BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G405654

BETTY A. ETZBERGER, EMPLOYEE **CLAIMANT**

vs.

DOLLAR GENERAL STORES, EMPLOYER **RESPONDENT**

DOLGEN, LLC/YORK RISK SERVICES GROUP, INSURANCE CARRIER **RESPONDENT**

OPINION FILED JULY 12 , 2022

Hearing before Administrative Law Judge, James D. Kennedy, on May 24, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Daniel E. Wren, Attorney-at-Law, Little Rock, Arkansas.

Respondents are represented by Jason A. Lee, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

After a remand from the Full Commission for proper findings of fact and conclusions of law based upon a sufficient record, a hearing was conducted on the 24th day of May, 2022, to determine the issue of additional medical treatment. A copy of the Prehearing Order dated March 8, 2022, was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided the parties stipulated as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. An employer-employee relationship existed on October 10, 2013, when the claimant sustained a compensable injury to her low back.

3. The Commission issued an Opinion on February 9, 2018, finding that the claimant was entitled to additional medical care, specifically a spinal cord stimulator.

4. In lieu of an appeal, the parties agreed the claimant would undergo a second neuropsychological evaluation by Dr. Zolten, who concluded that the claimant was not a good candidate for a spinal cord stimulator.

5. The claimant continued pain management with Dr. William Ackerman.

6. The Commission entered an Order for an IME by Dr. Barry Baskin, who opined that the ongoing pain management would not be effective for the claimant and recommended physical therapy and lumbar steroid injections.

7. Respondent offered the treatment by Dr. Baskin and discontinued pain management by Dr. Ackerman.

8. The claimant initially declined the respondents offer. After several months of no treatment, the claimant then informed the respondents that she was ready to undergo Dr. Baskin's recommended treatment.

The claimant's and respondent's contentions are set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. The claimant contends that Dr. Ackerman's clinic note of March 10, 2020, provided it was his medical opinion that the claimant had sufficient pathology to warrant pharmacological pain management, and that consequently, the claimant was entitled to such treatment. The respondent's position is that they advised the claimant in April they would provide the treatment recommended by Doctor Baskin, that the claimant rejected the treatment at the time, that the treatment is no longer available, not reasonable and necessary, and consequently should be denied.

The sole witness to testify was the claimant, Betty A. Etzberger. Both parties requested that the multiple exhibits previously admitted when the parties submitted the matter on stipulations be again admitted into the record so that all evidence be available and part of the record, and these documents were jointly admitted without objection as Commission's Exhibit 4, 5, 6, 7, and 8, which included the transcript of the previous hearing on January 8, 2018, the Opinions of July 16, 2018, February 9, 2018, and January

14, 2022. The claimant submitted multiple pages of medical records, with the initial record dated October 14, 2013. The respondent also submitted multiple pages of medical records on a recordable disc with the initial medical record on the disc also dated October 24, 2013, and the last medical record being dated July 29, 2019. 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 CONCLUSSIONS OF LAW

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

2. That an employer/employee relationship existed on October 10, 2013, the date that the claimant suffered a compensable injury to her lower back.

3. The stipulations agreed to by the parties at the time of this hearing are hereby accepted as facts as follows:

   (A) The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

   (B) An employer-employee relationship existed on October 10, 2013, when the claimant sustained a compensable injury to her low back.

   (C) The Commission issued an opinion on February 9, 2018, finding that the claimant was entitled to additional medical care, specifically a spinal cord stimulator.

   (D) In lieu of an appeal, the parties agreed the claimant would undergo a second neuropsychological evaluation by Dr. Zolten, who concluded that the claimant was not a good candidate for a spinal cord stimulator.

   (E) The claimant continued pain management with Dr. William Ackerman

   (F) The Commission entered an Order for an IME by Dr. Barry Baskin who opined that the ongoing pain management would not be effective for the claimant and recommended physical therapy and lumbar steroid injections.

(G) Respondent offered the treatment recommended by Dr. Baskin and discontinued the pain management by Dr. Ackerman.

(H) The claimant initially declined the respondents offer. After several months of no treatment, the claimant then informed the respondents that she was ready to undergo Dr. Baskin's recommended treatment.

4. That there is no alternative but to find that the claimant has satisfied the required burden of proof to prove by a preponderance of the evidence that the medical treatment recommended by Doctor Baskin, consisting of physical therapy and steroid injections, is reasonable and necessary and that the Claimant is entitled to this additional treatment.

REVIEW OF TESTIMONY AND EVIDENCE

The claimant, Betty A. Etzberger, the sole witness to testify, was working for Dollar General on October 10, 2013, when she injured her back, and was eventually sent to Dr. Bruffett, who performed surgery in late 2014 or early 2015. The surgery failed to resolve her problems and her back continued to hurt, her leg and foot were numb, and she couldn't bend her toes. At some point, she became the patient of Doctor Ackerman, who treated her for approximately four years. (Tr. 10, 11)

Dr. Ackerman treated her with medication, starting with hydrocodone, and also prescribing Tramadol. The claimant eventually was sent to Dr. Baskin for an independent medical exam and who recommended physical therapy and lumbar epidural steroid injections. The claimant testified she was willing to receive the treatments recommended by Dr. Baskin. She also testified that the last time she saw Dr. Ackerman was approximately two (2) years ago, right after she saw Dr. Baskin. (Tr. 12) She was told that workers' compensation would not pay anymore. Since then, she sought treatment on her own. She contacted Dr. Ackerman's office and found out he had retired and was given the name of Dr. Roman. (Tr. 13) She was instructed to obtain her medical records

from Dr. Bruffet's office, so she contacted his office, and they were supposed to be sending her the medical records to determine if she could get in to see Dr. Roman and if her insurance would cover it.

The claimant currently worked at Amazon, in what she called “Choose.” "What we do is when, we've got boxes that fills up with packages and carts, and when they get full, we take them to the trailer that meets where they're supposed to actually go." She stated she was in pain when going to work and described it as follows: "Before I go in it's around five. There's a sharp pain in my lower left part of my back. And by the time I get off it's 10-plus." She also stated she had no clue if Dr. Roman was going to accept her. She denied that any doctor ever told her she didn’t need treatment. (Tr. 14, 15)

On cross-examination, the claimant admitted she had been working at Amazon since January and was working full-time, 40 hours a week. Prior to that, she was working at Apollo, where she drove to various cosmetic stores in Conway, Little Rock, and Jonesboro, and set-up displays. (Tr. 16) She also admitted having a similar job with Driveline, setting up displays in Central Arkansas and Paragould. She had been working at Amazon for the last two (2) years, and prior to that had not been working. She also admitted going to see Dr. Judy Johnson and Dr. Zolten prior to the hearing in 2019 for a neuropsychological evaluation. (Tr. 17)

She admitted that she had indicated to Dr. Johnson in 2017, that she was leading an inactive, passive lifestyle, and thought she would never return to work. She also admitted telling Dr. Zolten during the exam in October of 2018, that she experienced pain after five (5) to ten (10) minutes, which required her to sit down, and she could no longer clean her house. She could do laundry, but was unable to vacuum more than five (5)

minutes at a time, had problems putting on and removing her clothes, and could no longer drive. At that time, she was still seeing Dr. Ackerman, and taking Tramadol. She testified that she had not seen Dr. Ackerman since January of 2020, maybe 2019, and since that time had worked two (2) jobs, where she traveled across the state setting-up cosmetic displays, and later working full time at Amazon due to the fact that she had to. (Tr. 18, 19) She currently worked 40 hours per week and had not had any medical treatment since she last saw Dr. Ackerman. Additionally, she admitted that she had an injury to her right shoulder, denied it occurred in the middle of 2020, but that it was injured right before Dollar General terminated her in 2013 or 2014. She agreed the shoulder injury had nothing to do with the claim before the Commission at the time of the hearing. (Tr. 20)

Under further cross-examination, the claimant admitted she had hurt her right shoulder in the middle of 2020 for a second time while moving furniture, which included moving couches, recliners, and a TV with assistance, and subsequently had surgery for a torn ligament by Dr. O'Malley. This occurred during a time period when she was not receiving medical treatment but was taking medication she had put back while being treated by Dr. Ackerman. She guessed it was during this time frame that the respondents had obtained a report from Dr. Baskin where he thought continued pain management medication by Dr. Ackerman was not helpful. The claimant was also questioned when Dr. Baskin offered to provide or recommend physical therapy and steroid injections and she rejected the treatment back in March or April of 2020. She responded she did not remember rejecting the treatment, but agreed it was fair to rely on the record. She also agreed that approximately six (6) months later, she requested the treatment

recommended by Dr. Baskin be provided, and that this was after she injured her shoulder while moving furniture. (Tr. 21 - 23) At this point, both parties rested.

In regard to exhibits, both parties agreed and requested that the documents that were the exhibits entered into the record in previous hearings including the matter heard on stipulations, be made part of the record in the hearing on the above date. Consequently, these exhibits were admitted into the record as the Commission's exhibits.

"Commission's Exhibit Four" consisted of the Joint Stipulation by the parties filed on March 30, 2021, a Prehearing Order dated April 27, 2021, claimant's prehearing questionnaire filed February 3, 2021, respondent's prehearing questionnaire filed March 2, 2021, and claimant's and respondent's Trial Briefs both filed on June 1, 2021.

"Commission's Exhibit Five" was attached under separate cover and consisted of the transcript of the testimony of the first hearing of January 8, 2018, plus the exhibits for the hearing which consisted of the Prehearing Order of November 28, 2017, both the claimant's and respondents' responses to the prehearing questionnaire, as well as the "Claimant's Exhibit Number One" consisting of medical. In addition, an email from Susan Puckett dated December 29, 2016, was also made part of the record. The email provided that the claimant had a meeting with Judy Johnson, PhD. and this document was provided by the respondent.

"Commission's Exhibit Six" consisted of the Administrative Law Judge Opinion issued February 9, 2018. "Commission's Exhibit Seven" consisted of the Opinion by the Full Commission, dated January 14, 2022, vacating the Administrative Law Judge's Opinion filed June 9, 2021, and remanding for "proper findings of fact and conclusions of

law based on a sufficient record." "Commission's Exhibit Eight" consisted of additional medical records placed into the record on a recordable disc by the respondent.

The parties requested that the Joint Stipulations agreed to and submitted on March 30, 2021, be made part of the record. The Joint Stipulations of that date provided as follows:

1. Respondents had the claimant undergo a neuropsychological evaluation by Dr. Judy White Johnson who conducted a clinical evaluation of the claimant and concluded that the claimant was not a good candidate for the stimulator because of several factors, including somatic focus, severe depression, very low expectations of physically improving, and comfort in the patient role.

2. The Commission found that the claimant was entitled to additional medical care, specifically a spinal cord stimulator.

3. In lieu of an appeal, the parties agreed amongst themselves to a binding neuropsychological evaluation by Dr. Zolten.

4. Dr. Zolten opined that the claimant's test results were "mostly invalid secondary to exaggeration of symptom and poor overall effort." He stated that her Pain Disability Index scores demonstrated exaggerated self-ratings; that her Short-Form ratings of "severe" for most pain descriptions and "moderate" for all of the other pain descriptions and no pain descriptions that were "mild" or "no pain"; and that her responses to the Oswestry Low Back Pain Disability Questionnaire were consistent with either bed-bound pain patients or patients who exaggerated their symptoms. Dr. Zolten also noted that her exaggeration of symptoms were common for people who have secondary gain issues, depression, somatic preoccupation, histrionic tendencies, anxiety and perceived loss of personal control for an unsophisticated and psychologically naïve individual.

5. Subsequently, the respondents filed a Motion for an Independent Medical Exam and the Commission entered an Order requiring the claimant to undergo the exam by a doctor chosen by the Medical Cost Containment Division. Dr. Baskin was selected.

6. Respondent's attorney propounded questions to be answered by Dr. Ackerman and Dr. Baskin. Dr. Ackerman provided in his clinic note of March 10, 2020, that the claimant had sufficient pathology to warrant pharmacological pain management. Dr. Baskin opined that he did not believe that it was likely that ongoing medical pain management would be effective for the claimant and

recommended a period of physical therapy and lumbar epidural steroid injections.

In regard to the hearing on May 24, 2022, the parties additionally stipulated that the respondent's notified the claimant they would no longer authorize continued pharmacological pain management by Dr. Ackerman, but if the claimant elected to undergo the treatment recommended the Doctor Baskin, it would be provided. The claimant's attorney responded to the offer by stating that unless the offer of treatment by Dr. Baskin also included the treatment recommended by Dr. Ackerman, the claimant did not want it and wished to continue pain management with Dr. Ackerman. The claimant later changed her position and informed the respondents she was willing to undergo the treatment suggested by Dr. Baskin. The parties also stipulated and agreed that because the claimant had initially denied the treatment prescribed by Doctor Baskin, the respondents would not currently pay for the treatment and would also not pay for the resumption of treatment by Doctor Ackerman. (See Com. Ex. 4, P. 3 – 6)

The applicable medical in "Commissions Exhibit 5" provided the claimant initially presented to Conway OccuMed on October 14, 2013, due to an injury on October 10, 2013, with the assessment being for a lumbar sprain after she had been moving bags of dog food. (Com. Ex. 5, P. 72) The claimant suffered from persistent back pain for six (6) month's duration, despite conservative care, and then presented to Dr. Kenneth Rosensweig on April 24, 2014, who recommended an MRI to determine the source of the pain. The MRI dated April 30, 2014, provided that the claimant suffered from degenerative disc disease at L 2-3 and L 4-5, with a superimposed small left extra–foraminal disc protrusion with a mild tethering of the extra foraminal portion of the left L 2 nerve root. A procedure was performed at the Little Rock Surgery Center by Dr.

Rosenzweig on May 12, 2014, which appeared to be an epidural steroid injection for a disc herniation. (Com. Ex. 5. P. 98 – 105) Later on May 27, 2014, Dr. Rosenzweig opined it did not appear that a second epidural steroid injection would have any efficacy, but that medications would be continued. (Com. Ex. 5, P. 106, 107) The claimant returned to Dr. Rosenzweig on July 7 and August 11, 2014. He opined that the diagnostics revealed multilevel degenerative disease, but the paracentral disk protrusion to the left was felt to be more acute. (Com. Ex. 5, P. 108 – 111)

The claimant then went to OrthoArkansas Spine Center. Later on October 17, 2014, the claimant presented to Dr. Bruffett at Arkansas Specialty Orthopedics, who opined the claimant was quite symptomatic from her work injury of October 8, 2013, and stated that it was his opinion, with a reasonable degree of medical certainty, that this injury resulted in a herniation of the disc at L4–5 causing lateral recess stenosis, and impingement of the L-5 nerve root, which was substantiated by electric tests. (Com. Ex. 5, P. 128) He performed a microscopic partial discectomy at L 4–5 on the left, on November 25, 2014. (Com. Ex. 5, P. 142 – 151) The claimant returned to the office of Dr. Bruffet on December 10, 2014, and the report provided x-rays were obtained which showed evidence of her laminotomy but with no evidence of instability, and it was recommended the claimant stay off work for the next month. (Com. Ex. 5, P. 167 – 169).

The claimant underwent a Functional Capacity Evaluation on February 18, 2015, which provided the claimant did not demonstrate an ability to perform the job duties of a store manager for the respondent. (Com. Ex. 5, P. 175 – 191) On March 4, 2015, the claimant returned to Dr. Bruffett who opined she could perform medium classification work, that he could refer her to pain management, but was concerned about the long term

consequences of narcotics. (Com. Ex. 5, P. 195 – 196) Later on April 6, 2015, Dr. Buffet requested a MRI and he opined the claimant was suffering from post-laminectomy syndrome with ongoing pain. (Com. Ex. 5, P. 199-207) The MRI report dated April 28, 2015, provided there was a focal area of metallic artifact or possibly a small recurrent left paracentral/foraminal disc protrusion at L 4-5, an interval resolution of a small left foraminal disc protrusion at L 2-3, and also stable mild degenerative changes in the remaining lumbar spine. (Com. Ex. 5, P. 208, 209) On April 29, 2015, Dr. Bruffett stated the claimant was suffering from post-laminectomy syndrome, with ongoing low back pain. (Com. Ex. 5, P. 214, 215) A later report from Dr. Bruffett, dated May 27, 2015, provided that he did not see any obvious disc herniation. (Com. Ex. 5, P. 217 - 220)

The claimant was seen by Dr. Ackerman on July 14, 2015. His report provided the claimant had received a ten percent (10%) disability rating and her radiculopathy persisted. Activity increased her pain and the pain was constant. He recommended a dorsal column stimulator evaluation and further stated the claimant might respond to a simple TENS unit. (Com. Ex. 5, P. 232 – 242) The claimant returned to Dr. Ackerman on August 11, 2015, who opined it was his medical opinion the claimant had sufficient pathology to warrant a dorsal column stimulator trial, that the claimant was not taking opioids, but was taking valium for sleep. (Com. Ex. 5, P. 245 – 247) The claimant again returned to Dr. Ackerman on December 8, 2015, and the report provided the claimant had shown a decrease in her range of motion in all planes about the lumbar spine. The report went on to provide that the claimant had some degeneration, but the majority of her pain was due to her accident and subsequent treatments and provided the pain would necessitate long-term medication management. (Com. Ex. 5, P. 260 – 265) The claimant

next presented to Dr. Ackerman on April 4 and May 3, 2016, and the reports again provided for degenerative disc disease of the lower lumbar spine, and post laminectomy syndrome of the lumbar spine. The May report provided the claimant had sufficient pathology to warrant continuation of pharmacologic management. (Com. Ex. 5, P. 270 – 282)

The claimant returned to Dr. Bruffett on May 18, 2016, who again assessed post laminectomy syndrome with chronic pain. He opined that although he did not normally recommend a spinal cord stimulator, he thought it was reasonable and the next step here. (Com. Ex. 5, P. 284 – 291)

The claimant again returned to Dr. Ackerman on June 2, 2016, and also on September 1, 2016. On the first visit, Dr. Ackerman opined the claimant had sufficient pathology to warrant continuation of pharmacological management. On the September visit, Dr. Ackerman opined the claimant could return to work with a dorsal column stimulator and should be weaned off her medications. (Com. Ex. 5, P. 295 – 307) The claimant returned to Dr. Ackerman on December 29, 2016, and he again opined it was his medical opinion the claimant had sufficient pathology to warrant continuation of pharmacologic management and again stated the claimant should do well with a spinal cord stimulator. (Com. 5, P. 307 – 312)

A report issued by Judy White Johnson, Ph. D., dated January 18, 2017, opined that the claimant was not a good candidate for a spinal cord stimulator at the time. (Com. Ex. 5, P. 314 – 316) Later on March 21, 2017, the claimant again presented to Dr. Ackerman, who again recommended pharmacological management. (Com. Ex. 5, P. 317-319) On August 7, 2017, Dr. Ackerman again saw the claimant and stated that it

was his opinion the claimant had sufficient pathology to warrant pharmacologic management. (Com. Ex. 5, P. 321 – 330)

The respondents also submitted multiple pages of medical records by a recordable disc with the initial medical report from Conway OccuMed, as reviewed above and dated October 14, 2013. (Com. Ex. 8, P. 1 – 5) The claimant made multiple visits to Conway OccuMed, before presenting to Doctor Rosenzweig at Orthopedic Spine and Sports on February 11, and March 7, 2014. The visits to Dr. Rosenzweig, were also reviewed above. A follow up report by Dr. Rosenzweig dated May 27, 2014, provided the claimant still was reporting pain in the medial calf, after physical therapy, epidural steroid injections, medications and/or time. (Com. Ex. 8, P.35, 36) The claimant returned to Dr. Rosenzweig on July 7, 2014, and also August 11, 2014, and the report provided the claimant was suffering from eccentric disk herniation as a source of radiculitis with no findings of motor deficits. He recommended a series of epidural steroid injections to reduce her inflammation. (Com. Ex. 8, P. 37 - 40) The claimant was ultimately treated by Dr. Bruffett, as described above. (Com. Ex. 8, p. 41 – 49)

As described above, the claimant initially presented to Dr. Ackerman on July 14, 2015. (Com. Ex. 8, P. 150 -171) The claimant continued to return to Dr. Ackerman and Dr. Bruffett, but presented to A.J. Zolten, Ph. D., on October 24, 2018, who provided that the claimant was referred by Angela Cornwell, RN, Workers' Compensation, for a psychological evaluation to provide a differential diagnostic information and a second opinion in regard to the claimant's candidacy for a spinal cord stimulator. The report stated that "considerable medical records were available" and provided the claimant's test results were mostly invalid secondary due to an exaggeration of symptoms and poor

overall effort, with results lower than patients with moderate dementia, who have moderate to severe memory disorder. The results indicated the claimant was a poor candidate for a spinal cord stimulator and provided that the current findings were not only consistent with the previous psychological evaluation conducted by Dr. Judy White Johnson, but appeared more extreme in the exaggeration of the ratings. (Com. Ex. 8, P. Towards the end of Exhibit)

DISCUSSION AND ADJUDICATION OF ISSUES

In the present matter, the parties stipulated the claimant sustained a compensable injury on October 10, 2013. The claimant is therefore not required to establish "objective medical findings" in order to prove that she is entitled to additional benefits. *Chamber Door Indus., Inc. v Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997)

In determining whether the claimant has sustained her required 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. Cavananugh'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).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 635 S.W. 2d 823 (1982). 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). Further, pursuant to Ark. Code Ann. §11-9-509 (a), medical

benefits owed under the Workers' Compensation Act are only those that are reasonable and necessary. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508 (a). However, injured employees have the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary for the treatment of the compensable injury. *Owens Plating Co. v. Graham*, 102 Ark. App. 299, 284 S.W. 3d 537 (2008). What constitutes reasonable and necessary treatment is a question for the Commission. *Anaya v. Newberry's 3N Mill*, 102 Ark. App. 119, 282 S.W. 3d 269 (2008). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are casually related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. *Foster v. Kann Enterprises*, 2019 Ark. App. 746, 350 S.W.2d 796 (2009).

In the present matter, in lieu of an appeal, the parties, agreed that the claimant would undergo a neuropsychologic exam evaluation by Dr. Zolten, who opined that the claimant's exaggeration of symptoms were common for people who have secondary gain issues, depression, somatic preoccupation, histrionic tendencies, anxiety, and perceived loss of personal control for an unsophisticated and psychologically naïve individual and

consequently, her test results were invalid. Dr. Zolten stated that the claimant was not a good candidate for a spinal cord stimulator.

At this point, the parties agreed to an IME from a physician selected by the Medical Cost Containment Division of the Commission, and Dr. Baskin was chosen. The parties stipulated that Dr. Baskin opined he did not believe ongoing medical pain management would be effective for the claimant but recommended a period of physical therapy and lumbar epidural steroid injections. The respondents initially offered the care recommended by Dr. Baskin. The claimant declined this offer initially, still wanting pain management by Dr. Ackerman. She later agreed to it, but the respondents stated it was no longer available at the time, contending that it was not reasonable and necessary.

The Commission has authority to accept or reject medical opinion and to determine its medical soundness and probative force. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998). However, the Commission may not arbitrarily disregard the testimony of any witness. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The treatments recommended by Dr. Baskin were originally authorized by the respondents. However, the claimant preferred the recommended treatment by Doctor Ackerman, who has apparently retired. There is no evidence the claimant wanted no treatment. After the absence of treatment for approximately six (6) months, the claimant agreed to the treatment recommended by Doctor Baskin, the provider chosen by the Medical Cost Containment Division for the IME. This treatment was intended to reduce or alleviate the symptoms from the compensable injury. Consequently, this treatment is determined to be reasonable and necessary.

Based upon the above evidence and the applicable law, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has satisfied the required burden of proof to prove, by a preponderance of the evidence, that the medical treatment as recommended by Doctor Baskin, consisting of physical therapy and steroid injections, is reasonable and necessary, and the claimant is entitled to this additional treatment.

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