY 19, 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the 15th day of December, 2021, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 15th day of December 15, 2021, to determine the issues of compensability for injuries to the back, neck, head, and left knee, reasonable and necessary medical, temporary total disability (TTD), and attorney's fees, with all other issues reserved. A copy of the Prehearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on February 8, 2021, the date of the claimed injuries. At the time of the claimed injuries, the claimant was earning an average weekly wage of \$398.40, sufficient to entitle her to a TTD/permanent partial disability (PPD) rate of \$266.00/\$200.00. There was no objection to these stipulations, and the Prehearing Order was admitted into the record.

The claimant's and respondents' contentions are all set out in their respective responses to the Prehearing Questionnaire and made a part of the record without objection. At the time of the hearing, the claimant provided it was her contention that she was entitled to TTD from February 9, 2021, to a date to be determined. The witnesses consisted of Thurn K. Apple, the claimant, and Misty Glenn for the respondents. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on February 8, 2021, the date of the claimed injury. At the time, the claimant earned an average weekly wage of \$398.40 a week, sufficient for a TTD/PPD rate of \$266.00/\$200.00 per week.
3. That the claimant has satisfied the required burden of proof by a preponderance of the evidence that she suffered a compensable work-related injury to her sacrum, lower back, and left leg, on February 8, 2021, and that she is entitled to reasonable and necessary medical treatment for these injuries.
4. That the claimant has failed to satisfy the required burden of proof by a preponderance of the evidence that she suffered a compensable work-related injury to her head and neck.
5. That the claimant has failed to satisfy the required burden of proof that she is entitled to TTD from February 9, 2021, to a date to be determined.
6. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. § 11-9-715. This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809.

7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order, along with the Prehearing questionnaires of the parties, were admitted into the record without objection. The claimant submitted an exhibit that consisted of forty-seven (47) pages of medical reports and was admitted without objection. The respondents submitted two (2) exhibits, with the first exhibit consisting of twenty-five (25) pages of medical reports and the second exhibit consisting of thirteen (13) pages of non-medical; both were admitted without objection.

The claimant was born on October 5, 1954, and was sixty-seven (67) years old at the time of the hearing. She quit school in the eleventh grade because she had to go to work, but later obtained her GED. (Tr. 5) She worked since leaving high school, first working at a shirt factory, a grocery store, and then as a dietary supervisor at two retirement homes in Oklahoma. (Tr. 6) She also worked at a restaurant, a convenience store, and a bar, before starting to work for the Area on Agency on Aging approximately eight (8) years ago. The job consisted of going to the house of a client and performing housekeeping, feeding them, and being their personal assistant. Normally she would have the same client until it was no longer necessary, or the agency needed her for a different client, but she had several over the years. She said that she had received about forty (40) hours of training. (Tr. 7)

On February 8, 2021, the claimant got to her first client's house and went in and started preparing the client's breakfast and cleaning her kitchen. She stated that the client kept her house too hot, so she assisted the client to the bathroom and then went out to get a drink of water that she kept in her car, "cause I didn't dare take anything in the

house.” She went out and, “[As] I stepped off the first step of her porch, it had iced over while I was in the house, and I went from the top step all the way to the ground.” The claimant testified she arrived at the client’s house about 7:30 in the morning and clocked in using an app. The client, who was in her eighties, had a house with roach and bed bug problems that was never clean. Upon entering the house, the claimant stated,

I always made sure I didn’t have anything on me that I couldn’t put in my pocket. At first when I was taking care of her, we had paperwork that she would have to sign in and out on, so I would carry it in, let her sign it, and then take it back to the car. I didn’t dare lay it down. And then we got to where we used our phones, I could keep it in my pocket, so that’s what I would do. I didn’t take anything in that I intended to take with me unless it was a cup that I could wash before I left. Normally I just took in something I could throw away. (Tr. 8-10)

In regard to the temperature in the house, “If I didn’t change it, she would have it in the nineties normally.” When the claimant fell down the stairs, she testified she hit both her arms, her head, and her back, hitting her tailbone first. When she started to get up, she was aware that she had hurt her left knee and ankle, her shoulder, neck, and head, and was dizzy. She stated that she almost passed out. After the fall, the claimant crawled back up the steps, and then walked into the client’s house, sitting down at the dining table, due to the fact she would not sit on the client’s cloth furniture. She stated she reached for a trash can because she thought she was going to get sick, and wound up in the floor, passed out. (Tr. 11, 12)

The claimant stated she thought she called Misty Glenn at the office at that time. The claimant’s daughter came to pick her up, and then her daughter and Misty helped her into the office, where she took a drug test. She then went to Doctor Simpson’s office. (Tr. 13) She then went to the emergency room. (Tr. 14) She testified she received some x-rays, which provided she had a fracture of her sacrum. (Tr. 15)

The claimant provided she gave a recorded statement to Ms. Bloom, the insurance adjuster, where she admitted that she had a workers' compensation claim back in 2005, when she slipped and fell, which caused a herniated disc, with the claim being accepted and which led to a fusion surgery at L4 – 5. After the surgery, she never had any problems and kept working. (Tr. 16) She also admitted she told Ms. Bloom about being diagnosed with fibromyalgia since 1987, and that she was in the early stages of kidney failure, plus she had high blood pressure that was under control. (Tr. 17)

She treated with Doctor Spann, her primary care physician, who referred her to OrthoArkansas, where she received an MRI and treatment by Doctor Seale. (Tr. 18) The injury to her back in February of 2021 involved a different section of her lower back than her earlier injury. At the time of the hearing, she had not received surgery. In regard to surgery, she testified she had multiple medication allergies. (Tr. 19) One of her reactions was anaphylactic shock. (Tr. 20) The claimant also admitted she had received epidural steroid injections in the past, and she could not walk for three days after the injections. (Tr. 21) The claimant had allergies to anesthesia and only wanted surgery as a last resort. She also provided that she had the aches and pains of arthritis prior to the incident on February 8, 2021, but that her back was fine. (Tr. 22) She stated that her left leg was asleep all the time. "If I sit too long, I hurt, if I stand too long, I hurt, so I'm not able to even clean my house by myself, much less try to work." The claimant stated that she was given a light duty work slip, which she took to Misty at the office, and Misty told her that she would have to talk to the office in Batesville. "And I never received - - I never was let come back to work." She denied being offered light duty. Ultimately, her doctor took her off work completely, after the recommendation of surgery. (Tr. 24)

The claimant admitted to having a previous workers' compensation claim with the respondent, back in maybe 2015, after she had clocked out while leaving a client's house and was in the yard walking on stepping-stones and caught her foot on one, causing her to fall and fracture her ankle. Within a week, she had returned to light duty. (Tr. 25) She also admitted she was involved in a motor vehicle accident forty (40) years earlier where she injured her pelvic bone and her right ball and hip socket, and was placed in traction for six (6) weeks with no surgery. (Tr. 26)

Under cross examination, the claimant admitted she was off work for about a year due to her motor vehicle accident in 1973, in which she was pinned under a car and broke her right hip, separated her pelvic bones. (Tr. 27) She also admitted to having surgery on her lower back after a slip and fall at the retirement home and that she settled the claim for around \$30,000.00. She admitted to suffering a burn injury while working at Pizza Hut. (Tr. 28) She also admitted that she had gone to part-time work for the respondent after going on Social Security. She admitted that she was working from 7:30 a.m. to 10:30 a.m. on the day of the accident, which occurred a little before 9:00. (Tr. 29) The claimant admitted she always had at least one (1) break during her three (3) hour shift. (Tr. 30) The break was not at a set time, normally lasted about ten (10) minutes, and she did not have to clock in or out. She would usually just go and get a drink in her car or just sit down for a minute if she wanted to talk. She had clocked in the day of the accident and would normally clock out before going to her car to leave for the day. (Tr. 31) The claimant also stated that her lasting injuries were her left leg and tail bone. She admitted that she had stated in her deposition that her neck and shoulders hurt sometimes which she assumed it was from old age. (Tr 33) The claimant also admitted she told

Doctor Spann on her July 26, 2016, visit, that she was having pain in both of her hips, thighs, and knees from arthritis and also complained about left hip pain and pain in both knees due to arthritis on her visit to Doctor Spann on November 4, 2020.

The respondents called Misty Glenn, the office coordinator, as their only witness. She had worked for the respondent for two (2) years performing scheduling, payroll, and billing. She testified she took a statement from the claimant on the day of the incident. The claimant stated, “[t]hat she had fallen down, that when she went in those steps weren’t icy, when she went out they were. Slid down the steps and her back and neck and arm and leg were hurt [...] She said she was going to get a drink.” She also testified that according to the claimant, she was not performing her job duties at the time of the incident. She also agreed the claimant brings her doctor notes to the office, as far as she knows. (Tr. 37, 38)

In regard to light duty, Ms. Glenn testified, “I think our requirement is 40 pounds in lifting restrictions. I don’t think that she met that.” (Tr. 38, 39) Under cross examination, she admitted that she did not know anyone placed on light duty while she was there. (Tr. 40)

The claimant submitted an exhibit that consisted of forty-seven (47) pages of medical reports with an index. The claimant presented to the Stone County Medical Center ER on February 8, 2016, and the report provided the triage nurse questioned the claimant and that the claimant fell on the left side of her body and was suffering from pain in her left ankle, hip, and tail bone, and that she hit her left arm, head, and neck, and reported nausea and dizziness. The report mentioned “mostly pelvic pain.” A CT scan of the pelvis provided the hip joints aligned normally and the bony structures were intact.

There was a traverse fracture through the 4th sacral segment, which was of indeterminate age but could be acute. (Cl. Ex. 1, P. 1 – 16)

The claimant presented to Doctor Spann on February 22, 2021, and the report provided the claimant was still sore providing under assessment for chronic pain and a closed fracture of the coccyx with routine healing. (Cl. Ex. 1, P. 17 – 20) The claimant returned to Doctor Spann on March 1, 2021, and again on March 5, 2021. The reports provided the claimant presented due to her legs and feet tingling. On the March 1 visit, the claimant provided that her calf muscle was tingling as well, and her lower back was tightening up. On the March 5 visit, the claimant reported her calf muscle was tingling and she was having numbness in both hips and down her tail bone, with more on the left than the right. (Cl. Ex. 1, P. 21 – 28) The claimant returned to Doctor Spann on March 15, 2021, for a follow-up on the sacral fracture. The report provided she continued to have pain which was worse when she stood for long periods of time. Her left ankle continued to tingle. (Cl. Ex. 1, P 29 – 32)

On March 26, 2021, the claimant presented to the Stone County Medical Center for an MRI of the pelvis. A bone marrow signal abnormality was seen in the sacrum at the S3-4 level to the right of the midline and this may have represented a subtle fracture, although not classic for an insufficiency fracture. Sacroiliac joints appeared intact, and surgical hardware was seen. A narrowing of both hip joints was seen with no fracture or dislocation in the hips. The coccygeal segments appeared intact. (Cl. Ex. 1, P. 33)

On August 11, 2021, the claimant presented to OrthoArkansas. The report provided the primary pain location was around the sacrum area with numbness of the left leg from about her knee down, which tingled as if asleep. She also reported pain in her

right leg. The report also provided that there was a history of a sacral fracture which occurred from a motor vehicle accident when she was eighteen (18). (Cl. Ex. 1, P. 34 – 38)

An MRI of the lumbar spine occurred on September 20, 2021, which provided there was a possible small left foraminal to extraforaminal disc protrusion at L5-S1, without a definite mass effect on the adjacent exiting left L5 nerve root. Moderate left foraminal stenosis was noted at L5-S1. Mild foraminal stenosis was noted on the right at L2-L3, L3-L4, and also L5-S1. Mild bilateral stenosis was noted at L4-L5. (Cl. Ex. 1, P. 39)

The report dated September 20, 2021, from OrthoArkansas provided the claimant's MRI revealed a disc protrusion, which is an objective finding of injury that matched the claimant's subjective complaints of symptoms. "Therefore it is within a certain degree of medical certainty that at least [fifty-one percent] 51% of the patient's current symptoms are directly related to their work injury". The report went on to provide that the claimant does have a history of a right hip dislocation with right pelvic fracture and that she has been pain free from this until her fall and that it is likely that the claimant's fall is related to both injuries. The claimant does have an extra foraminal disc protrusion on the left side that is creating her left leg radiculopathy. "We may discuss a minimally invasive extraforaminal microdiscectomy on the left side at the L5-S1 later." As far as the sacral fracture, no surgical intervention was recommended. (Cl. Ex. 1, P. 40 – 44) On November 11, 2021, Doctor Spann issued an off-work note that provided the claimant would be unable to return to work until April of 2022. (Cl. Ex. 1, P. 45)

The respondents' medical provided the claimant had been seen by Doctor Spann on July 26, 2016, and assessed with osteoarthritis of the hand, hip, bilateral sacroiliitis,

and chronic pain, among other issues. (Resp. Ex. 1, P. 1 – 3) The second report of record was an initial physical therapy report from the Stone County Medical Center dated December 9, 2019, which provided the claimant was referred to physical therapy with spondylosis with myelopathy in the cervical region. The claimant's chief complaint was right shoulder and neck pain. The claimant's MRI indicated a full thickness right supraspinatus tear. The claimant had a long history of neck pain that preceded her right shoulder injury. The claimant's intake functional capacity was 32 out of 100. (Resp. Ex. 1, P. 4 – 13) The claimant returned to the Stone County Medical Center for physical therapy on December 18, 2019. The report provided the claimant presented for physical therapy with a complaint of moderate neck and right shoulder pain, and the claimant stated that she fell Sunday evening after stubbing her toe. (Resp. Ex. 1, P. 14, 15)

The respondents also introduced medical reports from Doctor Spann for the period of July 26, 2020, through November 4, 2020. The report dated July 26, 2020, stated the claimant presented for a one (1) month follow-up regarding knee pain and stated she fell last night and was now having more left knee pain. The report dated November 4, 2020, provided the claimant presented for a follow-up for left hip and bilateral knee pain, denying injury. (Resp. Ex. 1, P. 16 – 21) An x-ray of the left pelvis dated November 4, 2020, provided under impression that no definite acute fracture of the pelvis or the hip was seen, but that postoperative and degenerative changes in the lumbar spine may cause hip pain. (Resp. Ex. 1, P. 22)

The respondents also submitted the transcription of the recorded statement the claimant made to an adjuster the day following the fall from the porch. The statement basically corresponded to the claimant's testimony at the time of the hearing. She

admitted to previous injuries, going to a specialist in regard to a shoulder issue, and obtaining treatment from a chiropractor. She also admitted taking tramadol for her arthritis and her fibromyalgia. She described the client's house as really hot and that she went to her car to get a drink and did not realize there was ice on the porch, which led to her fall. She mentioned hitting her head and neck on the steps and bruising her left arm and her elbows. (Resp. Ex. 2, P. 1 – 12) The final document that was entered into the record by the respondents was a written statement from Misty Glenn, the Stone County office coordinator for the White River Area Agency on Aging, which provided that on the date of February 8, 2021, the claimant had reported she fell on an icy porch when she stepped outside to get a drink and stated that she was in a lot of pain in her buttocks due to hitting the steps on the way down. (Resp. Ex. 2, P. 13)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for her injuries under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In the present matter, there appears to be no significant issue as to the facts of the matter or the actions of the claimant. The claimant had driven to the client's house and clocked in using an app on her phone. She arrived at approximately 7:30 a.m. and

normally stayed until 10:30 a.m. She was allowed to take a break, more or less at her discretion, and was not required to clock out at the time of the break. She met the client, who she estimated to be in her eighties, and testified that she was going to fix the client breakfast and clean up her kitchen. She assisted the client to the bathroom in the house that was excessively hot, probably in the ninety plus degree temperature range. After assisting the client, she went outside to take a break and drink some water, which she had brought from home and left in her car. It was un rebutted that she would not take her water into the house because in addition to the house being oppressively hot, it was infested with roaches and bed bugs. In the process of going to her car for the water, she slipped on the front steps that had iced over since the time of her arrival and was injured from the fall. She testified she was able to get up and go back into the house, and upon entry, refused to sit on the cloth furniture due to the home's cleanliness. She made it to the kitchen table, sat down, and passed out.

In order for an accidental injury to be compensable, it must arise out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury does not include an injury inflicted upon the employee at a time when employment services were not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii). The phrase “in the course of employment” and the “employment services” are not defined in the Workers’ Compensation Act. Consequently, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the act. See Hudak – Lee v. Baxter County Regional Hospital & Risk Mgmt. Res., 2011 Ark. 31, 378 S.W.3d 77 (2011).

It is commonly known that it's not unusual for the elderly to keep their houses oppressively hot. It is also believable that some homes that receive home help visits lack

the cleanliness that many may be used to in modern society. The claimant's uncontradicted testimony is accepted as believable in regard to the home's status as to temperature and cleanliness and also to the fact that you would not want to bring personal items into the home that would then be taken to another client's home or to the claimant's home. It is also found believable that the sixty plus year old claimant, with her own health issues, would want to step outside of the house to cool down in order to finish the required work.

In White v. Georgia Pacific Corp., 339 Ark. 474, 6 S.W.3d 98 (1999) White was on his way for a smoke break when he attempted to step off his forklift through a door located in front of the veneer dryers and fell approximately three (3) feet, injuring his ankle. The Commission denied the claim, concluding he failed to prove that he was performing employment services. The Supreme Court reversed, holding that substantial evidence failed to support the Commission's decision because White's unrebutted testimony was that while he was entitled to breaks, oftentimes his employer failed to provide him with a relief worker, so he was told to take his break – not in the designated break area, but in an area where he could monitor the dryers, which was where White was headed when he fell. White also testified that he was told by his supervisor to take a break whenever he got the chance and if he was needed while on break, he would have been forced to return immediately. See Wal-Mart Associates, Inc. v. Wille Anderson and Death & Permanent Total Disability Trust Fund, 2022 Ark. App. 12.

Here, the claimant was given personal discretion in regard to breaks. The house was oppressively hot and filled with roaches and bed bugs. If an emergency arose while the claimant was on break, the claimant would have reentered the home. Consequently,

there is no alternative but to find that the claimant's injury occurred within the time and space boundaries of her employment and that she was carrying out the employer's purpose and advancing the employers interest, either directly or indirectly. See Texarkana Sch. Dist. v. Conner, 373 Ark. 372, 284 S.W.3d 57 (2008).

From the medical reports made part of the record, there is little to no disagreement that the claimant suffered from various arthritic conditions and previous injuries that involved her pelvis and sacrum. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 864 (1990); Conway Convalescent Center v. Murphee, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as finds him. *Murphee, supra*.

The claimant testified she fell from the porch while going to get water and hit both her arms, head, back, and tailbone. Under cross examination, she admitted to previous injuries and that the lasting injuries were her left leg and tail bone. She also admitted her neck and shoulders hurt sometimes, which she assumed was from old age. The claimant's statements to the various health care providers and to the two individuals that took her statements were consistent with her testimony at the time of the hearing. The medical report from OrthoArkansas dated August 11, 2021, provided that although there was history of the sacral fracture which occurred from a motor vehicle accident when she was eighteen (18), her primary pain location was around the sacrum area with numbness of the left leg from about her knee down which tingled like it was asleep. A later

OrthoArkansas report dated September 20, 2021, opined that the claimant's MRI revealed a disc protrusion, which is an objective finding of injury that matched the claimant's subjective complaints of symptoms. "Therefore it is within a certain degree of medical certainty that at least [fifty-one percent] 51% of the patient's current symptoms are directly related to their work injury." The report noted that the claimant suffered from previous injuries and pain to her lower back and legs. It further provided that as far as the sacral fracture, no surgical intervention was recommended.

A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102 (16) establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Further, it is noted that a claimant is not required in every case to establish the causal connection between a work-related incident and an injury with an expert medical

opinion. See Wal-mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hail v. Pitman Construction Co. 235 Ark. 104, 357 S.W.2d 263 (1962) Here, it is found that the claimant has satisfied these requirements and has proven by a preponderance of the evidence that the injury to her lower back, sacrum, and left leg are work-related and compensable. The claimant has failed to satisfy the required burden of proof by a preponderance of the evidence that the injuries to her head and neck are work-related.

In regard to medical treatment, the employer shall promptly provide for an injured employee such medical treatment as may be reasonable in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Stone v. Dollar General Stores, 91 Ark. App. 260, 209 S.W.3d 455 (2005) What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984) Here, the claimant has proven by a preponderance of the evidence that she suffered a compensable work-related injury to her lower back, sacrum, and left leg, and consequently she is entitled to the reasonable and necessary treatment regarding these injuries.

The claimant is also claiming TTD from February 9, 2021, to a date to be determined. The claimant testified that she was given a light duty work slip but was never offered light duty. Misty Glenn, the office manager, testified she was not aware of anyone receiving TTD during the time that she had worked there. No light duty work slip was entered into the record. The only off work slip or light duty work slip introduced was issued by Doctor Spann, the claimant's primary care provider on November 11, 2021, which provided that the claimant would be unable to return to work until April of 2022. However, the medical records provided that the claimant last presented to Doctor Spann on March 15, 2021, approximately eight (8) months earlier. Although OrthoArkansas opined that the claimant had suffered a work-related injury, they did not issue a slip stating that the claimant should remain off of work or only work light duty, even after their report of August 11, 2021, which under discussion did mention, "She has been unable to work and is currently trying to get workers' comp."

TTD is that period within the healing period in which an employee suffers a total incapacity to earn wages. Arkansas State Highway and Transportation Department v. Brashears, 272 Ark. App. 244, 613 S.W.2d 392 (1984). The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. Paalazolo v. Nelms, 46 Ark. App. 130, 877 S.W.2d 938 (1994). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve the condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In the present matter, the only off work slip that was made part of the record was issued by the claimant's primary care physician approximately eight (8) months after her last office visit to his clinic. It is found that Doctor Spann was not the primary treating physician of the claimant's lower back and left leg injury. OrthoArkansas, who is found to be the primary health care provider for the claimant's lower back and left leg problems, never issued an off work or light duty work slip. Consequently, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof that she is entitled to TTD. TTD can not be based on speculation or conjecture.

Based upon the available evidence, and after weighing it impartially, the claimant has satisfied the required burden of proof to show she suffered a compensable work-related injury to her sacrum, lower back, and left leg on February 8, and is entitled to reasonable and necessary medical treatment for these injuries. The claimant failed to satisfy the required burden of proof that her neck and shoulder problems were work-related.

The claimant has failed to satisfy the required burden of proof as to TTD.

The claimant and her attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. § 11-9-715. This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge