

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G802764

ROBIN L. BUSH, EMPLOYEE	CLAIMANT
SHERWOOD TRACTOR, EMPLOYER	RESPONDENT NO. 1
MIDWEST INSURANCE COMPANY/MIC RISK MANAGEMENT SERVICES, LLC INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 9, 2022

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE JAMES ARNOLD II, Attorney at Law, Fort Smith, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed January 12, 2022. In said order, the Administrative Law Judge made the following 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 Qureshi, 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.

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.

Therefore, we affirm and adopt the January 12, 2022 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.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part with but must respectfully dissent in part from the majority opinion. I concur with the majority's findings that (1) 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; (2) The claimant has failed prove by a preponderance of the evidence that the treatment by Doctor Kilough that was provided after Doctor Roman's finding of the claimant reaching MMI is reasonable and necessary.; (3)The claimant failed to prove by a preponderance of the credible evidence that the spinal cord stimulator is reasonable and necessary and (4) 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. However, I must dissent from the majority opinion finding that the claimant has 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. I find that the claimant proved by a preponderance of the evidence that the treatment by the White County Emergency Room on August 5, 2020 is reasonable and necessary, and that

the claimant is entitled to TTD from March 26, 2021 until six to eight weeks after April 9, 2021.

August 5, 2020 White County Emergency Room Visit

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 claimant bears the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). 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).

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury; the basic test is whether there is a causal connection between the two episodes. *See generally Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001); *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

Ark. Code Ann. Section 11-9-514 prescribes the rules for the selection of an authorized medical provider for the treatment of a compensable injury. When a claimant receives medical care by a physician

outside the procedure of this statute, that treatment “shall be” at the claimant’s expense, except in the case of emergency treatment. Ark. Code Ann. Sec. 11-9-514(b).

On September 20, 2018, the claimant underwent a “minimally invasive far lateral partial discectomy, transforaminal, right, L3-4”. Following this procedure, the claimant began experiencing severe right leg pain and began falling as a result of her right leg/knee giving way.

The claimant was diagnosed with CRPS by Dr. Justin Seale on October 22, 2018. Dr. Seale noted:

The patient has developed a very uncommon severe complication of lumbar decompression being complex regional pain syndrome. Her bone scan is consistent with this as well as her clinical impression.

Dr. Roman will take over care from here. I spoke with him today. He is going to try some blocks as well as take over her med management.

Dr. Seale’s x-ray interpretation on that same day indicated, “[b]one scan is consistent with CRPS of the right lower extremity”.

The claimant’s right knee was initially examined by Dr. Eric Gordon on December 18, 2018. The history indicates, “She presents today for evaluation of right knee pain which has been present since her knee

gave way causing her to fall after having surgery on her back on 09/20/2018.” Dr. Gordon’s assessment was as follows:

Right knee pain likely secondary to RSD with functional giving way and limp likely secondary to pain limitations, deconditioning.

Regarding her fall on August 5, 2020, the claimant testified as follows:

Q Now you continued to treat with Doctor [sic] Kahn and Doctor Qureshi intermittently for the next few months, and on August 5, 2020, there is a note that you fell at home and fractured your ribs. Tell us what happened.

A I was out on my front porch and my leg gave out and I fell off about 4 foot down and fractured two ribs.

Q Okay. When you say your leg went out, it’s still the same right leg?

A Right leg, yes, ma’am.

Q Okay. Do you recall about how many falls you’ve had since the first time you fell after this surger?

A I could average about at least one a week.

Q Okay.

A I fall quite often.

Clearly, the injuries the claimant sustained as a result of falling on August 5, 2020 are compensable consequences of her compensable back injury. But for the claimant's work accident, the back surgery would not have been necessary; without surgery there would be no resulting CRPS; and without CRPS, the claimant would not have fallen and broken her ribs on August 8, 2020. A clear line can be drawn directly from the claimant's work accident to this fall and the resulting injuries. Thus, I find that the emergency treatment sought for this compensable injury is reasonable and necessary and causally connected to the claimant's workplace accident.

Temporary Total Disability Benefits

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. *Ark. State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). 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. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

A claimant who has been released to light duty work but has not returned to work may be entitled to temporary total disability benefits where there is insufficient evidence that the claimant has the capacity to

earn the same or any part of the wages that he was receiving at the time of the injury. *Breshears, supra; Sanyo Manufacturing Corp. v. Leisure*, 12 Ark. App. 274, 281-82 (1984).

On March 26, 2021, Dr. Raja performed a L3-L4 and L4-L5 laminectomy for decompression on the claimant. Dr. Raja's April 9, 2021, medical record indicates the following:

We discussed the need to continue to be careful with no excessive pushing, pulling, bending, weight lifting, strenuous activities and not lifting anything more than 5-10 pounds. She will return to the clinic for [her] 6-8 week follow up visit.

The respondents were responsible for providing the claimant work within the above-noted restrictions. The record does not show that the respondents made the claimant an offer to return to light duty work within her restrictions. Therefore, I find that the claimant is entitled to TTD benefits beginning on March 26, 2021 and continuing through six to eight weeks after April 9, 2021.

For the foregoing reasons, I concur in part and dissent in part from the majority opinion.

M. Scott Willhite, Commissioner