

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. G906914 & G906915

MARION EVANS,
EMPLOYEE

CLAIMANT

OUACHITA COUNTY MEDICAL CENTER,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 30, 2021

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 represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed March 16, 2021. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved she sustained a compensable neck injury. The Full Commission finds that the claimant proved she was entitled to reasonably necessary medical treatment and a period of temporary total disability benefits.

I. HISTORY

The testimony of Marion L. Evans, now age 51, indicated that she had previously been employed on one or two occasions with the respondents, Ouachita County Medical Center. The record indicates that the claimant again became employed with the respondents on or about July 20, 2018. The respondents' attorney examined the claimant at a deposition of record:

Q. What did you start out doing there?

A. I started out as a Scrub Tech, working in surgeries with the doctors.

Q. What did that job entail? What did you have to do?

A. Open the cases for the procedures, clean up after the procedures, and then if I'm on call I would have to sterilize the instruments.

Q. How long did you work there as a Scrub Tech?

A. Three years.

Q. What was your next position?

A. Sterile Processing....

Q. And what does that person do?

A. I keep all instruments in the whole hospital sterilized and I keep all of the instrument counts, make sure they're sharp, and I put up product instruments and cases and stuff. I have to put them up and wrap them, wash them, sterilize them.

Q. Is this a very physical job?

A. Yes....It involves heavy lifting, it involves bending, it involves – I guess you would call it straining.

Q. What kinds of things would you have to lift that would be heavy?

A. Lab trays, orthopedic cases, hip trays, knee trays – stuff like that.

Q. I'm not familiar with what that might be. Can you describe it for us?

A. It's a case that weighs approximately 25, some 30 pounds, and they have all different types of instruments inside of it that they replace the knee or a hip with....

Q. And these would weigh 25 to 30 pounds each?

A. Yes.

The parties stipulated that the employment relationship existed on May 29, 2019. The respondents' attorney examined the claimant:

- Q. When were you hurt there?
A. I'm not sure which time you're asking about.
Q. There were two?
A. Yes.
Q. When was the first?
A. End of May, around the first of June.
Q. Do you know the exact date or day of the week?
A. Wednesday....
Q. Where were you when you were hurt?
A. Sterile Processing....
Q. What time of day did it happen?
A. Probably around 11:30, 12:00.
Q. Around noon?
A. Yes....
Q. And what happened when you were hurt?
A. I noticed I had pain in my shoulder, left shoulder.
Q. How did that happen?
A. Picking up instruments, having to pick them up above my head to put them up on a rack.
Q. What were the instruments in, if anything?
A. I'm not sure what you're asking.
Q. Were they in a box? Were they –
A. Oh, they was in a metal case, an aluminum case – whatever the case is.
Q. Do you know what types of instruments they were?
A. I'm not sure – not sure what type of instruments. Just orthopedic instruments is all I can tell you.
Q. But they were in aluminum cases?
A. Yes.
Q. How many of them were you putting on shelves?
A. Twelve.
Q. How much would you say each one weighed?
A. 25 to 30 pounds.
Q. Were they all cleaned and ready to be put up? Is that why you were doing it?
A. They was all washed, wrapped, and then put up, getting ready to just sterilize them – put them on the racks to sterilize.

Q. So, you lifted all 12 of the cases that day?

A. Yes, multiple times.

Q. How many times did you lift them?

A. It depends on how many ortho cases. It takes five cases for the ortho. And they don't have enough, so I have to run the knee cases more than once at a time. So if it's five cases, I have to pick them up – let's see – four times each.

Q. You lifted all 12 cases that many times that day?

A. Yes, along with if other cases were going on....

Q. So if you were to say, all together how many cases did you lift up until the time you hurt your shoulder around noon?

A. Approximately 35....

Q. Were you lifting one particular case when you noticed pain?

A. No.

Q. What were you doing at the time you noticed it?

A. Getting ready to wrap some more instruments, and I noticed I was hurting....

Q. Can you describe the symptoms that you were having?

A. It started out with symptoms like my shoulder felt like it was coming out of the socket and the whole arm would go numb and pain in my right – I mean my left side shoulder.

The claimant testified that she reported her pain complaints to Merlene Ball, a supervisor. The claimant testified that she informed Merlene Ball that she had sustained a work-related injury. The parties stipulated that the respondents "accepted a medical-only claim for a thoracic spine injury" on May 29, 2019. According to the record, the claimant treated at Family Care of South Arkansas on June 10, 2019. The claimant's chief complaint was "Neck pain – worse x 2 weeks. It is making L arm & hand tingle & numb." It was noted, "C spine X-ray – straightening." A Nurse Practitioner's impression was "Cervical pain. Cervical straightening."

A Ouachita County Medical Center INCIDENT INVESTIGATION REPORT indicated that the Date of Incident was May 29, 2019, and that the claimant reported the incident on June 17, 2019. It was reported, “Marion stated that she strained her neck lifting orthopedic instrument pans.” The record contains another Incident Report dated June 17, 2019: “EE alleges about 3 weeks ago she was washing and wrapping surgical instruments weighing about 35 lbs and then stacking them together when she felt pain in the L side of her neck, radiating down to her shoulders and arm. EE calling to complete incident report; denies any new/worsening symptoms. EE sought treatment on 06/10/2019 at Family Care of S Arkansas[.]”

The claimant signed a Form AR-N, EMPLOYEE’S NOTICE OF INJURY, on June 17, 2019. The ACCIDENT INFORMATION section of the Form AR-N indicated that the Date of Accident was May 29, 2019 and that the employer was notified of the accident on June 10, 2019. It was reported that the claimant injured her “Neck,” and the cause of injury was “Lifting 35lb cases 4 times per case. We had 5 cases that day.”

The claimant testified that the respondents directed her to treat at Ouachita County Medical Center. The claimant treated at Ouachita County Medical Center on June 18, 2019: “Patient presents today with complaint of left sided neck pain radiating down left arm for the past 3 weeks. Denies any specific injury but states she thinks she may have injured it while lifting

some surgical instruments at work. States pain worsens with movement.” Physical examination of the claimant’s neck showed “No spasm or trapezius tenderness.” It was noted, “All other finding (sic) upon physical exam were within normal limits.” A CNP assessed “Cervical radiculopathy.” The CNP planned, “Based on symptoms and my exam I feel this is related to nerve impingement rather than a muscular issue. Recommend continue medications prescribed by PCP. Will offer lift assistance at work x 1 week.”

The claimant continued to follow up at Ouachita County Medical Center. The claimant followed up at Family Care of South Arkansas on June 24, 2019, at which time a Nurse Practitioner’s impression was “Neck pain” and “Muscle spasm.” An MRI of the claimant’s cervical spine was taken on July 30, 2019 with the impression, “Disc desiccation at all levels.”

Dr. Timothy Burson examined the claimant at Baptist Health on September 10, 2019:

This is a new problem. Episode onset: May 2019. The problem occurs daily. The problem has not changed since onset. The pain is associated with lifting a heavy object. The pain is present in the generalized neck. Quality: throbbing. The pain radiates to the left shoulder, left arm, left forearm and left hand. The pain is moderate. Exacerbated by: lifting, looking up or down too long. Associated symptoms include numbness, headaches, tingling and weakness....She has tried NSAIDs and bed rest for the symptoms. The treatment provided mild relief. Neck pain since May after lifting heavy object in May. Pain in LUE to hand with NT. C/o some LUE weakness, drops things. Taking Flexeril, nabumetone – some help. Tried dosepack – no help. No PT or ESI....

I do not have the MRI just the report. It appears by this and her symptoms she has something at C6/7. I talked with her about options. For now she will get us a new disc and we put her in PT. We also discussed the risks, benefits and expectations of doing an ACD or arthroplasty at this level....

The respondents' attorney examined the claimant:

Q. When was your second injury?

A. I think it was end of September.

Q. We're showing a date of September 25th. Does that sound right?

A. Yes....

Q. What happened?

A. They was getting ready to do a case and they needed the instruments....I picked up the case that was carrying the batteries and I was holding it....And then Juanna – the door came open and she was coming in with the table with the other instruments on it, behind me. So I stepped to my left to move over so I wouldn't contaminate the table that she had the instruments on. And when I stepped to the left there was a wet spot and up in the air and down I went.

Q. Still holding the case of batteries?

A. Holding the case and my neck, because I didn't want to hurt my neck. So I kind of landed in the middle of my neck, trying to protect my neck....

Q. Did the slip-and-fall on September 25th hurt your neck or shoulder at all?

A. No, because I protected it.

According to the record, the claimant treated at OCMC Express Care on September 25, 2019: "Pt. presents today for c/o fall. Reports she fell while at work today. Reports she fell directly on her back. Reports pain in her mid and lower back, worse with movement. Denies fever, chills, headache, head injury, neck pain[.]" A CNP assessed "Thoracic back pain. Low back pain." An x-ray of the claimant's lumbar spine was taken on

September 25, 2019 with the impression, “Negative lumbar spine series.”

An x-ray of the claimant’s thoracic spine was taken on September 25, 2019 with the impression, “1. No fracture. 2. Mild degenerative changes.”

A CNP planned on September 27, 2019, “Based on clinical evaluation today and history, I feel this patient would benefit from physical therapy at this time. Recommend light duty at work beginning Monday Sept. 30 with reevaluation on October 7.”

Dr. Burson reported on October 22, 2019:

This is a new problem. Episode onset: May 2019. The problem occurs daily. The problem has not changed since onset. The pain is associated with lifting a heavy object. The pain is present in the generalized neck....

Neck pain since May after lifting heavy object in May. Pain in LUE to hand with NT. C/o some LUE weakness, drops things....

She is here to discuss plan. CT c spine today.

Performed Test

MRI cervical spine cd from Med Center South Ark 7/30/19.

CT BMC today

Multilevel degenerative disc disease with posterior osteophytic ridging.

This results in multilevel central canal stenosis and areas of neural foraminal narrowing.

2. No acute fracture or subluxation. There is mild reversal the normal cervical Lordosis....

Dr. Burson planned, “I talked to her about her MRI/CT and what to do next. I think her symptoms point to C4/5 and 5/6. We talked about doing an ACD at these levels and the risks/benefits associated. Will get it scheduled.”

An MRI of the claimant's lumbar spine was taken on October 28, 2019 with the impression, "Mild scattered multilevel thoracic disc degeneration without significant central canal stenosis. Mild neural foraminal narrowing is present at T5-T6 and T11-T12 as described."

An MRI of the claimant's thoracic spine was also taken on October 28, 2019 with the impression, "Moderate disc bulge at C6-C7. Correlation with dedicated MRI of the cervical spine is advised for additional assessment."

Dr. Burson performed surgery on November 11, 2019: "1. Anterior cervical discectomy, C4-C5. 2. Anterior cervical discectomy, C5-C6. 3. Arthrodesis of C4-C6 with allograft bone spacers. 4. Anterior cervical plating C4-C6 with Medtronic Zevo 35 mm plate and 15 mm screws. 5. Allograft bone preparation placement x2." The pre- and post-operative diagnosis was "Cervical disk disease, C4-C5 and C5-C6 with stenosis."

Dr. Burson arranged follow-up treatment after surgery. An APRN noted on November 25, 2019, "She states all arm/hand and finger numbness and tingling has resolved."

Dr. D'Orsay D. Bryant, III's impression on December 19, 2019 was "Thoracic spine musculoskeletal strain. PLAN: A conservative treatment protocol is recommended, for the patient's work-related injury, to the thoracic spine. The patient has already received medication and physical

therapy, which has failed to relieve the thoracic spine pain. She has two distinct sites of point tenderness, in the right and left paravertebral regions of the thoracic spine, that require trigger point injections. The patient will return, when the thoracic spine injections have been approved, by the workers' compensation carrier.”

Dr. Bryant performed two trigger point injections on January 21, 2020. Dr. Bryant reported on February 18, 2020:

The patient is a 50-year-old female who comes today in followup of her work-related injury to the thoracic spine. The date of injury was 09/25/2019. The patient stated that the trigger point injections administered on 01/21/2010, the patient's previous office visit, were successful. She has had excellent relief of her pain to the thoracic spine region. However, the patient's principle (sic) complaints today are referable to chronic neck pain. She stated that she experiences an increase in her neck pain, particularly when she is supine....

PLAN: The thoracic spine region was the only region authorized for examination on the patient's previous office initial visit of 12/19/2019. Her principle complaints today involved the cervical spine. For the thoracic spine only, the patient has reached maximum medical improvement and no further treatment is indicated for the thoracic spine. She will continue her current light duty restrictions of 10 pounds. She is in recovery from cervical spine surgery and her cervical spine is managed by Dr. Tim Burson. The patient did not have a surgical lesion indicated on her MRI of the thoracic spine. She will have no permanent partial impairment to the thoracic spine as a result of her work-related injury. She will follow up with me on an as needed basis.

Dr. Burson noted on March 5, 2020, “The above patient can remain on light duty until seen back in clinic in 6 wks. She has a 25lb lifting

restriction.” The claimant testified that she returned to light-duty work for the respondents after Dr. Burson’s release on March 5, 2020.

A pre-hearing order was filed on October 13, 2020. According to the text of the pre-hearing order, the claimant contended, “The claimant contends that on May 29, 2019, she was lifting a heavy item when she injured her neck within the course and scope of her employment. Initially the respondents accepted the claim as medical-only. On September 10, 2019, Dr. Burson recommended an anterior cervical discectomy and fusion surgery at the C4-C6 level of the claimant’s cervical spine. The respondents denied this proposed treatment; however, the claimant proceeded with the surgery on her own on November 11, 2019. On November 25, 2019, Dr. Burson allowed the claimant to return to work with restrictions. The claimant contends the respondents denied the claim in its entirety on December 3, 2019.”

The claimant contended, “The claimant contends further she continued working after she filed the May 29, 2019 claim. On September 25, 2019, she was walking into the operating room when she slipped and fell on a wet floor, injuring her mid-to-low back. Respondents accepted this as a medical-only and provided treatment with [Dr. D’Orsay Bryant]. On February 18, 2020, Dr. [Bryant] opined the claimant had sustained no (0%) permanent anatomical impairment rating, and should follow-up as needed.

In summary, the claimant contends she sustained a compensable cervical spine injury within the course and scope of her employment, and that she is entitled to medical, TTD, and her attorney is entitled to an attorney's fee on all controverted indemnity benefits. All other issues are reserved."

The parties stipulated that the respondents "controverted the alleged cervical spine injury of May 29, 2019 and/or September 10, 2019." The respondents contended, "The respondents contend all appropriate benefits have been paid to date with regard to the claimant's thoracic spine injury of September 25, 2019. Furthermore, the respondents contend they did not receive notice of any alleged injury of May 29, 2019, until June 17, 2019. The claimant did not assert any work-related injury with her doctors until July 13, 2019. The respondents contend the claimant's need for medical treatment associated with her cervical spine is not associated with either a specific incident or a gradual onset injury within the course and scope of her employment. Therefore, the claimant cannot meet her burden of proof pursuant to the Act in demonstrating she sustained either a specific-incident or a gradual onset 'compensable injury' to her cervical spine."

The pre-hearing order indicated that the parties agreed to litigate the following issues:

1. Whether the claimant sustained a "compensable injury" to her cervical spine within the meaning of the Arkansas Workers' Compensation Act (the Act) on May 29, 2019, and/or September 10, 2019.

2. If the claimant's alleged cervical spine injury is deemed compensable, the extent to which the claimant is entitled to medical, and indemnity benefits.
3. Whether the claimant's attorney is entitled to a controverted attorney's fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

After a hearing, an administrative law judge filed an opinion on March 16, 2021. The administrative law judge found, among other things, that the claimant failed to prove she sustained a compensable injury to her neck or cervical spine on May 29, 2019 or September 25, 2019. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) "Compensable injury" means:
- (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence;
 - (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
 - (b) A back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

Ark. Code Ann. §11-9-102(4)(Repl. 2012) further provides:

- (E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:
 - (i) For injuries falling within the definition of compensable injury under subdivision (4)(A)(i) of this section, the burden of proof shall be a preponderance of the evidence; or
 - (ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

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. 269, 101 S.W.3d 252 (2003). “Major cause” means “more than fifty percent (50%) of the cause,” and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012).

An administrative law judge found in the present matter, “3. The claimant has failed to meet her burden of proof in demonstrating she

sustained a ‘compensable injury’ to her neck/cervical spine within the course and scope of her employment on either May 29, 2019, or September 25, 2019.” In workers’ compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The determination of the credibility and weight to be given a witness’s testimony is within the sole province of the Commission. *Murphy v. Forsgren, Inc.*, 99 Ark. App. 223, 258 S.W.3d 794 (2007). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). An administrative law judge’s findings with regard to credibility are not binding on the Full Commission. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission has the duty to decide the case *de novo* and we are not bound by the characterization of evidence adopted by the administrative law judge. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

According to the pre-hearing order of record in the present matter, the claimant contended that she sustained “a compensable cervical spine injury.” The respondents contended that the claimant could not prove she sustained “either a specific-incident or a gradual onset ‘compensable injury’

to her cervical spine.” The parties agreed to litigate the issue of whether the claimant “sustained a ‘compensable injury’ to her cervical spine within the meaning of the Arkansas Workers’ Compensation Act (the Act) on May 29, 2019, and/or September 10, 2019.” The Full Commission finds that the claimant proved she sustained a compensable injury to her neck in accordance with Act 796 of 1993 as codified at Ark. Code Ann. §11-9-102(4)(A)(ii)(b)(Repl. 2012).

The record indicates that the claimant became employed with the respondents on or about July 20, 2018. The parties stipulated that the employment relationship existed on May 29, 2019. The claimant testified that she worked in Sterile Processing for the respondent-employer, which employment position required her to frequently lift aluminum cases weighing 25 to 30 pounds each. The claimant, who the Full Commission finds was a credible witness, testified that on May 29, 2019 she lifted a total of approximately 35 cases in a short period of time. The claimant testified that as a result of lifting the cases at work she began suffering from pain symptoms radiating from her neck to her left shoulder. The claimant testified that she informed her supervisor, Merlene Ball, that she was suffering from pain. Ms. Ball testified that she could not recall whether the claimant reported a work-related injury to her on May 29, 2019.

The medical evidence of record corroborated the claimant's testimony. The claimant treated at Family Care of South Arkansas on June 10, 2019, at which time it was noted that the claimant had been suffering from neck pain for two weeks. An x-ray of the claimant's cervical spine showed "Straightening," and a Nurse Practitioner's impression was "Cervical pain. Cervical straightening." "Straightening" of the spine is a sign normally associated with muscle spasm. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). Muscle spasm can be an objective medical finding establishing compensability. *Estridge*, citing *Continental Express, Inc. v. Freeman*, 66 Ark. App. 102, 989 S.W.2d 538 (1999). The Full Commission finds in the present matter that "Cervical straightening" reported on June 10, 2019 was an objective medical finding establishing a compensable injury to the claimant's neck.

An INCIDENT INVESTIGATION REPORT prepared June 17, 2019 corroborated the claimant's testimony that she had strained her neck while lifting orthopedic instrument pans on May 29, 2019. Another Incident Report prepared June 17, 2019 also corroborated the claimant's testimony that she began feeling pain on the left side of her neck as the result of lifting at work. The Form AR-N, EMPLOYEE'S NOTICE OF INJURY signed by the claimant on June 17, 2019 also essentially corroborated her testimony. It was reported on the Form AR-N that the claimant injured her "Neck" on

May 29, 2019, and that the cause of injury was “Lifting 35lb cases 4 times per case. We had 5 cases that day.” The evidence of record does not demonstrate that there was any cause for the claimant’s neck pain other than lifting heavy aluminum containers at work on May 29, 2019.

Merlene Ball and Donna Jeffus, the respondent-employer’s Safety Director, testified that the claimant did not formally report a work-related injury until June 17, 2019. The claimant testified that she informed Ms. Ball on May 29, 2019 that she was suffering from pain symptoms, and the Form AR-N indicated that the claimant reported the May 29, 2019 injury to the respondent-employer no later than June 10, 2019. In any event, the Full Commission has determined that the claimant was a credible witness. The claimant’s purported “failure to comply with the employer’s reporting requirements” is not a statutory element for the Commission’s adjudication in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(b)(Repl. 2012). Nor is there any provision of Ark. Code Ann. §11-9-102(4)(Repl. 2012) which requires the claimant to prove her neck injury was “acute.” A Nurse Practitioner’s impression on June 24, 2019 was “Neck pain” and “Muscle spasm.” The Full Commission reiterates that “Muscle spasm” is an objective medical finding establishing an injury. *Estridge, supra*.

Dr. Burson’s reports beginning September 10, 2019 corroborated the claimant’s testimony. Dr. Burson noted that the claimant began suffering

from neck pain in May 2019 as the result of lifting at work. The record shows that the claimant slipped and fell at work on September 25, 2019. The respondents stipulated that the claimant sustained a compensable thoracic spine injury on September 25, 2019, but the evidence does not demonstrate that the claimant aggravated her neck or cervical condition at that time. Dr. Burson reported on October 22, 2019, “There is mild reversal [of] the normal cervical Lordosis.” Abnormal Lordosis is another objective medical finding establishing a compensable injury to the claimant’s neck on May 29, 2019. *King v. Peopleworks*, 97 Ark. App. 105, 244 S.W.3d 729 (Ark. App. 2006).

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(b)(Repl. 2012). The claimant proved that she sustained a compensable injury which caused physical harm to the body and arose out of and in the course of employment. The claimant proved she sustained a neck injury which was not caused by a specific incident and was not identifiable by time and place of occurrence. The claimant established a compensable injury by medical evidence supported by objective findings not within the claimant’s voluntary control. These objective medical findings included cervical straightening, muscle spasm, and abnormal lordosis. The claimant proved that these

objective medical findings were causally related to her compensable neck injury and were not the result of a prior injury or pre-existing condition. Finally, the claimant proved that the compensable injury was the major cause of her disability and need for treatment.

B. Medical Treatment

The 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)(Repl. 2012). 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 (2002). 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).

In the present matter, the Full Commission has found that the claimant proved she sustained a compensable gradual-onset injury to her neck on May 29, 2019 in accordance with Act 796 of 1993 as codified at Ark. Code Ann. §11-9-102(4)(A)(ii)(b)(Repl. 2012). The Full Commission finds that the medical treatment of record provided following the compensable injury was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The parties agreed that the claimant

sustained a compensable thoracic injury when she slipped and fell at work on September 25, 2019. The Full Commission finds that the medical treatment provided in connection with the thoracic injury, including treatment provided by Dr. Bryant, was reasonably necessary.

Dr. Burson performed an anterior cervical discectomy on November 11, 2019. The Full Commission finds that the discectomy performed by Dr. Burson on November 11, 2019 was reasonably necessary in connection with the compensable injury to the claimant's neck. The claimant reported some post-surgical improvement following surgery. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonably necessary. *Winslow v. D&B Mech. Contractors*, 69 Ark. App. 285, 13 S.W.3d 180 (2000). The Full Commission notes that the claimant was eventually able to return to work following surgery performed by Dr. Burson.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her neck on May 29, 2019 in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(b)(Repl. 2012). The Full Commission finds that the medical treatment of record provided in connection with the compensable neck injury and in connection with the compensable thoracic injury on September 25, 2019 was reasonably necessary in accordance with Ark. Code Ann.

§11-9-508(a)(Repl. 2012). The evidence demonstrates that the claimant remained within a healing period and was totally incapacitated from earning wages from November 11, 2019 through March 5, 2020. The claimant therefore proved that she was entitled to temporary total disability benefits from November 11, 2019 through March 5, 2020. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority's finding that Claimant proved that she sustained a compensable gradual onset injury because there is insufficient objective medical evidence to show Claimant sustained a compensable injury or that any workplace injury necessitated the treatment.

The majority relies on muscle spasms as indicative of an injury. While it is undisputed that muscle spasms may be indicative of an injury, such existence should not be the end of the inquiry. A muscle spasm is involuntary and is caused by pain. *See, Cont'l Express Inc. v. Freeman*, 66 Ark. App. 102, 106, 989 S.W.2d 538, 540 (1999) (citing Stedman's Medical Dictionary's definition of muscle spasm). Unanswered is the question of *what* caused the underlying pain. Here, the MRI of Claimant's cervical spine (neck) answers this question: Claimant suffers from degenerative disc disease and disc bulges at various levels of the cervical spine. Because of this, I would find the evidence insufficient to support a finding of a compensable injury and, accordingly, respectfully dissent from the majority.

CHRISTOPHER L. PALMER, Commissioner