

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G802764**

**ROBIN L. BUSH, EMPLOYEE**

**CLAIMANT**

**SHERWOOD TRACTOR, EMPLOYER**

**RESPONDENT #1**

**MIDWEST INSURANCE COMPANY/MIC  
RISK MANAGEMENT SERVICES, LLC,  
INSURANCE CARRIER, TPA**

**RESPONDENT #1**

**DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND**

**RESPONDENT #2**

**OPINION FILED JANUARY 12, 2022**

Hearing before Administrative Law Judge, James D. Kennedy, on the 9<sup>th</sup> day of November, 2021, in Little Rock, Pulaski County, Arkansas.

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

Respondents #1 are represented by James Arnold II, Attorney at Law, Fort Smith, Arkansas.

Respondents #2 are represented by Christy L. King, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 9<sup>th</sup> day of November, 2021, to determine the issues of additional medical, temporary total disability (TTD) from November 7, 2019, to a date to be determined, and attorney's fees. It was stipulated at the time of the hearing that the respondents had paid the eight percent (8%) impairment rating and that there was no claim for attorney's fees on those benefits. In addition, the parties stipulated the claimant earned an average weekly wage of \$806.89, sufficient for a TTD/permanent partial disability (PPD) rate of \$538.00/\$404.00 based upon figures from the Trust Fund. Due to the fact the average weekly wage was agreed to, the Trust Fund waived its

appearance. A copy of the Pre-hearing 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 March 23, 2018, when the claimant sustained a compensable work-related injury to her back. The claim was accepted as compensable by the respondents, who have paid some benefits. The claimant received an impairment rating of eight percent (8%) on October 29, 2019, and as stated above, this rating had been paid by the respondents at the time of the hearing. The parties provided post hearing briefs and they are blue backed and attached to this Opinion.

The claimant’s and respondents’ #1 responses were set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The sole witness was Robin L. Bush, the claimant. 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 witness, 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 with Sherwood Tractor on March 23, 2018, when the claimant sustained a compensable work-related injury to her back that was accepted by Respondents #1 as compensable.
3. That at the time of the injury, the claimant earned an average weekly wage of \$806.89, sufficient for a TTD/PPD rate of \$538.00/\$404.00.

4. That the claimant has satisfied the required burden of proof to prove by a preponderance of the credible evidence that the treatment by Doctor Raji, Doctor Quershi, and Nisi Kahn, APRN, is reasonable and necessary.
5. That the claimant failed to prove by a preponderance of the credible evidence that the treatment by Doctor Kilough that was provided after Doctor Roman's finding of the claimant reaching MMI is reasonable and necessary.
6. That the claimant failed to prove by a preponderance of the credible evidence that the treatment by the White County Emergency Room on August 5, 2020, is reasonable and necessary in connection with the work-related injury on March 23, 2018, but is in fact due to an intervening cause.
7. The claimant has failed to prove by a preponderance of the credible evidence that the spinal cord stimulator is reasonable and necessary.
8. That the claimant has proven by a preponderance of the credible evidence that she is entitled to TTD from March 26, 2021, through the date of April 9, 2021, and only for these dates.
9. 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. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted one (1) exhibit, which was admitted into evidence without objection, consisting of 234 pages of medical records. This was the only exhibit of record.

The claimant, Robin L Busch, was the only witness called. She testified she was fifty-two (52) years old at the time of the hearing, completed the eleventh grade, and obtained her GED in 2008/2009. She then received a scholarship and obtained an associate degree in general technology, going through the automotive technology and

the diesel technology program, graduating in 2011. (Tr. 7) The claimant began working for Sherwood Tractor as a tractor technician starting in 2011, working for four (4) years, when she then became the shop foreman/lead technician in 2015, and after about eight (8) months, left her employment. (Tr. 9) She then opened her own shop, named Robin's Nest. She worked there as a mechanic, but the business did not obtain a sufficient number of customers, so she returned to Sherwood Tractor. (Tr. 10) Robin's Nest just "stopped." She worked as a shop foreman/lead technician on her return to Sherwood Tractor and was the only female certified mechanic for Mahindra in the world. (Tr. 11)

On March 23, 2018, she was working on a 100-horsepower tractor that came in needing the rear axle rebuilt. She was removing the rear tire which was "loaded" and was trying to keep the tire from falling on her and she twisted and injured her back. The respondents accepted the claim and sent her to Sherwood Urgent Care, where she received an MRI in April of 2018. The medical report provided she had a disc protrusion at L3–4. She then was sent to Doctor Vargus for conservative treatment, which consisted of injections which did not help. She then saw Doctor Seale in September of 2018 for lumbar surgery. (Tr. 12, 13) After surgery, she testified she fell as they were placing her into the car and knew something was wrong. She kept falling at home and could tell that something was wrong with her knee. She was then authorized to see Doctor Killough, and was also approved to see Doctor Roman. (Tr. 14) She stated that she was diagnosed with CRPS (Complex Regional Pain Syndrome) on the visit of the 19<sup>th</sup> of October, 2018. Doctor Seale released the claimant to Doctor Roman, who made the diagnosis. She received blocks and injections, and some of them helped temporarily. (Tr. 15)

The claimant received an MRI of the right knee and Doctor Gordon opined that she did not need surgery, but that her problem was secondary to CRPS. The claimant was allowed to return to work and the respondent accommodated her restrictions and provided sedentary-type duty. (Tr. 16) The claimant then obtained a change of physician and presented to Doctor Qureshi. (Tr. 17) She testified that her right leg would sometimes give out and Doctor Qureshi recommended a spinal cord stimulator, which was denied by the respondents. (Tr. 18) She then returned to Doctor Roman who performed a functional capacity exam which provided she could return to work in a light duty category. (Tr. 19) The claimant stated that after her employer received all of the information, she was told that they had no work within her restrictions and was terminated, with her last day of work being November 6, 2019.

The claimant admitted she owned the property where the shop, Robin's Nest, was located, but denied performing any work since November 6, 2019. She additionally denied performing any work in the shop or renting the shop out, although she did admit that she allowed other people the use of it and her \$40,000 worth of tools. (Tr. 20, 21) She also admitted her boyfriend used the shop.

In regard to the medical, the claimant stated after her last visit to Doctor Roman, she had not been authorized to return to any doctor by workers' compensation, but she did return to Doctor Killough in November of 2019, where she asked for some medication. (Tr. 22) She continued treatment with Doctor Qureshi. (Tr. 23) The claimant returned to Doctor Killough in January of 2020 after she had fallen on her bottom, so she used her health insurance. The claimant felt her pain was the same between November 7, 2019,

and January 31, 2020, between her visits to Doctor Killough. In February, the claimant presented to Doctor Kahn, who was in the same office with Doctor Qureshi. (Tr. 24, 25)

The claimant testified she continued to treat with Doctor Kahn and Doctor Qureshi for the next few months and then fell about four (4) feet off her porch, fracturing her ribs, when her leg gave out. She stated she would suffer about one (1) fall a week. She then underwent another MRI, and underwent another surgery in March of 2021, which was performed by Doctor Raja. She stated she was referred to Doctor Raja by Doctor Qureshi. (Tr. 26) After surgery, she was better for a while, but then started getting worse after another fall.

In regard to a spinal cord stimulator, the claimant stated she had been unable to obtain one because Medicaid wouldn't pay for it, workers' compensation rejected it, and she could not afford it. The claimant stated she was asking for a spinal cord stimulator, just anything to stop the pain. She also admitted she had been approved for social security disability. She testified she was currently taking Lyrica 100 milligrams, twice a day, hydrocodone, methocarbamol, or something that is a muscle relaxer. (Tr. 27) At night, she takes her anti-depressants and also meloxicam for her breakthrough pain. She also testified her loss of bladder function had gotten worse. In regard to her animals, she stated her boyfriend now takes care of them. (Tr. 29)

Under cross examination, the claimant was questioned about how her testimony had changed about the care of the animals since her deposition on September 21<sup>st</sup>. She responded that she had fallen several times since then. She admitted she was still doing the laundry and placing meals in the oven. She also admitted she had received workers' compensation benefits up through the point that Doctor Roman placed her at MMI and

gave her a rating in October of 2019. (Tr. 30) The following cross examination then occurred:

Q. And you had continued working for Sherwood Tractor for all those months up until your restrictions became permanent, is that correct?

A. Yes.

Q. And Sherwood Tractor had you doing warranty work, had you answering the phone, doing various paperwork, and you were able to do that just fine?

A. Yes.

Q. And then they had terminated you because they weren't able to accommodate your restrictions and provide you with that job on a full-time basis, correct?

A. Yes.

Q. Okay. And your condition has not changed, then, it was just that they weren't able to provide you that work on a full-time basis?

A. Correct.

The claimant was then questioned about Robin's Nest Repairs, LLC. (Tr. 31) The claimant admitted that Sam, who was Patricia Smith's son, would perform work on the tractors for neighbors and she would sit and supervise and advise them. The claimant was questioned about a phone number. She denied that it was a number for Robin's Nest Repair, but admitted that it was her personal number. She denied that she took phone calls for Robin's Nest Repair at that number. She was then questioned about whether she recalled a phone call on December 17, 2020. (Tr. 32) She stated she did not remember the call but did admit that her sixteen (16)-year-old granddaughter had access to the phone and that she did not do business at Robin's Nest Repair. The claimant was asked about a phone call that was made to her personal phone where a female answered and indicated they were taking new clients. The claimant stated she

did not remember the call, but admitted that it was possibly her. (Tr. 33) “I’m not denying, I don’t remember, and I don’t believe I did.” She admitted her shop was being used by her live-in to do maintenance, repair work, and mechanical work on tractors and farm equipment for neighbors. She denied being paid for the work, but admitted that they would barter for services. (Tr. 34) They would give her hay for the work. She also testified that she did sit there and help Sam Smith, but she never received anything in regard to that. (Tr. 35)

The claimant was then questioned about Brian Church, and admitted that one of Mr. Church’s tractors had been worked on in her shop. She testified Mr. Church had a key to the shop and for that matter still had a key. He did not have to be supervised because he had also gone to Mahindra School and was a co-worker at Sherwood Tractor.

The claimant was also questioned about Darryl Norris and stated that although she did not remember the exact dates, he did have a tractor over at her shop and needed the use of her wenches. She further denied supervising the work on his tractor because she does not do John Deeres. The claimant was then questioned about Jerry Don. She replied he was her neighbor and denied performing any work on his vehicles. (Tr. 36, 37)

The following questioning then occurred in regard to a Facebook post:

Q. Well, tell me about the post. I don’t want to misrepresent it. You tell me and the judge what that post was about.

A. All posts that were on there, I looked at those, what he was talking about the last time. They were all put on on the same exact date, all of them. And the post states, “Another satisfied.” It was a John Deere tractor that Darryl Norris himself was over there working on. I was not the one that took the picture.

Q. Another satisfied customer of Robin’s Nest Repair.

A. Okay. I don’t remember the exact words that was on there.



Q. Okay.

A. I was not the one that worked on it, it was Darryl himself.

The claimant was then questioned about her emergency room visit on August 5, 2020, where the claimant fell off her porch and fractured her ribs. The claimant was asked why she did not tell the emergency room about her back or that her leg had gone out. (Tr. 38) She testified that she did not remember what was said because she was in quite a bit of pain, but did remember telling them to not put a blanket over her and her leg. She did not know why it was not in the report. The claimant also admitted that when her deposition was taken on September 21<sup>st</sup>, she stated the surgery in March and the follow-up on April 9<sup>th</sup> was a miracle. (Tr. 39)

On redirect, the claimant testified her partner on Robin's Nest was Patty Smith, but they did not get along because she had shot her granddaughter. (Tr. 40) The claimant denied performing any work for any of the neighbors. She also testified that Bryan Church did not provide hay, but Darryl Norris did. Additionally, her boyfriend Charles was able to work in the shop and sometimes she would go with him and talk to him while he was doing something. "We have an ongoing joke, he's a nurse, I'm the mechanic, so our roles are kind of reversed." He's actually employed. (Tr. 41, 42) In regard to the Facebook page, the claimant testified her daughter in Missouri had access to it. (Tr. 43) In regard to her falls, she stated she could be walking, and if she was not paying attention, she would take a step and its like the leg is not there. (Tr. 44, 45)

The claimant submitted a packet of medical records consisting of 234 pages that were admitted into the record without objection. The records provided that the claimant initially presented to Sherwood Urgent Care on March 26, 2018, with the onset of low

back pain three (3) days earlier after lifting a heavy object. X-rays provided the spine was within normal limits. (Cl. Ex. 1, P. 1 – 5) The claimant continued to present to Sherwood Urgent Care and on April 10, 2018, received an MRI of the lumbar spine. The MRI report provided under impression that the L3–L4 disc demonstrated a right foraminal protrusion causing foraminal narrowing and a likely impingement on the exiting right L3 nerve root. Circumferential canal narrowing and mild bilateral neural foraminal stenosis at L4-L5 was seen which related to a diffuse disc bulge. Claimant returned to Sherwood Urgent Care and again presented to Doctor Victor Vargas on April 18, 2018. The claimant provided that the medications provided had not helped her pain. The report further provided that she would benefit from a steroid injection at L5–S1. The claimant received a right lumbosacral paraspinal injection. (Cl. Ex. 1, P. 20, 21)

On May 16, 2018, the claimant presented to Arkansas Specialty Orthopedics with the assessment providing for an episode of low back pain with pain localized to the lumbosacral passage on the right side. The MRI showed some facet arthropathy at L5–S1. There was also a description of degenerative disc disease at the L3-L4 and L4–L5 without significant central canal stenosis. The recommendation was to start physical therapy as soon as possible and to continue with the medications. (Cl. Ex. 1, P. 22, 23)

The claimant returned to Doctor Vargas on June 7, 2018, with the report providing that the new MRI was still showing no clear focal traumatic injury to the lumbar spine but there were degenerative changes at multiple places. Under assessment, the report provided Doctor Vargas couldn't explain with any of the findings of the MRI, the symptomatology in the lower extremities. "Today we have a new MRI, better resolution, is still showing no clear focal traumatic injury to the lumbar spine. There is degenerative

changes at multiple places [...] It is possible that she had an aggravation of this degenerative changes pressure at the facet.” (Cl. Ex. 1, P. 27 – 29)

The medical records provided the claimant first presented to Doctor Roman on July 11, 2018, for bilateral intra-articular facet injections at L4- 5 and L5-S1 with a follow up in two to three weeks. (Cl. Ex. 1, P. 30) On October 8, 2018, Doctor Roman obtained a MRI of the lumbar spine which provided mild to moderate degenerative disc and joint disease with moderate right and mild left neural foraminal stenosis at L3-4 and mild right moderate left neural foraminal stenosis at L4–5 with no central canal stenosis. (Cl. Ex. 1, P. 62 – 63) On October 19, 2018, the claimant again presented to Doctor Roman who ordered a Three Phase Bone Scan of the lower extremities. This report provided under impression for asymmetric increased blood flow to the right foot and for a lesser degree of asymmetric blood pool activity and delayed uptake of the bones of the right foot. The report provided this could represent complex regional pain syndrome, but that other conditions such as altered weightbearing could also yield similar findings. (Cl. Ex. 1. P. 68) The claimant continued to present to Doctor Roman with at least twenty-two (22) visits of record, receiving multiple lumbar sympathetic blocks, and with the last visit on October 29, 2019, where Doctor Roman opined that the claimant had reached MMI. He referred to the lumbar decompression surgery of August 2018, and of the FCE (Functional Capacity Exam) of October 21, 2019. He agreed with the FCE and that the claimant had an eight percent (8%) whole person impairment. He also opined that the claimant would not qualify as having active complex regional pain syndrome or reflex dystrophy. (Cl. Ex. 1, P. 127 – 128)

In addition to being treated by Doctor Roman, the claimant was also seen by Doctor Jared Seale, on August 1, 2018. His report provided the claimant had received a L3 nerve root block, lumbar facet injections, and physical therapy. The injections did not help, and the physical therapy made her pain worse. Under assessment, the report provided for a disc protrusion, lateral, right, L3-4 with right L3 nerve block without obvious nerve impingement. (Cl. Ex. 1, P. 34 – 39)

The claimant was then seen by Doctor Sprinkle on August 13, 2018. The report provided that a nerve conduction study had been performed and there was no electrodiagnostic evidence of lumbar radiculopathy, peripheral neuropathy, or focal tibial or peroneal nerve entrapment in the right lower extremity that was tested today. (Cl. Ex. 1, P. 41 – 42)

The claimant returned to Doctor Seale on September 10, 2018. The report provided she had almost complete relief of her symptoms with the right L3 nerve root block. Given the fact that she had a lateral disc protrusion at L3-4 on the right with dermatomal right L3 distribution and a great diagnostic L3 nerve block, Doctor Seale opined that decompression was indicated. (Cl. Ex. 1. P 43 -54)

Doctor Seale performed a minimally invasive far lateral partial discectomy, on the transforaminal right at L3–4 on September 20, 2018. (Cl. Ex. 1, P 55 – 57) Five (5) days later, the claimant presented to Doctor Timothy Killough with severe lower extremity pain and a hyper seizure that had occurred since the surgery. (Cl. Ex. 1. P. 58 – 61, 64 – 67) On October 22, 2018, the claimant again presented to Doctor Seale. The report provided the claimant had developed a very uncommon severe complication of lumbar decompression being complex regional pain syndrome. Her bone scan was consistent

with this as well as her clinical impression. He further stated that Doctor Roman would take over her care from here. (Cl. Ex. 1. 69 - 75)

On December 18, 2018, the claimant was seen by Doctor Eric Gordon. His assessment provided for right knee pain secondary to RSD with functional giving way and limp likely secondary to pain limitations. The report provided he recommended physical therapy, but would refer the claimant back to Doctor Roman for treatment of the RSD. (Cl. Ex. 1, P. 87 – 91)

After a change of physician to Doctor Qureshi as testified to by the claimant, she first presented to him on September 17, 2019, with complaints of low back and right knee pain. The report provided the claimant stated she was in constant pain and that she reported constant falls along with loss of bladder control. Doctor Qureshi found that the claimant was suffering from complex regional pain syndrome of the right lower extremity and opined that since she had received a lumbar sympathetic block and nerve block in the past, he would like to proceed with a spinal cord stimulator trial to see if this would help improve her reflex sympathetic dystrophy, her complex regional pain syndrome, and her failed back surgical pain. (Cl. Ex. 1, P. 104 – 109)

A Functional Capacity Evaluation was performed on October 21, 2019. The claimant passed 53 of 53 of the consistency measures, and the report provided the claimant demonstrated the ability to work at the light physical demand level with a demonstrated occasional bimanual lift of up to thirty-five (35) pounds and an occasional carry of up to thirty (30) pounds and with a frequent ability of up to ten (10) pounds. (Cl. Ex. 1. P. 110 – 126)

After the claimant's final visit of record to Doctor Roman on October 29, 2019, the claimant returned to Doctor Killough on November 7, 2019, for an unauthorized visit and the record mentioned she had been released from the care of Doctor Roman, and that she wanted to try milder pain medication. (Cl. Ex1, P. 129 – 132) The claimant again returned to Doctor Killough on January 31, 2020, to discuss chronic pain issues in regard to reflex sympathetic dystrophy after her lumbar surgery. (Cl. Ex. 1, P. 133 - 136)

A few days later, the claimant made a visit to the Arkansas Spine and Pain Center, for a visit where she was seen by Nisa Khan, APRN FNP–C. The report provided the claimant was there with a complaint of low back and knee pain. (Cl. Ex. 1, P. 137 -142) The claimant returned on March 2, 2020, for a trigger point injection. (Cl. Ex. 1, P. 143 – 148) The claimant returned to the clinic on April 20, 2020, again with the complaint of pain in the low back and right knee. The report provided an MRI of the lumbar spine would be ordered. (Cl. Ex. P. 149 – 154) The claimant presented for an MRI of the lumbar spine on May 5, 2020. Doctor Qureshi's report provided under impression, for moderate disc degenerative changes at L3–L4 and L4–L5 which included protrusions that produced moderate to severe narrowing of the thecal sac. In addition, the report provided for a protruding component at the foraminal locations of the L2 and L3 on the right, bilaterally at L3–L4, and on the right at L4–L5, which contributed to mild to moderate foraminal narrowing, greatest on the right at L3-L4. (Cl. Ex. 1, P. 155 -159)

A report from the Arkansas Spine and Pain Center and Nisa Kahn, APRN, dated April, 20, 2020, provided for chronic regional pain syndrome of the lower extremity. (Cl. Ex. 1, P. 160 – 165) The claimant then received a medial branch nerve block at the L3–L4, L4-L5, and L5–S1 by Doctor Qureshi on July 8, 2020. (Cl. Ex. 1, P. 166 – 167)

On August 5, 2020, the claimant presented to the White County Medical Center due to a four (4)-foot fall from a porch, where she landed on her left side. The report provided there was a history of falls, and additionally provided that she presented with a fourth and fifth lateral rib fracture. (Cl. Ex. 1, P. 168 – 184)

On August 24 and 31, 2020, the claimant again received medial branch nerve blocks at the same lumbar levels previously received. (Cl. Ex. 1, P. 185 -188). The claimant then returned to the Arkansas Spine and Pain Center on September 8, 2020, for a follow-up, and was again seen by Nisa Kahn APRN, who was supervised by Doctor Quershi. The report provided for lower back and right knee pain, and further stated the claimant would be referred to Doctor Raja to determine if she would benefit from surgery before proceeding with a spinal cord stimulator or superior treatment. (Cl. Ex. 1, P. 189 – 198) On September 20, 2020, the claimant received another MRI of the lumbar spine. The report provided there were no signal abnormalities within the distal spinal cord, no thecal sac mass, and the nerve roots of the cauda equina were normal. Five lumbar-type vertebrae were present and in anatomic alignment. The tip of the conus medullaris terminated normally at the L1 level. There were diffuse mild degenerative changes of the spinous process and interspinous ligaments and mild interspinous ligament edema at L4-L5. The prevertebral space was unremarkable. The following findings were present at each level. (Cl. Ex 1, P. 199 – 209)

The claimant then returned to Doctor Qureshi on September 22 and October 6, for radiofrequency ablation of the medial branch nerves at L4–L5. (Cl. Ex. 1, P. 210 – 23) The claimant was then referred to Doctor Ali Raja on October 26, 2020, with the complaint of continued low back pain. (Cl. Ex. 1, P. 214 – 216) The claimant had a follow-up on

February 22, 2021, and later on March 25, 2021, where she stated she wished to proceed with surgery that had been described by Doctor Raja. (Cl. Ex. 1, P. 217 – 223) On March 26, 2021, Doctor Raja performed a laminectomy for decompression at the L3–L4 and L4–L5 at the Arkansas Surgical Hospital. (Cl. Ex. 1, P. 224 – 227) A follow-up for a wound check occurred on April 9, 2021, which provided that the claimant “tolerated procedure well.” (Cl. Ex. 1, P. 226 – 227)

### **DISCUSSION AND ADJUDICATION OF ISSUES**

In reaching a decision on the issues and 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).

#### Medical

In regard to medical, the Arkansas Workers’ Compensation Act provides that an 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). 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 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. Metropolitan Nat’l Bank v. La Sher Oil Co., 81 Ark App. 263, 101 S.W.3d 252 (2003). 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). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co. 14 Ark. App. 88, 684 S.W.2d 842 (1985).

The claimant received a partial discectomy performed by Doctor Seale on September 20, 2018, and later on October 22, 2018, and he opined that the claimant had developed a very uncommon severe complication of the lumbar decompression being complex regional pain syndrome, and at that point, turned the treatment of the claimant over to Doctor Roman. The claimant was also seen by Doctor Eric Gordon on December 18, 2018, and his assessment provided for right knee pain secondary to RSD, with functional giving way and limp likely, secondary to pain limitations. The report provided he recommended physical therapy and he also referred the claimant back to Doctor Roman for treatment of the RSD.

Doctor Roman began treating the claimant on July 11, 2018. After twenty-two (22) visits of record to Doctor Roman, with the claimant being treated with multiple sympathetic blocks, a decompressing surgery, and taking a Functional Capacity Exam where she satisfied 53 of 53 consistency matters, and which provided she demonstrated the ability to work at the light physical demand level, Doctor Roman opined that the claimant had reached MMI on October 29, 2019, and that the claimant had a disability rating of eight percent (8%) to the body as a whole.

After a change of physician, the claimant first presented to Doctor Qureshi on September 17, 2019, and he opined that the claimant was suffering from complex regional pain syndrome of the right lower extremity and since she had received lumbar sympathetic blocks and a nerve block in the past, he would like to proceed with a spinal

cord stimulator trial to see if this would help improve her reflex sympathetic dystrophy, her complex regional pain syndrome, and her failed back surgical pain. The claimant continued to present to Doctor Qureshi after Doctor Roman opined that the claimant had reached MMI on October 29, 2019, and Doctor Qureshi treated her for chronic regional pain syndrome of the lower extremity. An MRI of the lumbar spine was ordered by Doctor Qureshi on May 5, 2020, and it provided for moderate disc degeneration and for a protruding component at the foraminal location of the L2 and L3 on the right, bilaterally at L3–L4, and on the right at L4–L5, and that this contributed to mild to moderate foraminal narrowing, greatest on the right at L3-L4.

It is clear in Arkansas that a respondent's obligation for medical treatment does not end when a claimant reaches MMI. The Arkansas Court of Appeals has held that a claimant may be entitled to additional treatment after the healing period has ended if the treatment is geared toward management of the injury. See Patchell v. Wal-Mart Stores Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury, maintaining the level of healing achieved, or preventing further deterioration of the damage produced by the compensable injury. Jordan v. Tyson Foods, Inc. 51 Ark. App. 100, 911 S.W.2d 593 (1995). A claimant is not required to furnish objective medical evidence of her continued need for medical treatment. Castleberry v. Elite Lamp Co., 69 Ark. App. 359, 13 S.W. 3d 211 (2000).

In the present matter, Doctor Roman and Doctor Qureshi issued conflicting opinions as to whether the claimant was suffering from Complex Regional Pain Syndrome and Reflex Sympathetic Dystrophy. Doctor Roman opined after twenty-two (22) visits

that the claimant did not qualify for a diagnosis of Complex Regional Pain Syndrome or reflex dystrophy, and that the claimant had reached MMI. Doctor Qureshi opined after the initial visit on September 17, 2019, that the claimant suffered from complex regional pain syndrome of the right lower extremity.

At this point, the opinions by the other treating doctors should be reviewed. Doctor Seale, who performed a minimally invasive discectomy in September 2018, opined prior to referring the claimant back to Doctor Roman that the claimant had developed an uncommon severe complication of the decompression, that being complex regional pain syndrome, which was consistent with her bone scan and her clinical impression. Later on December 18, 2018, Doctor Gordon opined that the claimant's right knee pain was secondary to reflex sympathetic dystrophy, prior to also referring the claimant back to Doctor Roman.

Here we have a classic situation with "dueling doctors" in regard to their opinions. Although Doctor Roman saw the claimant twenty-two times, multiple doctors diagnosed the claimant with complex regional pain syndrome or reflex sympathetic dystrophy and the opinion of Doctor Seale is found controlling when he opined that the claimant developed the uncommon severe complication from decompression surgery of complex regional pain syndrome. Based upon this finding, there is no alternative but to find that the claimant has proved by a preponderance of the credible evidence that the treatment provided by Doctor Raji, Doctor Quershi, and Nisi Kahn, APRN, is reasonable and necessary.

In regard to the claimant's return visit to Doctor Killough after Doctor Roman's finding that the claimant had reached MMI, it is commendable that the claimant was

attempting to reduce the medications she was taking, but the visit to Doctor Killough for this purpose was not in the chain of referral for her treatment. Consequently, the claimant has failed to prove by a preponderance of the credible evidence that the treatment by Doctor Kilough was reasonable and necessary under the circumstances.

Unfortunately, the claimant suffered a fall from her porch on August 5, 2020, when she fell four (4) feet and ended up in the emergency room. The claimant testified that her leg that was part of the work-related injury gave way, causing the fall. However, in regard to the claimant's treatment by the White County Emergency Room on August 5<sup>th</sup>, 2020, the medical records make no mention of the claimant's back injury or of her leg giving out causing the fall from the porch. It is a common practice for providers in the emergency room to question conscious individuals about the cause of an injury, specifically where a fall was involved. Ark. Code Ann. § 11-9-102(4)(F)(iii) provides that "benefits shall not be payable for a condition that results from a nonwork-related intervening cause following injury which causes or prolongs disability or a need for treatment." Consequently, there is no alternative but to find that the claimant failed to prove by a preponderance of the credible evidence that the treatment by the White County Emergency Room on August 5, 2020, was reasonable and necessary in connection to the work-related injury of the claimant on March 23, 2018, but was in fact due to an intervening cause.

Finally, there is the issue of the spinal cord stimulator requested by the claimant. It was first mentioned by Doctor Qureshi during the claimant's initial clinic visit to him on September 17, 2019. On this visit, Doctor Qureshi suggested a spinal cord stimulator trial, in an attempt to treat her RSD, CRPS, and her failed back surgery. The spinal cord stimulator was later mentioned by Nisi Kahn, APRN on February 3, 2020. The claimant

returned to the Arkansas Spine and Pain Center on September 8, 2020, for a follow-up, and was seen by Nisa Kahn APRN, who was supervised by Doctor Quershi. The report again provided for lower back and right knee pain, and further stated the claimant would be referred to Doctor Raja to determine if she would benefit from surgery before proceeding with a spinal cord stimulator. The records provide that the claimant first presented to Doctor Raja on October 26, 2020, with a follow-up on March 25, 2021, when the claimant stated she wished to proceed with the surgery. A laminectomy for decompression was performed at the L3-L4 and L4-L5 on March 26, 2021, with a follow-up for a wound check up on April 9, 2021. The medical records provide that the only health care provider to see the claimant during the last year is Doctor Raja, who made no recommendation for a spinal cord stimulator. Consequently, there is no alternative but to find that the claimant failed to prove by a preponderance of the credible evidence that the spinal cord stimulator is reasonably necessary.

#### Temporary Total Disability

In regard to temporary total disability (TTD), the claimant contended she was entitled to TTD from November 7, 2019, to a date to be determined. 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. Breshears, 272 Ark. App. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing in the way of treatment will improve that condition. Mad Butcher, Inc. V. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982) The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. See Breshears, *supra*. The claimant bears the burden of

proving both that she remained within her healing period and, in addition, suffered a total incapacity to earn pre-injury wages in the same or other employment. Paalazolo v. Nelms, 46 Ark. App. 130, 877s.W.2d 938 (1994).

There appears to be no dispute that Doctor Roman placed the claimant at maximum medical improvement (MMI) on October 21, 2019, and released the claimant to light duty. The claimant testified that she had been performing light duty work provided by the respondent up and until her restrictions became permanent, where she was advised by the respondents that they were not in a position to accommodate her restrictions on a permanent basis and was terminated. There was no note from Doctor Roman, Doctor Killough, Doctor Qureshi, or any of the other providers that opined that the claimant not work. The persistence of pain may not of itself prevent a finding that the healing period is over, providing the underlying condition has stabilized. The Court of Appeals has previously rejected another claimant's argument that the healing period was not over because she had not received optimal relief from pain. See Deloach v. Manpower, Inc., 1999 Ark. App. Lexis 315 (1999) To receive temporary total disability, the claimant has the burden of proof to demonstrate by a preponderance of the evidence that she was within a healing period and that she was totally incapacitated from earning wages. Here there are no medical records to provide that the claimant should remain off work. The claimant admitted she had received workers' compensation benefits and under cross examination further admitted that she was able to perform light duty work consisting of warranty work and answering the phone. The claimant testified her surgery on March 26, 2021, was a miracle. Following the surgery, the only medical report entered into the

record was dated April 9, 2021, which provided that the claimant tolerated the procedure well.

That based upon the above evidence, there is no alternative but to find that the claimant has proven by a preponderance of the credible evidence that she is entitled to TTD from March 26, 2021, through the date of April 9, 2021, and only for these dates.

#### Attorney Fees

Based upon the above findings, the claimant and her attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. § 11-9-715.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that:

1. The claimant has proven by a preponderance of the credible evidence that the treatment provided by Doctor Raji, Doctor Quershi, and Nisi Kahn, APRN is reasonable and necessary.
2. The claimant has failed to prove by a preponderance of the credible evidence that the treatment provided by Doctor Killough, after Doctor Roman found that the claimant had reached MMI, is reasonable and necessary.
3. Additionally, the claimant has failed to prove by a preponderance of the credible evidence failed that the treatment by the White County Emergency Room on August 5, 2020, was reasonable and necessary in connection with the work-related injury of the claimant on March 23, 2018, but was in fact due to an intervening cause.
4. The claimant has failed to prove by a preponderance of the credible evidence that the spinal cord stimulator is reasonable and necessary.
5. The claimant has proven by a preponderance of the credible evidence that she is entitled to TTD from March 26, 2021, through the date of April 9, 2021.
6. The claimant is also entitled to attorney fees as spelled by the Arkansas Workers' Compensation Act. 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.**

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**JAMES D. KENNEDY**  
**Administrative Law Judge**