BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G210121

WANDA JACKSON, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC, EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 25, 2021

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

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed August 5, 2020. The administrative law judge found that the claimant failed to prove she was entitled to additional medical treatment from Dr. Rosenzweig. The administrative law judge found that the respondents were not in contempt of the Commission. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

Wanda Gail Jackson, now age 69, testified that she injured her neck in a nonwork-related motor vehicle accident in 2009. The parties stipulated

that the employer-employee-carrier relationship existed on or about September 21, 2011. The parties stipulated that the claimant "sustained a compensable low back injury" on or about September 21, 2011. The claimant testified on direct examination:

> Q. Now, briefly I want you to tell the Court how you hurt yourself.
> A. I was pumping up a pallet of pumpkins. I don't know how much those things weigh, but they weigh a lot. And while I was pumping it up my back, I mean, it felt like it just went out, you know, when I was pumping it….
> Q. When you say you were pumping up, did you have a lever or something that you were pumping on?
> A. I was pumping on the pallet jack, on the lever, and I was pumping with both hands, pumping it up, and like I said, it just happened, it went, my back just went….
> Q. And where did you feel the pain?
> A. In my lower back.

According to the record, a physician examined the claimant on September 21, 2011 and diagnosed "Acute LBP/Strain r/o herniation." An x-ray of the claimant's lumbar spine was taken on September 21, 2011 with the impression, "1. No acute osseous injury is evident. If there is further concern, CT correlation is recommended. If there is concern for cord or ligament injury, or epidural hematoma, MRI is recommended if there is no contraindication."

Dr. Mark Larey noted on September 22, 2011:

> A 60-year-old female presents for evaluation of her reported work-related injury which occurred under the employment of Wal-Mart in Malvern where she works as department manager in produce.

> She states that yesterday she was moving a [pallet] of goods. She had pumped up the jack and just [began] pulling it when she developed a sharp debilitating pain in her left lower back area. She was unable to straighten it, it was so severe that coworkers got a wheelchair and she was actually taken to the hospital by ambulance to Hot Springs County Hospital for evaluation. She states that in the emergency department x-rays were performed. She was given a shot for pain, discharged on a Medrol Dosepak, pain medications.
> She states today that she continues to hurt, particularly in her left lower back area. She denies any radiation or paresthesias of the legs, although she states that it felt better this morning. After riding to the clinic in the car it is starting to hurt more so. She denies previous history of lower back injuries. She apparently has had a cervical back injury in the past secondary to motor vehicle accident and since she is followed by pain management Dr. Abraham who apparently does epidural steroid injections.

Dr. Larey diagnosed “Lumbar strain with spasm.” Dr. Larey treated the claimant conservatively and provided follow-up visits. The claimant received a program of physical therapy beginning October 12, 2011. The claimant initially testified that she did not benefit from physical therapy. An MRI of the claimant’s lumbar spine was taken on November 14, 2011 with the impression, “Mild diffuse degenerative disc changes greatest at L5-S1 with a small subligamentous disc protrusion but no definite effacement of the thecal sac or upon the exiting nerve roots.”

Dr. J. Zachary Mason reported on January 20, 2012:

> The patient is a 61 year old female who was working for Walmart in September. She was using a hand pump to elevate a pallet. She then pulled the pallet which was a load of pumpkins. This was quite heavy. She had sudden onset of back pain and left hip and leg pain. This has progressed to

> the point that she has been unable to work for several months now.
> She was evaluated by the Worker's Compensation physician and was placed on light duty. She has continued to work at light duty only using a hand scanner. She has pain that radiates down through the hip and the leg. Her pain is predominantly over the left SI joint.
> STUDIES REVIEWED: She has had a lumbar MRI scan that shows her to have a bulging disc at L5-S1 but without obvious compression of the thecal sac or the nerve roots.
> She has had one trigger point injection by Dr. [Larey], but without improvement. She has not responded to physical therapy either. She was somewhat worse after her treatments with left hip and leg pain that was more pronounced after her therapy.

Dr. Mason stated, "I have reviewed the findings of the MRI scan with the patient and her husband. She does have a bulging disc at L5-S1. I don't see any specific impression on the thecal sac or the nerve roots." Dr. Mason recommended additional diagnostic studies.

A case manager for the respondents was informed on January 25, 2012, "In Dr. Mason's opinion the L5-S1 disc bulge is a result of her work injury in September 2011. A myelo/CT is needed for further investigation to check the progress of the disc." A lumbar myelogram was taken on February 17, 2012 with the impression, "1. Mild lumbar spondylosis without significant canal or foraminal stenosis demonstrated." A CT of the claimant's lumbar spine was also taken on February 17, 2012 with the impression, "1. Multilevel spondylitic change of the lumbar spine without significant canal or foraminal stenosis demonstrated."

The claimant followed up with Dr. Mason on March 6, 2012:

> She returned to the office for review of her lumbar myelogram….The study looks good with no indication of compression of the thecal sac or the nerve roots. She has some slight increase in the facet joints at L4-5 and L5-S1 but without any compression of the nerve roots.
> MDM/RECOMMENDATIONS: Her pain seems to be originating from the left SI joint. With the absence of findings involving the spinal nerve roots, I think her pain must be arising from the SI joint itself.
> I would recommend that she have a left SI joint injection. We usually arrange to have Dr. Rosenzweig do this for us….I would recommend that she continue with light duty for now until she has had the left SI joint injection done. We will advise her Worker's Compensation carrier of her findings and recommendations at this point.

Dr. Kenneth M. Rosenzweig performed a procedure on March 28, 2012: "Fluoroscopic-guided sacroiliac joint injection on the left." The pre- and post-operative diagnosis was "Spondylosis, sacroiliac dysfunction with pelvic joint pain." The claimant testified that her low back pain decreased as a result of Dr. Rosenzweig's first injection.

Dr. Rosenzweig reported in part on April 12, 2012, "She returns after a sacroiliac joint injection performed on March 28, 2012. She did very well with the injection. It has been two weeks. It did not completely cure her pain….She is very pleased regarding the efficacy of treatment. She is having some difficulties with vestibula neuritis and has had some dizzy spells….A second injection to potentiate the efficacy of spinal intervention in hopes of achieving a satisfactory reduction of pain for an uneventful return

to work without restrictions will be considered." Dr. Rosenzweig performed a "Sacroiliac joint injection on the left, #2" on June 6, 2012. The post-operative diagnosis was "Spondylosis, sacroiliac dysfunction with pelvic joint pain." The claimant testified that the second injection also relieved her pain.

The claimant testified on cross-examination that the respondents terminated her employment on or about June 30, 2012. Dr. Rosenzweig performed a procedure on July 18, 2012: "Fluoroscopic guided radiofrequency denervation to the lateral branches, S1, S2, S3, and S4 nerve roots and further at the sacroiliac joint." The post-operative diagnosis was "Spondylosis, sacroiliac dysfunction, pelvic joint pain." Dr. Rosenzweig gave the following impression on August 7, 2012: "Lumbar spondylosis with sacroiliac dysfunction status post radiofrequency of the lateral branches of the SI joint." Dr. Rosenzweig recommended continuing follow-up treatment.

Dr. Rosenzweig reported on September 18, 2012:

> Ms. Jackson returns in follow-up. She states that she has been hurting worse. She has an appointment to see Dr. Scott Schlesinger in 10 days for evaluation of her chronic pain. She states that the treatment for her SI joints [has] not helped. Walking is making her pain much worse. She states that her pain level is a 7/10 but is usually worse than that. She states that pain medication helps but it does not stop her pain. Dr. Mason has advised her that she does not require surgery. Since then her pain has become debilitating. She recalls that

> this is all associated with an injury that occurred on September 21, 2011 when jacking up a ladder.
> It appears that the SI joint is the source of pain based on diagnostic blocks. Unfortunately, she has not enjoyed prolonged efficacy. The CT scan from February revealed primary facet disease of the lumbar spine but myelogram was negative for any compression. She states that she has more pain than weakness. She states that her pain is localized more to the center of the low back than the SI joint area….
> Plain radiographs of the lumbar spine today reveal collapse of the L5-S1 disk. She has normal lordosis but no evidence of compression fractures. There is no spondylolisthesis. There are degenerative disk changes at the L2-L3 level with narrowing and endplate changes. She has moderate osteoarthritic changes of the SI joint, right greater than left. There is no evidence of scoliosis. The hip joints are negative for degenerative collapse.

Dr. Rosenzweig's impression on September 18, 2012 was "Lumbar spondylosis with sacroiliac dysfunction/arthritis with unsatisfactory recovery with SI joint treatment." Dr. Rosenzweig recommended diagnostic facet joint injections and consideration of radiofrequency. Dr. Rosenzweig stated, "3. It appears that Ms. Jackson sustained a sprain/strain to her underlying otherwise asymptomatic degenerative spine. I have recommended attention to the lumbar facets for further treatment." The claimant initially testified that the respondents did not allow her to return to Dr. Rosenzweig after September 18, 2012.

Dr. Scott M. Schlesinger reported on or about September 28, 2012:

> This 61 year old female presents with lower back pain that intermittently radiates down the posterior aspect of the left thigh to the anterior aspect of the left shin. She also complains of spasms in her lower back and weakness in her

> left leg. Her symptoms initially began on September 21st, 2011 due to a work injury and her pain has been persistent ever since. She denies having a history of these symptoms prior to this accident….
> I have personally read and interpreted the multiple MRI images of the lumbar spine. This reveals minimal bulge at L5-S1. There are degenerative changes at L4-5 and L5-S1. I do not see anything at all to do from a surgical standpoint. A decision was made to request the radiologist's report. I have reviewed the radiologists' report, and basically agree with their findings.
> I read the myelogram CT report which was unremarkable. I have not viewed the images as I did not receive them. I am glad to review the actual images if they are provided to me. A decision was made to request the medical records for the current problem. I have reviewed these records.
> **Impression/Plan/Discussion:** She has already had therapy, SI injection, and a rhizotomy performed and did not get any benefit from these. I think she is at MMI at this time. I do not feel there is anything further that can be done for her. According to the patient's history, all her problems began with the work injury and she had no symptoms prior. If this, in fact, is accurate I think that the symptoms she has had is related to the work injury. I do not see anything to give her a disability rating for. There are no pre-existing issues to discuss as she did not have any symptoms prior to the work injury.

The respondents initially stipulated that they paid medical expenses through September 28, 2012, the date of Dr. Schlesinger's examination.

A pre-hearing order was filed on October 8, 2013. According to the pre-hearing order, the claimant contended, "The claimant contends she sustained compensable injuries September 21, 2011, and is entitled to [reasonably] necessary medical treatment related to said injuries. Specifically, claimant will contend that she is entitled to additional medical treatment recommended by Dr. Kenneth Rosenzweig in the form of facet

joint injections. Alternatively, claimant will ask to be returned to Dr. Rosenzweig for additional follow-up treatment in the event the facet injections are denied. Further and alternatively, claimant will ask to be referred to the original treating physician, Dr. [Zachary] Mason, Neurosurgeon."

The parties stipulated that the respondents "accepted the claim and paid some benefits." The respondents contended, "The respondents contend that based on the present medical evidence, they have paid all benefits to which the claimant is currently entitled. The claimant was determined to be at the end of her healing period by Dr. Schlesinger in his IME which occurred on or about October 20, 2012. The claimant was released at that time without a permanent anatomical impairment rating."

The parties agreed to litigate the following issues:

1. The claimant's entitlement to additional medical benefits.
2. Controversion.
3. All other issues are reserved.

A hearing was held on December 4, 2013. The claimant testified that she suffered from daily back pain. The claimant testified that she had benefitted from Dr. Rosenzweig's treatment and that she wanted to return to him. An administrative law judge filed an opinion on February 28, 2014. The administrative law judge found, in pertinent part, "4. Claimant has proven by a preponderance of the evidence that her need for additional

medical treatment with Dr. Rosenzweig is reasonable and necessary and related to her compensable work-related injury on September 21, 2011." The parties subsequently stipulated, "The prior Opinion of the Arkansas Workers' Compensation Commission is final."

Dr. Rosenzweig reported on April 1, 2014, "Ms. Jackson returns in follow-up. Her last visit was in September of 2012. She is having ongoing back pain from a claim of 2011. She had undergone SI joint injections with radiofrequency on the left. She is now almost two years ago and is reporting some increasing back pain. She would like to have another procedure." Dr. Rosenzweig's impression was "Increasing back pain with sacroiliac dysfunction with successful treatment in the past….Repeat SI joint injections under fluoroscopic control will be scheduled."

Dr. Rosenzweig performed a procedure on April 16, 2014: "Fluroscopic guided SI joint injections right and left." The post-operative diagnosis was "1. Spondylosis. 2. Sacroiliac dysfunction." Dr. Rosenzweig's impression on May 1, 2014 was "Persistent sacroiliac dysfunction with underlying degenerative changes." Dr. Rosenzweig performed a fluoroscopic-guided sacroiliac joint injection on the left on May 28, 2014. The post-operative diagnosis was "Spondylosis, sacroiliitis dysfunction, back pain." Dr. Rosenzweig's impression on June 12, 2014

was “Increasing back, hip, and leg pain unresponsive to SI joint injections that were previously successful.”

An MRI of the claimant’s lumbar spine was taken on July 3, 2014 with the impression, “Mild degenerative disc disease. Negative for disc herniation, central canal or exit foraminal stenosis.” Dr. Rosenzweig’s impression on July 11, 2014 was “History of sacroiliac dysfunction with progressive symptoms of coccydynia with a negative MRI.”

Dr. Rosenzweig performed a procedure on August 6, 2014: “Caudal epidural steroid injection, low volume, with sacrococcygeal joint injection.” The post-operative diagnosis was “Sacroiliac dysfunction, coccyodynia with sacral neuritis.” Dr. Rosenzweig reported on August 22, 2014, “Ms. Jackson returns in follow-up of the low volume caudal with a sacrococcygeal joint injection. Ms. Jackson reports that she had good relief. She was 80% better….She has a noted 90 degrees sacrococcygeal angle which may be congenital, but appears post-traumatic. The injection appears to have been successful in identifying her pain generator with respect to the coccyx. It may be reasonable to do a confirmatory block. If this is confirmed to be the source of pain, a resection or coccygectomy could be considered.” Dr. Rosenzweig’s impression on December 19, 2014 was “Coccydynia, with sacroiliac dysfunction.”

Dr. Rosenzweig reported on March 2, 2015:

> Ms. Jackson is a 64-year-old who presents for follow-up and clarification of her mechanism of injury. She states that she was working a pallet jack in 2011 and sustained a severe onset of pain. There was no fall or impact injury. She felt a twitch of pain. Then she went into spasms and locked up requiring an ambulance to come get her at work and take her to the emergency room for evaluation. She states that she never did fall on this claim and never had a work compensation claim from an earlier event in 2005 or 2006. She did have a slip in a freezer but did not have a fall. She did not sustain a treatable injury. There was no claim submitted at that time. In the pallet jack injury, she did not fall on her buttocks. She just had a severe onset of pain. I was not involved in her care at that time, but now four years later she [is] still having pain that appears more in the SI joint area. She was found to have a tender coccyx with angulation. It is unknown if this is congenital or posttraumatic. If it is a source of pain, it is certainly a treatable pathology. She states that the SI joints helped her pain significantly….
> The relationship of the coccyx pain and SI joint pain is to the same bone which is the sacrum. The ligament interconnects between the sacrococcygeal ligament to the ischium. The pelvic floor is a fibrotic network attaching to the coccyx. I believe the SI joint strain and sacrococcygeal strain can be part of the same injury. It is certainly reasonable to incorporate this as part of her claim.

Dr. Rosenzweig's impression on March 2, 2015 was "Coccydynia, with sacroiliac dysfunction….I did not have the opportunity to evaluate Ms. Jackson early on at the time of the injury, but the manifestation of sacrococcygeal pain as part of her original injury is felt to be appropriate and medically necessary." The parties agreed at the second hearing before an administrative law judge that the respondents did not allow the claimant to return to Dr. Rosenzweig after March 2, 2015.

Dr. Wayne L. Bruffett performed an Independent Medical Examination on February 5, 2016:

> Mrs. Jackson is a sweet 65-year-old lady who worked in the produce department as a manager for Walmart. She states that she was pumping up a pallet of pumpkins in 2011 when she felt a pop in her back and started having severe pain in her back….She had physical therapy with no improvement. She was evaluated by Dr. Rosenzweig after obtaining an MRI and CT of her lumbar spine. She underwent SI joint injections [that] she states helped her temporarily. She also had rhizotomies without benefit. She was sent to be seen by [Dr. Schlesinger] she says told her she did not have a work-related injury and needed no treatment. She is here for evaluation of the same symptoms.
>
> Her pain is mostly in her back is moderate to severe and constant. She says that it is worsened when she sits for long periods of time or stands for periods of time. She endorses some pain down the front of her left leg. That her back is the worst….
>
> X-ray shows no evidence of fracture. I see no instability. Her MRI scan is reviewed. I reviewed both her studies both 2011 and 2014. She has a central bulge or herniation at L5-S1. I do not see any evidence of nerve compression….
>
> I would like to answer the questions [posted] for this IME. I think Mrs. Jackson's current diagnosis is discogenic pain from a central disc herniation or disc bulge at L5-S1. I do not recommend any further treatment or surgery for this condition. I went into this in detail with Mrs. Jackson. At this point I just do not think there is an injection or medication or therapy or surgery is gonna make a significant change in her situation. Surgical treatment is not indicated in my opinion. I do not recommend further pain management treatments. I would not recommend continued medication for this work injury. [Mrs. Jackson] was on hydrocodone for a neck injury prior to her work accident. This was initiated in 2009 by Dr. Abraham if she continues to see him. Therefore, I think it is reasonable for her to continue to see him for chronic pain but not specifically for this work injury. I do think Mrs. Jackson [has reached a] point of maximum medical improvement. Based on the American Medical Association guides to evaluation of

> permanent impairment fourth edition I would [assign] her impairment rating of 7% of the whole person[.] I do not have any restrictions to place upon her. I suspect she certainly has some limitations. However, she is now 65 years old and is retired or on disability. I do not think defining her limitations through a functional capacity evaluation is necessary because I do not think is gonna change in result her what we do (sic). I have just told her to let her pain be her guide with regards to her activities. So I have no restrictions per se to place upon her.

Dr. Bruffett assessed "Discogenic pain L5-S1 from bulging disc as a consequence of a work injury."

A pre-hearing order was filed on April 19, 2016. The claimant contended, "Claimant is under the care and treatment of Dr. Kenneth Rosenzweig, Orthopedic Surgeon, Little Rock, Arkansas. Dr. Rosenzweig has suggested additional medical treatment which the Respondents have denied. In an opinion dated February 28, 2014, the Administrative Law Judge specifically found that the Claimant was entitled to additional medical treatment by Dr. Rosenzweig that is in the same form as his current recommendations. Claimant contends that the Respondents are in contempt of the February 28, 2014 opinion of the Administrative Law Judge. Alternatively, Claimant contends that the recommended treatment of Dr. Rosenzweig is reasonable and necessary."

The parties stipulated, "This claim for additional benefits has been controverted in its entirety." The respondents contended, "The respondents contend that the recommended treatment of Dr. Rosenzweig does not arise

out of the compensable injury. In addition, the respondents contend that the treatment is unreasonable and unnecessary."

The April 19, 2016 pre-hearing order indicated that the parties agreed to litigate the following issues:

> 1. Claimant's right to additional medical treatment by her treating physician, Kenneth Rosenzweig, an orthopedic surgeon, in Little Rock, Arkansas.
> 2. Contempt and penalties.

A hearing was held on October 28, 2016. The claimant testified that she was suffering from increased back pain. The claimant testified that she had benefitted from injections provided by Dr. Rosenzweig.

An administrative law judge filed an opinion on December 21, 2016. The administrative law judge found, in pertinent part:

> 4. The claimant proved by a preponderance of the credible evidence her entitlement to additional medical treatment for her compensable back injury of September 21, 2011, pursuant to the provisions of Ark. Code Ann. §11-9-508. Therefore, the respondents are liable for the expense of this treatment under the Arkansas Workers' Compensation Act.
> 5. That there is insufficient evidence to support a finding that the respondents are in contempt of the Administrative Law Judge's Order of February 28, 2014, for which they should be held liable.

Dr. Rosenzweig performed a procedure on February 1, 2017: "Fluoroscopic-guided SI joint injection on the left with sedation." The post-operative diagnosis was "Sacroiliac dysfunction on the left, back pain." Dr. Rosenzweig performed an SI joint injection on April 12, 2017. Dr.

Rosenzweig performed a procedure on May 17, 2017: "Fluoroscopic guided facet block L3-L4, L4-L5, L5-S1 left and right with sedation." The post-operative diagnosis was "1. Spondylosis 721.3. 2. Back pain 724.2." Dr. Rosenzweig performed a second facet block on June 8, 2017.

Dr. Edward H. Saer provided an Independent Medical Evaluation on August 14, 2018:

> Ms. Jackson is a 67 year old woman seen today for independent evaluation. She has a history of work-related injury in 2011….She says she was injured in 2011 while working at Walmart as a produce manager. She was pumping up a pallet of pumpkins with a pallet jack when she had the onset of severe pain in her back. She says this pain has persisted.
> She describes pain which is now primarily in the left side. Sometimes it will go down the leg to the calf. She occasionally has pain on the right side. Her back pain is worse than the leg pain though. She also describes some intermittent numbness in the left anterior leg….
> She has had a lot of nonoperative treatment for this. Most recently she has been seen by Dr. Ken [Rosenzweig]. She has tried various medications including hydrocodone, gabapentin, and muscle relaxers. None of them really helped so she has stopped all of them. She is just taking Tylenol or ibuprofen now.
> She has had a number of injections and even radiofrequency; she says none of this has given her much long term benefit. She has had physical therapy 2 or 3 times over the years, most recently last fall. She says she is trying to walk on her own. She does use heat or ice sometimes….
> Standing AP lateral lumbar spine films obtained today and personally reviewed show relatively normal alignment. There is mild disc space narrowing at L2-3 and L5-S1. There is no evidence of fracture or instability. When compared to x-rays done February 5, 2016, there has been slight progression of the degenerative change at L2-3 and L5-S1.

> MRI done at Sealy Memorial on January 24, 2018 was reviewed. There is desiccation of all the disks. She may have a small annular tear at L5-S1 with a small left sided disc bulge. There is mild degenerative change at L2-3. Overall the study looks relatively normal for age. I compared it to the MRI done February 3, 2014 actually Memorial. The disc bulge at L5-S1 was not present at that time.
> **Assessment**
> I don't believe her symptoms are related to a disc bulge at L5-S1. I do not think that surgical treatment is going to be of value. There is no structural problems that we can identify that surgery is likely to help. The fact that the disc bulge was not present in 2014, when she was very symptomatic, indicates that that is not the cause of her pain.
> I had a long visit with her about this today explaining that surgery is not likely to help her. Nonoperative measures so far including injections have not really helped either. I would recommend she continue to exercise on her own and trying to manage this symptomatically.
> **Plan**
> I think she is at MMI from the standpoint of her injury. No surgery is indicated. Further injections and noninvasive procedures are not likely to help either. Impairment rating has already been assigned by Dr. Bruffett.
> Please let me know if there are any questions.

Dr. Rosenzweig's impression on August 20, 2018 was "Probable diskogenic back pain with radiculitis." Dr. Rosenzweig planned, "1. A repeat SI joint injection was offered. Her previous injection was last year. 2. Repeat facet blocks were offered regarding her back pain. 3. Redo radiofrequency will be considered for mechanical back and buttock pain. She had radiofrequency exactly one year ago."

Dr. Rosenzweig performed a procedure on October 16, 2018: "Fluoroscopic-guided SI joint injection, left and right." The post-operative

diagnosis was “Sacroiliac joint dysfunction, left greater than right.” The claimant followed up with Dr. Rosenzweig on October 29, 2018:

> Ms. Jackson is a 67-year-old worker’s compensation claimant from a claim from 2011. She underwent bilateral SI joint injections on October 16, 2018 and had excellent relief of her pain with the Marcaine. The relief lasted about 8 hours. The pain is progressively worsening. She is still having persistent lower back pain in the right buttock area. The pain radiates down to her thigh. She is having spasms.
> She has had previous treatment for the lumbar facets with radiofrequency. Her pain complaints appear to be low in the area of the SI joint. The SI joints were previously injected in 2012 and 2014. Her anesthetic response confirmed the SI joint is contributing to her lower back pain. She had improvement with the Marcaine and some improvement with the steroid. The pain is persistent. It radiates down her thigh to the point that it is difficult for her to walk.

Dr. Rosenzweig gave the following impression on October 29, 2018: “1. Facetogenic back pain. 2. Sacroiliac pain with response to a diagnostic injection….A repeat injection versus repeat radiofrequency for more advanced treatment will be considered. The radiofrequency for the lower lumbar facet redo including the SI joint would be for pain control.”

The parties deposed Dr. Rosenzweig on December 7, 2018. The respondents’ attorney examined Dr. Rosenzweig:

> Q. Now, sir, at least – either from the medical records or – the original injury was at L5-S1. What, if any, relationship is there between that and the SI joint?
> A. Well, L5-S1, S1 refers to the sacrum and so the very top part of the sacrum articulates the lumbar spine. SI joint is just to either side of the sacrum. They share similar symptoms because it is so close in proximity. And, oftentimes, it is difficult to tell which one is causing pain until you treat one or

> the other, and the response to treatment will identify the source of pain.
> Q. Okay. At this point in time, I mean, currently, you are just treating Ms. Jackson for her pain, aren't you?
> A. Correct. Whack-A-Mole.
> Q. What's Whack-A-Mole? Well, and I was going to ask you about that. Wendy Trossie who is a nurse case manager for Wal-Mart has discussed with you, and that is the term you used with her, "Whack-A-Mole," isn't it?
> A. Yes.
> Q. Okay. So are you specifically treating her for her discs at L5-S1, which was injured in this incident at Wal-Mart on September 21, 2011?
> A. We did SI joint injections. It's not treating the discs. It's treating the SI joint. We've done an epidural once, in August 2014. And we also injected coccyx at the same time to enter at the same place.
> Q. Okay. The injections that you have provided for Ms. Jackson, unfortunately, have not provided any lasting relief, have they?
> A. They have not. She at times is reporting the pain is returning. She stated that they do help though….She stated that the injections do help her.
> Q. On a temporary basis?
> A. Correct….
> Q. And, essentially, can you state with a reasonable degree of medical certainty that you are actually treating her workers' compensation injury now?
> A. I'm treating what she is reporting is pain from the injury….
> Q. You are not treating a specific injury, then, are you, sir?
> A. I am treating symptoms.
> Q. Okay.
> A. That she says are from her injury.

A pre-hearing order was filed on October 30, 2019. The claimant contended, "The Respondent has been ordered on two separate occasions to provide treatment to the Claimant as recommended by Dr. Kenneth Rosenzweig. Despite the orders of the Arkansas Workers Compensation

Full Commission, treatment of the Claimant has been substantially delayed on many occasions and most recently has again been denied. Claimant's ability to acquire reasonable medical treatment as a result of her injury has been completely frustrated by the Respondent and its intentional actions. Respondent's failure and refusal is a direct violation of the previous orders and Respondent should be found in contempt with appropriate penalties and sanctions imposed."

The parties stipulated, "This claim for additional benefits has been controverted by the respondents." The respondents contended, "The respondents deny that they have denied any medical treatment to the claimant. Dr. Rosenzweig made a referral to Dr. Anderson. At that time the respondents requested IME's from Dr. Souheaver and Dr. Saer. The claimant agreed to attend the IME of Dr. Souheaver but refused to attend the IME of Dr. Saer. The respondents are requesting additional medical opinions in an effort to come to some solution to the claimant's medical treatment. The claimant's injury was in September of 2011 and there appears to be no improvement whatsoever."

The parties agreed to litigate the following issues:

1. Claimant's right to additional medical treatment.
2. Contempt and appropriate penalties as a result of respondents' failure to comply with the previous orders of the Court.

A hearing was held on December 27, 2019. The claimant testified that she continued to suffer from pain in her lower back. An administrative law judge filed an opinion on August 5, 2020. The administrative law judge found, among other things, that the claimant failed to prove she was entitled to additional medical treatment from Dr. Rosenzweig. The claimant appeals to the Full Commission.

II. <u>ADJUDICATION</u>

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 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, an administrative law judge found in part, "3. The claimant has failed to prove by a preponderance of the evidence she is entitled to additional medical treatment from Dr. Rosenzweig." It is the duty

of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support the administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission reviews an administrative law judge's opinion *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by the administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996).

In the present matter, the Full Commission affirms the administrative law judge's finding that the claimant did not prove she was entitled to additional medical treatment provided by Dr. Rosenzweig. The parties stipulated that the claimant sustained a compensable low back injury on or about September 21, 2011. The claimant testified that she injured her back while operating a pallet jack. A physician's diagnosis on September 21, 2011 was "Acute LBP/Strain r/o herniation." Dr. Larey diagnosed "Lumbar strain with spasm." The claimant was provided physical therapy from which she did not benefit. Dr. Mason reported in January 2012 that the claimant had sustained "a bulging disc at L5-S1." Dr. Mason opined that the L5-S1 disc bulge resulted from the September 21, 2011 compensable injury.

The claimant began treating with Dr. Rosenzweig on March 28, 2012. Dr. Rosenzweig began performing injection treatment from which the

claimant has derived no long-lasting benefit. Dr. Schlesinger reported on September 28, 2012, “She has already had therapy, SI injection, and a rhizotomy performed and did not get any benefit from these. I think she is at MMI at this time. I do not feel there is anything further that can be done for her.” Nevertheless, an administrative law judge filed an opinion on February 28, 2014 and found that additional treatment provided by Dr. Rosenzweig was reasonably necessary. The claimant resumed treating with Dr. Rosenzweig on April 1, 2014.

Dr. Bruffett performed an Independent Medical Examination on February 5, 2016. Dr. Bruffett correctly noted that the claimant continued to suffer from chronic low back pain with no appreciable relief from Dr. Rosenzweig’s extensive treatment. Dr. Bruffett opined, “I do not recommend any further treatment or surgery for this condition….I do think Mrs. Jackson has reached a point of maximum medical improvement.” However, an administrative law judge filed an opinion on December 21, 2016 and found that the claimant proved she was entitled to additional medical treatment pursuant to Ark. Code Ann. §11-9-508(a)(Repl. 2012).

The claimant resumed treating with Dr. Rosenzweig on February 1, 2017. Dr. Rosenzweig provided treatment in the form of injections and blocks. Dr. Saer provided an Independent Medical Evaluation on August 14, 2018. Dr. Saer noted that the claimant continued to suffer from chronic

low back pain despite Dr. Rosenzweig's procedures. Dr. Saer reported in part, "She has had a number of injections and even radiofrequency; *she says none of this has given her much long term benefit* [emphasis supplied]….I had a long visit with her about this today explaining that surgery is not likely to help her. *Nonoperative measures so far including injections have not really helped either* [emphasis supplied]. I would recommend she continue to exercise on her own and trying to manage this symptomatically." Nevertheless, Dr. Rosenzweig continued with his repeated injections and testified at a deposition that he was treating chronic pain symptoms purportedly resulting from the compensable injury.

The Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999). It is within the Commission's province to weigh all of the evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the Full Commission finds that the expert opinions of Dr. Schlesinger, Dr. Bruffett, and Dr. Saer are supported by the record and are entitled to more evidentiary weight than the opinion of Dr. Rosenzweig. On September 21, 2011, the claimant sustained a compensable injury in the form of a lumbar strain as diagnosed by Dr. Larey. The claimant began treating with Dr.

Rosenzweig in 2012 but received no lasting benefit or improvement of her symptoms. Dr. Schlesinger, Dr. Bruffett, and Dr. Saer have all opined that the claimant has reached maximum medical improvement for her compensable injury.

The Full Commission recognizes that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). In the present matter, however, the Full Commission finds that continued treatment by Dr. Rosenzweig is no longer geared toward management of the nonsurgical lumbar strain sustained by the claimant on September 21, 2011. The Full Commission in particular attaches significant evidentiary weight to Dr. Saer's opinion stated on August 14, 2018, "I think she is at MMI from the standpoint of her injury. No surgery is indicated. Further injections and noninvasive procedures are not likely to help either."

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she was entitled to additional treatment as provided by Dr. Rosenzweig. The claimant did not prove continued treatment from Dr. Rosenzweig after October 29, 2018 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant did not prove that the respondents are in contempt of the

Commission. The claim for additional medical treatment is respectfully denied and dismissed.

IT IS SO ORDERED.

____
SCOTTY DALE DOUTHIT, Chairman

____
CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part but must respectfully dissent in part from the majority opinion. I concur with the majority's finding that the claimant did not prove that the respondents are in contempt of the Commission. However, I must dissent from the majority opinion finding that the claimant did not prove she was entitled to additional treatment as provided by Dr. Rosenzweig.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries.

Deboard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown*, *supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

The Arkansas Court of Appeals has held a claimant may be entitled to additional medical treatment even after the healing period has ended, if said treatment is geared toward management of the injury. See *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage

produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex*, *supra*.

When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). A physician's special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. *Id*.

Here, there are conflicting medical opinions. The claimant's treating physician, Dr. Kenneth Rosenzweig, recommended that the claimant undergo a radiofrequency rhizotomy or fusing. Dr. Rosenzweig has been the claimant's treating physician since 2012 and has treated the claimant on multiple occasions. Whereas, Dr. Edward Saer, who performed the most recent Independent Medical Examination[1] (hereinafter, "IME"), opined that the claimant reached maximum medical improvement on August 14, 2018 and that she needs no additional treatment. I assess great weight to the opinion of Dr. Rosenzweig and little weight to that of Dr. Saer. Dr. Saer was not the claimant's treating physician; he was hired by the

---

[1]Dr. Scott Schlesinger initially performed an IME and determined that the claimant had reached maximum medical improvement. Dr. Wayne Bruffett performed a second IME on February 5, 2016 and opined that no additional treatment was indicated for the claimant. The claimant was granted additional medical treatment by the Commission subsequent to each of these IMEs.

respondent to perform an independent medical examination. Dr. Saer only saw the claimant on one occasion to perform a cursory evaluation and reviewed the claimant's medical records. As independent medical examinations are designed to limit the respondent's liability, each one must be viewed for what it is (a money-saving tool) and weighed accordingly.

Dr. Rosenzweig performed a radiofrequency rhizotomy on August 17, 2017 which provided the claimant with relief for a significant amount of time. Dr. Rosenzweig testified that the claimant did not require medical treatment for approximately one year after undergoing this treatment.

On October 16, 2018 Dr. Rosenzweig performed an SI injection and determined that the source of the claimant's pain was her SI joint. According to Dr. Rosenzweig, the next step in treatment would be "to do radiofrequency or a fusion". Based on the claimant's previous response to this treatment, Dr. Rosenzweig opined that a radiofrequency rhizotomy should help with the claimant's pain. In addition, the claimant testified that of all the types of treatments she received, the radiofrequencies gave her the greatest pain relief. Therefore, I find that the treatment recommended by Dr. Rosenzweig is reasonable and necessary.

Thus, I find that the claimant proved by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a radiofrequency rhizotomy as recommended by Dr. Rosenzweig.

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

____
M. SCOTT WILLHITE, Commissioner