BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G906350

LAURA D. EASLEY,
EMPLOYEE **CLAIMANT**

COLLEGE HILL MIDDLE SCHOOL,
EMPLOYER **RESPONDENT**

ARKANSAS SCHOOL BOARDS ASS'N
WORKERS' COMPENSATION TRUST/
ARKANSAS SCHOOL BOARDS ASS'N,
INSURANCE CARRIER/TPA **RESPONDENT**

OPINION AND ORDER FILED MARCH 2, 2023

Hearing before the Arkansas Workers' Compensation Commission (the Commission) before Administrative Law Judge (ALJ) Mike Pickens on December 2, 2022, in Texarkana, Miller County, Arkansas.

The claimant was represented by the Honorable Gregory R. Giles, Moore, Giles & Matteson, LLC, Texarkana, Miller County, Arkansas.

The respondents were represented by the Honorable Melissa Wood, Worley, Wood & Parrish, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the Prehearing Order filed September 23, 2022, the parties agreed to the following stipulations, which they modified and then affirmed on the hearing record:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times including August 13, 2019, when the claimant sustained compensable injuries to her right ankle, neck, and thoracic spine.

3. The claimant's average weekly wage (AWW) was $484.92, entitling her to weekly compensation rates of $323.00 for temporary total disability (TTD), and $242.00 for permanent partial disability (PPD) benefits.

4. The respondents have accepted and paid a five percent (5%) permanent anatomical impairment rating for the claimant's compensable right ankle injury, as well as a ten percent (10%) to the body-as-a-whole (BAW) permanent anatomical impairment rating for her compensable neck injury.

5. The respondents do not dispute the fact the claimant fell at home in August of 2020, as they paid for additional medical treatment for her right ankle and neck/cervical spine following this fall.

6. The respondents controvert the claimant's alleged lower back/lumbar spine injury, as well as her request for any additional medical treatment and additional TTD benefits other than the medical and TTD benefits they have paid to date.

7. The parties specifically reserve any and all other issues for future determination and/or hearing.

(Commission Exhibit 1 at 2; Hearing Transcript at 5-7; Respondents' Post-Hearing Brief at 1).

Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether, within the meaning of the Arkansas Workers' Compensation Act (the Act), the claimant sustained a "compensable injury" to her lower back/lumbar spine, either as a result of the August 13, 2019, compensable work injury, and/or the admitted compensable consequence incident/fall of August 22, 2020.

2. Whether the claimant is entitled to additional TTD benefits from August 22, 2020, through March 8, 2021; and from July 13, 2022, through a date yet to be determined.

3. Whether the claimant is entitled to the additional medical treatment Dr. Ardoin has recommended for her compensable right ankle injury, specifically, a right ankle fusion; as well as whether the claimant is entitled to additional medical treatment – specifically pain management treatment – for her cervical and thoracic spine, as well as the alleged lumbar spine injury.

4. Whether the claimant's attorney is entitled to a controverted fee on these facts.

5. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms'n Ex. 1 at 2-3; T. at 5-12; and Claimant's Post-Hearing Brief; Respondents' Post-Hearing Brief).

First, the claimant contends she sustained compensable injuries to her thoracic spine and lumbar spine, either immediately as a result of the initial work incident of August 13, 2019, and/or a compensable consequence event that occurred on August 22, 2020, when she fell at home. The claimant contends the additional medical treatment, specifically the right ankle fusion Dr. Ardoin has recommend, is related to and reasonably necessary in light of her compensable injury of August 13, 2019, and/or the compensable consequence incident of August 22, 2020. She contends she is not at maximum medical improvement (MMI) with regard to her compensable right ankle injury and, therefore, she is entitled to additional TTD benefits from August 22, 2020, through March 8, 2021; and from July 13, 2022, through a date yet to be determined. Second, the claimant contends the medical treatment she has received to date for her right ankle, as well as for her cervical, thoracic, and lumbar spine injuries has been and remains related to and reasonably necessary for either the August 13, 2019, work incident and/or the August 22, 2020, compensable consequence incident and, therefore, the respondents should be ordered to pay for this medical treatment as well as for continuing medical treatment for all these injuries, including all the pain management treatment the claimant has received or will receive in the future at Pain Treatment Centers of America. Third, the claimant contends the respondents have controverted any and all indemnity payments other than those they have already paid to date and, therefore, they should be ordered to pay a controverted attorney's fee. The claimant specifically reserves any and all other

issues for future litigation and/or determination. (Comms'n Ex. 1 at 3-4; T. at 8-10; Cl.'s Brief).

The respondents contend they have paid all appropriate medical and indemnity benefits to date, and they are continuing to pay all appropriate and necessary medical and indemnity benefits. The respondents contend further that Dr. Martin performed an independent medical evaluation (IME) and indicated the right ankle fusion surgery Dr. Ardoin has recommended is not reasonably necessary, primarily because of the claimant's high BMI of 49. Therefore, in light of the claimant's high BMI, the respondents contend they should not be liable for payment for the recommended right ankle fusion surgery. The respondents contend the additional medical treatment the claimant is requesting for her cervical spine and her thoracic strain is not related to nor is it reasonably necessary for treatment of her compensable injury of August 13, 2020, or the compensable consequence incident of August 22, 2020. The respondents contend the claimant did not sustain a compensable injury within the Act's meaning to her lower back/lumbar spine at any time. Concerning the claimant's requested additional/continued pain management treatment for her right ankle, cervical, thoracic, and lumbar spine, the respondents contend that additional medical treatment is not related to nor is it reasonably necessary in light of any of her injuries, compensable or otherwise. The respondents contend the medical records do not support the claimant's request for additional TTD benefits. They contend the claimant has been assigned a 10% BAW impairment rating for her cervical injury, which they have accepted and paid in full; and that Dr. Martin has assigned her a 20% BAW impairment rating for her right ankle injury, and that the parties are working together to clarify this rating. The respondents specifically reserve any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 4-5; T. at 10-11; Resps'. Brief).

The record consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the parties' blue-backed post-hearing briefs.

STATEMENT OF THE CASE

The claimant, Ms. Laura D. Easley (the claimant), is 52 years old. It is undisputed she fell at work on August 13, 2019, and sustained injuries to her right ankle, as well as to her cervical and thoracic spine. The respondents accepted these injuries as compensable and paid both medical and indemnity benefits, including surgery on the claimant's right ankle and cervical spine. It is also undisputed the claimant fell at her home on August 22, 2020, when her right ankle gave-out as she was walking. The respondents paid for additional medical treatment for the claimant's neck/cervical spine, and right ankle following this incident. The claimant contends she injured her lower back/lumbar spine at this time; however, in light of the claimant's past history of symptomatic lower back/lumbar spine problems the respondents controverted the claimant's alleged lower back/lumbar spine injury.

Consequently, the issues litigated at the subject hearing and to be decided herein are: (1) whether the claimant sustained a "compensable injury" to her lower back/lumbar spine within the Act's meaning either in the initial fall at work on August 13, 2019, or as a result of the fall at her home on August 22, 2020; (2) whether the right ankle fusion surgery Dr. Ardoin has recommended for the claimant is related to and constitutes reasonably necessary medical treatment for her admittedly compensable right ankle injury; and, (3) whether the claimant is entitled to additional pain management treatment for her cervical and thoracic spine and – if the alleged injury is deemed "compensable" – for her alleged lower back/lumbar spine injury. Rather than recite a detailed

statement and analysis of the relevant medical and other evidence here, I will do so below in the "Discussion" portion of this opinion and order.

DISCUSSION

Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2022 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). ***Ark. Code Ann.*** Section 11-9-704(c)(3) (2022 Lexis Repl.) requires the ALJ, the Commission, and the courts "shall strictly construe" the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party**.** ***Ark. Code Ann***. § 11-9-704(c)(4) (2022 Lexis Repl.); *Gencorp Polymer Products v. Landers,* 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover,* 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791,

595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees,* 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles, supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

Compensability of the Claimant's Lower Back/Lumbar Spine Condition

For any specific-incident injury to be compensable, the claimant must prove by a preponderance of the evidence that her injury: (1) arose out of and in course of her employment; (2) caused internal or external harm to his body that required medical services; (3) is supported by objective findings, medical evidence, establishing the alleged injury; and (4) was caused by a specific incident identifiable by time and place of occurrence. ***Ark. Code Ann***. § 11-9-102(4); *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, at 5, 344 S.W.3d 684, 687 (Ark. App. 2009). Of course, the claimant bears the burden of proving the compensable injury by a preponderance of the credible evidence. ***Ark. Code Ann.*** § 11-9-102(4)(E)(i); and *Cossey, supra*.

"Objective findings" are those findings which cannot come under the voluntary control of the patient. ***Ark. Code Ann***. § 11-9-102(16)(A); *Long v. Wal-Mart Stores, Inc*., 98 Ark. App. 70, at 80 250 S.W.3d 263, at 272 (Ark. App. 2007). Objective findings, "specifically exclude such subjective complaints or findings such pain, straight-leg-raising tests, and range-of-motion tests." *Burks v. RIC, Inc*., 2010 Ark. App. 862 (Ark. App. 2010). Objective medical evidence is not essential to establish a causal relationship between the work-related accident and the alleged injury where objective medical evidence exists to prove the existence and extent of the underlying injury, and a preponderance of other nonmedical evidence establishes a causal relationship between the objective injury and the work-related incident(s) in question. *Flynn v. Southwest Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670 (Ark. App. 2010). Moreover, the claimant must prove a causal relationship exists between her employment and the alleged injury. *Wal-Mart Stores, Inc., v. Westbrook*, 77 Ark. App. 167, 171, 72 S.W.3d 889, 892 (Ark. App. 2002) (citing *McMillan v. U.S. Motors*, 59 Ark. App. 85, 90, 953 S.W.2d 907, 909 (Ark. App. 1997)).

Concerning the proof required to demonstrate the aggravation of a preexisting condition, our appellate courts have consistently held that since an aggravation is a *new injury*, a claimant must prove it by *new objective evidence of a new injury different than the preexisting condition*. *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (Ark. App. 2012) (citing *Barber v. Pork Grp., Inc*., 2012 Ark. App. 138 (Ark. App. 2012); *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W.3d 1 (Ark. App. 2011); *Mooney v. AT & T*, 2010 Ark. App. 600, 378 S.W.3d 162 (Ark. App. 2010) (Emphases added.). Where the only objective findings present are consistent with prior objective findings *or consistent with a long-term degenerative condition rather than an acute*

injury, this does not satisfy the objective findings requirement for the compensable aggravation of a preexisting condition injury. Vaughn, 2012 Ark. App. 344, at 6 (holding that Arkansas courts have interpreted the Act to require "new objective medical findings to establish a new injury when the claimant seeks benefits for the aggravation of a preexisting condition"); *Barber, supra* (affirming the Commission's denial of an aggravation of a preexisting condition claim *where the MRI findings revealed a degenerative condition, with no evidence of, and which could not be explained by, an acute injury*) (Emphases added.). In *Mooney*, 2010 Ark. App. 600 at 4-6, 378 S.W.3d at 165-66 (Ark. App. 2010), the court affirmed the Commission's decision denying a back injury claim where the objective evidence of an injury - including muscle spasms, positive EMG test results, and spinal stenosis revealed on an MRI - were all present *both before and after the date of the alleged aggravation injury*. (Emphasis added).

Based on the aforementioned law as applied to the facts of this case, the totality of the credible evidence of record – particularly the medical evidence – I am compelled to find the claimant has failed to meet her burden of proof in demonstrating she sustained a lower back/lumbar spine injury as a result of either of the two (2) incidents in question – the August 13, 2019, fall at work, or the August 22, 2020 fall at home.

The claimant has a long-standing, well-documented history of symptomatic, "severe" lower back/lumbar spine pain/complaints. There exists no objective medical evidence proving she sustained a "compensable injury" within the Act's meaning as a result of either of the aforementioned falls. MRIs of her lower back/lumbar spine taken both before and after the two (2) falls in question are essentially the same, and reflect only congenital spondylosis other

evidence of degenerative disc disease (DDD). Indeed, the claimant's medical records reflect she has suffered from preexisting and "severe" lower back pain, as well as pain and numbness that radiated into both her legs. The claimant also admitted under oath she had issues with incontinence starting in approximately 2017. (T. 110). The record does not reflect objective findings of an acute lower back/lumbar spine injury associated with either of the falls involved in this case; rather it reflects the claimant has a documented history of symptomatic lower back/lumbar spine problems.

A clinic note dated February 14, 2017, reveals at that time the claimant complained of constant lower back pain with a severity of 8/10. (Claimant's Exhibit 1 at 4). Furthermore, it appears one of the claimant's treating physicians had already discussed the possibility of surgery with her back in 2017, and told her she was too young to have back surgery in her 30s. The medical record reveals the claimant was complaining of "severe" lower back pain at this visit, as well as numbness and tingling in her buttocks and both legs. (*Id*.)

On July 2, 2019 – approximately one (1) month before her fall at work on August 13th, 2019 – the claimant presented herself for treatment at HealthCare Express complaining of lower back pain with muscle spasms. (T. 109). She testified under oath she recalled going to her doctor around this timeframe because her back was, "pinching up again," and her doctor prescribed some muscle relaxers and physical therapy (PT) at that time. (T. 106). On February 1, 2021, the claimant underwent an MRI based on her complants of, "low back pain, bilateral leg pain and bladder control issues." (CX2 at 286). This MRI revealed multilevel lumbar spondylosis most pronounced at L4-5 and L5-S1. (CX2 at 287). And, again, the claimant admitted under oath she has a prior history of low back pain/lumbar spine problems. (T. 24; and 49-50).

The HealthCare Express records reveal the claimant suffered from acute lower back pain on July 2, 2019 with muscle spasms and again on July 17, 2019 (CX2 at 86-87; 90-93) *before* the work-related fall of August 13, 2019. These records further reveal the claimant was even treated for some upper back pain identified as thoracic spine pain and radiculitis of her left cervical region on August 9, 2019 some four (4) days *before* the work-related fall of August 13, 2019. (CX2 at 94-95).

On January 18, 2021 – after the claimant's August 22, 2020, fall at home when her right ankle gave-way – Dr. Wayne Bruffett reviewed the claimant's MRI of December 28, 2020. Dr. Bruffett explained the claimant's MRI revealed, "disc degeneration with some endplate modic changes...degenerative disc disease, lumbar spine." (CX2 at 267; 268-270). Dr. Bruffett went on to state, "this does not look like a work-related problem." (CX2 at 268-270). As a result of her continuing lower back/lumbar spine complaints the claimant underwent another MRI of her lumbar spine on February 1, 2021 (CX2 at 286-287). This MRI revealed the, "possibility of T9-10 disc protrusion with posterior element hypertrophy at T10-11", as well as, "moderate degenerative changes most pronounced at L4-5 and L5-S1 previously identified in the MRI of December 28, 2020." (CX2 at 286-287; 267).

Thereafter, on May 26, 2021, Dr. Bruffett once again examined the claimant, at which time Dr. Bruffett agreed a second MRI was necessary to assist him in assessing her thoracic spine issue/complaints. (CX2 at 364-367). With regard to the claimant's lumbar spine Dr. Bruffett clearly stated he could, "not say within a reasonable degree of medical certainty that there is objective evidence of injury here related to her fall which would tie this into her work injury."

(CX2 at 364-367).

On June 16, 2021, the claimant underwent a second thoracic spine MRI. This MRI revealed a, "small left paracentral disc protrusion at T6-7", a, "mild disc bulge at T7-8", a, "small central disc protrusion at T9-10", a, "bulging disc at T10-11" and, "moderate to marked foraminal stenosis at T6-7 on the left and laterally at T7-8, T9-10, T10-11". In summary, this MRI revealed, "diffuse spondylosis as described. There is small left paracentral disc protrusion at T6-7 and extending into the left neural foramen. Mild disc bulge seen at T7-8. Small central disc protrusion is seen at T9-10. Bulging disc is seen at T10-11. There is mild spinal stenosis at T10-11. Moderate to marked foraminal stenosis is seen at T6-7 on the left and bilaterally at T7-8, T9-10, T10-11... ." (CX2 at 379).

Dr. Bruffett opined, "in part she multiple disc degeneration, she has facet arthritis, there are levels of disc bulging and foraminal narrowing. I would say within a reasonable degree of medical certainty that these findings are greater than 51% related to degenerative natural causes as opposed to any specific work injury...I have told her I cannot identify any objective evidence of injury to her back."..."welcome to have further treatments for her back under regular insurance with pain management specialist for further treatment." (CX2 at 380-382).

After Dr. Bruffett's aforementioned evaluation and opinion, the claimant sought a second opinion from Dr. Glenn Pait at the Neurosurgery Clinic at the University of Arkansas for Medical Sciences (UAMS). After both personally examining the claimant, and reviewing both her lumbar and thoracic spine MRI films Dr. Pait concluded in part, "I would not recommend surgical intervention for the thoracic discogenic or lumbar degenerative changes. The discogenic changes

are of chronic nature." He instead recommended, "continued consultation and support with interventional/chronic pain center… ." (CX2 at 433A-433C). Following both Dr. Bruffett's and Dr. Pait's evaluations the claimant has remained under the care of the Pain Treatment Centers of America, and undergone additional MRIs and other diagnostic tests of both her lumbar and thoracic spine that reveal evidence of long-standing DDD. (CX2 at 443-444; 462A-462B; CX2 at 465). Therefore, based on the claimant's aforementioned well-documented history of "severe" lower back/lumbar spine pain with bilateral radiculopathy, which includes a history of incontinence even before either of the subject falls, it is clear the claimant has failed to meet her burden of proof pursuant to the Act in demonstrating her lower back/lumbar spine condition is compensable. *See*, *Vaughn* and *Moody*, *supra*.

Related, Reasonably Necessary Medical Care

Ark. Code Ann. Section 11–9–508(a) (2022 Lexis Supp.) requires employers to provide medical services that are reasonably necessary in connection with a compensable injury. A claimant may be entitled to additional medical treatment after her healing period has ended if it is geared toward management of symptoms associated with her compensable injury(ies). *Santillan v. Tyson Sales & Distribution,* 2011 Ark. App. 634, 386 S.W.3d 566 (Ark. App. 2011); *Cossey v. Pepsi Beverage Co.*, 2015 Ark. App. 265, 3, 460 S.W.3d 814, 817 (Ark. App. 2015). Of course, significantly, in addition to being reasonably necessary for treatment of her compensable injury(ies), the requested additional medical treatment must be *causally related* to the compensable injury(ies).

In this case, with regard to the claimant's thoracic lower back/lumbar spine, the claimant

has failed to meet her burden of proof in demonstrating she has sustained a "compensable injury" to her lower back/lumbar spine. Therefore, the respondents are not responsible for any and all medical treatment related to the claimant's lower back/lumbar spine. Dr. Bruffett opined the claimant reached MMI on May 15, 2021, and he clearly stated she did not need any further treatment after this date based on her thoracic strain. (Respondents' Exhibit 1 at 19-20). He later clarified that while she probably had a thoracic strain, "none of the findings noted on her thoracic MRI scan from June 16, 2021, can be attributed to these complaints with any reasonable degree of medical certainty in my opinion…[the findings are] much more likely pre-existing" and age-related. (RX1 at 22) (Bracketed material added). I specifically find Dr. Bruffett's opinion to be the most objective and credible opinion concerning this issue, as well as the most consistent with the relevant medical evidence.

With regard to the right ankle fusion surgery Dr. Ardoin has recommended, the respondents' position is that this proposed additional medical treatment did not meet pre-certification and, therefore, is not reasonably necessary for the following reasons:

> There is no documentation of limited range of motion or crepitus. MRI does not document arthritis. Her x-ray documented a stable medial talar osteochondral lesion but no other arthritic pathology documented by Dr. Ardoin.

(RX1 at 35).

The respondents also note that Dr. Robert Martin performed an IME regarding the claimant's right ankle on June 13, 2022, and Dr. Martin opined the claimant was at MMI as of the date of his IME, and that the claimant, "would likely not experience significant relief from an ankle arthrodesis and she is not a candidate for ankle arthroplasty based on her BMI of 49." (RX1 at 25-

28).

However, I specifically find that Dr. Ardoin, the claimant's treating surgeon who has already operated on her right ankle, is in the best position to assess her need for the right ankle surgery. Also, having initially accepted the claimant's right ankle injury as compensable and paying for all related, reasonably necessary medical treatment to date; and having acknowledged the fact the claimant re-injured her right ankle – or at the very least fell at home as a result of her right ankle giving-way on August 22, 2020 – the respondents are not now in a credible position to deny the claimant's request for the additional surgery her treating surgeon recommends, and which may very well give the claimant more mobility and a better quality of life.

Moreover, with respect to the claimant's acknowledged/admitted compensable right ankle injury, it should be noted that it took the respondents some time before they were willing to accept and acknowledge the compensable consequence event of August 22, 2020. This delay necessitated the claimant's having to seek additional medical treatment for the compensable right ankle injury on her own using her personal health insurance. And it appears from the preponderance of the evidence of record that the nature of the claimant's symptoms rendered her unable to perform her job duties, and the respondents were unable to provide a light duty or other related job to her which accommodated her symptoms and resulting temporary disability, symptoms, the claimant was forced by the prevailing circumstances to submit a letter of resignation. (T. 47-48).

Indeed, all the aforementioned circumstances resulted in it taking some seven (7) months for the claimant to finally undergo an updated MRI of her right ankle, and for Dr. Ardoin to review the MRI results, and recommend the right ankle fusion surgery. The respondents accepted the

claimant's request for additional TTD benefits and began paying her as of March 9, 2021. They continued to pay TTD benefits through July 12, 2022, and the claimant was deemed to be at MMI as of June 14, 2022 based upon Dr. Martin's IME assessment. (CX2 at 447-450).

It should be noted the claimant's right ankle injury is scheduled and she is entitled to TTD benefits during the period of time when she remained within a healing period and was not working. ***Ark. Code Ann.*** §11-9-521(a). *See*, *Wheeler Corp. Co. vs. Armstrong*, 73 Ark. App 146, 41 S.W.3rd 824 (Ark. App. 2001). *See also*, *Fendley vs. Pea Ridge School District*, 97 Ark. App. 214, 245 S.W.3rd 676, 2006 Ark. App. LEXIS 846.

Dr. Ardoin, the claimant's treating physician who performed her first two (2) surgeries, clearly has tried various available treatment modalities to try and improve the stability or her right ankle, as well as her pain. His progress notes confirm following the second surgery that he put her in a boot and recommended, "eight weeks of aggressive range of motion therapy". (CX2 at 371-373). Despite Dr. Ardoin's aggressive PT, the therapist noted in December of 2021 that the claimant was continuing to complain of swelling and pain. And, despite the claimant's undergoing ice machine therapy, the therapist noted only, "minimal improvement and functional mobility and noted, "minimal improvement in strength to her right hip, knee and ankle, and that she remained limited secondary to pain. He noted, "she had met 0/6 of the goals established and that she was experiencing, pain with all activity and is limited in progression of strengthening and range of motion." (CX2 at 427-429).

Dr. Ardoin ordered additional testing including a bone scan and MRI (CX2 at 434). The bone scan noted, "increased uptake on blood pool and delayed images at the distal end of the fibula

and in the region of the anterior aspect of distal end of the tibia" and the differential diagnosis was, "trauma and arthritis". (CX2 at 437a-437b).

Although the MRI did not identify a complete tear, it found, "irregularity of the peroneus brevis tendon medially inferior to the level of the lateral malleous" and noted it was "unclear" whether those changes were, "postop vs tear". Also noted, "unstable appearing osteochondral lesion within the medial talar dome... ." (CX2 at 438)

Upon continuing examination, Dr. Ardoin noted the claimant to have, "continued redness and swelling of the ankle" (CX2 at 441). Although he apparently described her tendons at that point as looking like, "garbage", he recommended trying a, "custom Arizona brace" before considering fusion surgery as the last resort. (CX2 at 441-442).

Dr. Ardoin had the opportunity to review the opinions of Dr. Martin, who had opined the proposed right ankle fusion surgery was not reasonable necessary. Dr. Ardoin disagreed with Dr. Martin's opinion in this regard, and I find Dr. Ardoin's opinion should be given more weight on these facts. Dr. Ardoin expressed his disagreement in his progress note of June 27, 2022. He stated in part,

> I reviewed the independent medical evaluation from Dr. Martin, however, I do feel that the patient would benefits from a subtalar joint arthrodesis as a salvage procedure since she cannot really wear her brace without significant pain from the pressure applied to the scar. I think the subtalar joint arthrodesis would allow her to not depend on the peroneal tendons which are chronically painful and it would be a procedure that would likely stop her pain, however, she needs to lose weight and hopefully by allowing her to be pain free, this may help her in the long run in regards to her total body functions...I do think that this is greater than 51% related to the work injury she sustained. I expect MMI to be 9 months post-op...Patient is disabled and does not work... .

(CX2 at 452-455).

I find the claimant to be a credible and sincere witness. At the hearing she testified she would prefer not be left in her current state of very limited mobility and reliance upon the chair-walker she used to attend the hearing. (T. 97-98). While the claimant understands there is no guarantee the proposed right ankle fusion will totally relieve her pain, I find that, based on the specific facts of this case, the procedure is reasonably necessary taking into consideration the fact that she's been suffering since the initial accident of 2019 and would like the opportunity to regain her mobility and functionality. (T. 98-99).

Therefore, for all the aforementioned reasons I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this claim.

2. The stipulations contained in the Prehearing Order Filed September 23, 2022, which the parties modified and affirmed on the record at the hearing, hereby are accepted as facts.

3. The claimant has failed to meet her burden of proof in demonstrating she sustained a lower back/lumbar spine injury as a result of either of the August 13, 2019, or the August 22, 2020, falls. Therefore, the respondents are not responsible for payment of any medical or indemnity benefits associated with the claimant's long-standing, well-documented, symptomatic lower back/lumbar spine degenerative disc disease/condition. *See Vaughn* and *Moody*, *supra*.

4. The claimant has met her burden of proof in demonstrating the right ankle fusion surgery Dr. Ardoin has recommended is related to and reasonably necessary in light of her compensable injury.

5. The claimant has failed to meet her burden of proof in demonstrating she is entitled to additional medical treatment at the respondents' expense for her thoracic spine strain after May 15, 2021, the date Dr. Bruffett opined she reached MMI, except for the June 16, 2021, MRI Dr. Bruffett ordered and required in order to clarify his opinion.

6. The claimant has met her burden of proof in demonstrating the pain management treatment she has undergone for her right ankle and neck/cervical spine injuries is related to and reasonably necessary for treatment of her admittedly compensable injuries of August 13, 2019, and August 22, 2020.

7. The claimant has met her burden of proof in demonstrating she is entitled to additional TTD benefits from August 22, 2020, through March 8, 2021; and from March 9, 2021, through June 14, 2022, the date Dr. Martin opined she had reached MMI. Of course, the respondents are entitled to take a credit toward this award of additional TTD benefits based on any and all indemnity benefits they may have overpaid.

8. The claimant's attorney is entitled to an attorney's fee on all controverted indemnity payments.

AWARD

The respondents are hereby directed to pay benefits in accordance with the "Findings of Fact and Conclusions of Law" set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to ***Ark. Code Ann.*** Section 11-9-809, and *Couch v. First State Bank of Newport,* 49 Ark. App. 102, 898 S.W.2d 57 (Ark. App. 1995); *Burlington Indus., et al v. Pickett,* 64 Ark. App. 67, 983 S.W.2d 126 (Ark. App. 1998); and *Hartford Fire Ins. Co. v. Sauer,* 358 Ark. 89, 186 S.W.3d 229 (2004).

If they have not already done so, the respondents shall pay the court reporter's invoice within ten (10) days of their receipt of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp