

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H204710

ALICE E. LAWRENCE, EMPLOYEE	CLAIMANT
SEARCY COUNTY JUDGE, EMPLOYER	RESPONDENT
AAC RISK MANAGEMENT SERVICES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 31, 2024

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

Claimant represented by the HONORABLE NEAL L. HART, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part as modified, reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed June 20, 2024. The administrative law judge found that the claimant proved she sustained a compensable injury to her left leg and back. The administrative law judge found that the claimant proved she was entitled to temporary total disability benefits beginning March 3, 2023 until a date to be determined. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable back injury. The claimant proved that the medical treatment of record provided in connection with her

compensable left leg injury was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The Full Commission finds that the claimant proved she was entitled to additional temporary total disability benefits from March 3, 2023 through January 25, 2024.

I. HISTORY

The record indicates that Alice Lawrence, now age 46, underwent a lumbar fusion at L5-S1 performed by Dr. Edward H. Saer, III on May 23, 2007. Dr. Saer noted on January 3, 2008, “She’s going to therapy and hasn’t completed the course yet, but she feels like she’s getting stronger. The only thing that she’s noticed is that when she walks on the treadmill sometimes her left toe drags.” The claimant followed up with Dr. Saer on February 14, 2008: “She says occasionally she will still drag her toe when she walks on the treadmill....I am going to give her a release to return to her regular job duties. She is going to need to be a little careful and probably needs to alter some of her body mechanics, and we discussed that. I will release her at this point, but would be happy to see her again at any time.”

Dr. Saer informed a representative of Public Employee Claims on April 7, 2008, “I would estimate that she has a 2% impairment for her surgery done by Dr. Williams in 2005, and an additional 5% whole body

impairment for her fusion done May 23, 2007. This combines for a 7% whole body impairment rating[.]”

Dr. Saer noted in October 2008 that a vehicle the claimant was driving had been “T-boned” on the passenger side. Dr. Saer’s impression was “Lumbar strain/sprain secondary to motor vehicle accident.” Dr. Saer performed a posterior fusion/TLIF, L4-5 on November 30, 2016. The pre- and post-operative diagnosis was “1. Degenerative spondylolisthesis, L4-5. 2. Facet cyst L4-5 left with significant foraminal and lateral recess stenosis. 3. Prior L5-S1 fusion.”

An APRN noted on December 20, 2016, “She still has some sense of soreness and weakness in the left leg....I think her left leg will continue to improve over time.” Dr. Saer reported on January 31, 2017, “She is still having some problems with her left leg. In the mornings when she gets up she has difficulty getting out of bed.” Dr. Saer noted on April 4, 2017, “4 days ago she was walking up steps and could not pick up her left foot. It caught and she fell into the wall.”

The claimant testified that she became employed with the respondents, Searcy County, on November 29, 2021. The claimant testified that she drove a “compacter truck” for the respondent-employer. The claimant’s testimony indicated that her work for the respondents sometimes required manual labor. The parties stipulated that the

employee-employer-carrier relationship existed on June 16, 2022. The claimant testified on direct examination:

Q. Tell us what happened, please.

A. I had gotten out of the truck to shut the back doors to make sure that no trash falls out when we are going....And I walked back around the truck. And while I was walking, another truck pulled up behind us and for some reason honked the horn....And he put the truck in drive, and when he gassed the truck to go forward, it hit me and knocked me down in front of the back tires.

Q. Did the bed of the truck hit you?

A. Yes.

Q. Knocked you down in front of the tires and then what happened?

A. It went up on my left foot.

Q. What did?

A. The back tires. The dual tires. And I couldn't get away from it, so I tried to roll away from it....

Q. And then what?

A. And then when he come up on my leg, and I was screaming for him to stop. And when he got up, he – my dog actually jumped out. When my dog jumped out, he stopped. And when he stopped, he was on my lower back, and I couldn't really yell anymore because it kind of squeezed the breath out of me.

Q. The wheels were on your back?

A. The wheels stopped on my lower back, yes. And then when the dog jumped out, he stopped, and then he backed off of me....

Q. At that point what was the condition of your leg?

A. I could not move it. I could not put weight on it. My foot was twisted to the inside towards my other leg. My knee was curled. It had it all – it was all messed up....

The respondents' attorney cross-examined the claimant:

Q. So it's your testimony that this truck ran all the way over your entire left leg?

A. Yes.

Q. Dual truck tires?

A. Yes.

Q. All the way onto your lower back?

A. Yes....

Q. What marks did you have to your abdomen?

A. I had tire tread on my back where he stopped....

Q. So it's your testimony that you were not flat on your belly or your face, you were on your side as this over 5000-pound truck rolled all the way to your lower back?

A. Yes....

Q. And is it your testimony that this truck would have rolled over your foot, knee, hip, and then onto your lower back?

A. Yes.

According to the record, the claimant received emergency treatment on June 16, 2022:

ALICE LAWRENCE is a 44-year-old female who arrives to the ED via EMS air transport with the chief complaint that her left leg was run over....Patient complains of left thigh and knee pain. Patient states she was working and the garbage truck driver was spooked and moved forward where her left leg was caught under the tire and was ran over. Associated symptoms include: left thigh and knee pain. Patient denies any other associated symptoms....History limited due to acuity of condition and ketamine....

Musculoskeletal: Normal strength, No tenderness, No swelling, No deformity. Good dorsalis pedis and posterior tibial pulses. Bruising and swelling to entire left lower extremity. ROM decreased secondary to pain....

A physician gave the following impression on June 16, 2022:

“Unremarkable for vascular injury or focal hematoma within the CTA abdomen, pelvis and lower extremities. Soft tissue swelling above the knee joint. No fracture deformity. Right knee Baker’s cyst.”

An x-ray of the claimant’s pelvis was taken on June 16, 2022 with the following findings:

Bones/joints: Metallic posterior instrumented fusion hardware L4 and L5 with lateral fusion mass and L4-L5 intra discal cage prosthesis. No acute fracture. No subluxation.
Soft tissues: Unremarkable.
IMPRESSION: No acute findings.

An x-ray of the claimant's left tibia and fibula was taken on June 16, 2022 with the following findings:

Bones/joints: No definite cortical step-off deformity of the lateral tibial plateau region; if there is any concern for subtle hairline fracture, would then recommend CT knee. Minimal patellar spurring superiorly. Patella appears intact. Tibia and fibula appear intact.
Soft tissues: No suprapatellar effusion present and no lipo hemarthrosis fluid level.
IMPRESSION: No acute findings.

The Discharge Diagnosis on June 16, 2022 was "Crush Injury of the Foot" and "Knee Sprain, Adult." The claimant testified that she did not return to work following the June 16, 2022 accidental injury.

Dr. Jose E. Abiseid examined the claimant on June 20, 2022 and noted, "1. WC pt was ran over by truck....SKIN: multiple bruises on the left side of her leg and thigh. BACK: lumbar paraspinal tenderness." Dr. Abiseid assessed "1. Multiple traumatic injuries. 2. Intervertebral disc disorders with myelopathy, lumbar region. 3. Dorsalgia, unspecified. 4. Sciatica, left side." Dr. Abiseid noted, "Pt was ran over by a truck and ran back over again complaining of left leg and thigh pain and bruises and back pain."

Dr. Abiseid noted on June 27, 2022, "Pt was involved in [an] accident at work [where] she was ran over by a truck twice on legs pt is having severe back pain from the accident then also left ankle turning on its own, leg is red and hot to touch going to treat her with antibiotic to prevent staph needs MRI back and left ankle[.]"

An MR of the claimant's lumbar spine was taken on July 7, 2022 with the impression, "Mild spinal stenosis L3-4. Surgical changes from L4 to S1 described above."

Dr. Justin Cutler, D.O. began treating the claimant on July 19, 2022:

This is a 44 year old female who is being seen for a chief complaint of left leg. Work comp – left leg pain. [Ms. Lawrence] reports accident occurring on June 16 where she ended up underneath a garbage truck truck ran up her left leg all the way up to her thigh. Backed off of it. States that she was lift flighted to Springfield where pelvis and leg with CTs. No fractures were identified. Was discharged home. Since that time has had pain medicine but no physical therapy. States swelling in left lower extremity is pretty still severe....

Has extreme tenderness on the left lateral thigh at this with thickening of the subcutaneous tissue palpable....Has a large amount of swelling on the medial aspect of the lower leg. No erythema. Very tense and exquisitely tender to touch. Has a hard time picking her foot up secondary to the pain in her leg. I can passively move her ankle and toes well.

2 views of her left tib-fib are taken here in the office and reviewed today. See no fractures or dislocations. Large amounts of soft tissue swelling noted.

Impression/Plan: Crush injury to left lower extremity secondary to being run over by a garbage truck. This is clotted just what appears to be some fluid accumulation in the her (sic) left lower extremity medial gastroc region. Like to get an ultrasound of this to see if there is fluid that can be

aspirated or even surgically debrided as has not improved over the last month. Has evidence of meralgia paresthetica secondary to nerve injury that [has] occurred to her left lower extremity. At the go ahead to start her on some gabapentin. Recommend trying a steroid pack to see if get some of the swelling down as well. Lots of elevation. Need to aggressively start physical therapy to help work on lymphatic flow and get swelling down. See her back in 2 weeks to see how the ultrasound results are and if any of these modalities are helping her to improve her.

Dr. Cutler took the claimant off work on July 19, 2022 “pending MRI.”

An Ultrasound Imaging Report was done on July 20, 2022 with the impression, “Complex septated probable hematoma in the medial left calf measuring 8.0 x 2.0 x 5.5 cm.”

Dr. Cutler gave the following impression on July 26, 2022: “Crush injury to left lower extremity with neuropathy and severe contusions including a large 8 x 5 and half centimeter hematoma. Will continue to treat nonoperatively as her symptoms are slowly improving. Physical therapy will be her biggest asset. We will follow-up in 1 month for recheck.”

Dr. Cutler continued to provide follow-up treatment, and he kept the claimant off work.

An MRI of the claimant’s left knee was taken on September 8, 2022, with the impression, “Examination is limited by patient motion. There may be some articular cartilage fraying in the medial compartment of the knee.” In addition, an electromyographer reported on September 8, 2022:

44 y/o female with c/o LLE injury with being run over by a garbage truck, 3 months ago. Low back ache and sharp intermittent pain with LLE posterior radiation, Hx back surgery x4, most recent in 2016. Ambulates on walker carrying LLE in flexion, will not attempt to place foot on floor. Trace volitional firing of ankle/digit flexors and extensors, inconsistent effort. Marked hematoma on the LLE antero-medial lower leg....

Findings: No significant peroneal motor slowing but amplitudes are reduced. Tibial motor values are WNLs. EMG needle exam reveals increased insertional activity in the left sacral paraspinals and gastrocs. Large amplitude spontaneous activity in the left ant tib, gastrocs and AIIB. Peroneus longus is spared.

Conclusions: 1) S1 radiculopathy with moderate acute axon loss. Correlation with imaging should be of benefit.
2) Focal lesion of the left peroneal branch of the peroneal nerve in the anterior lower leg, with moderate acute axon loss, significant sparing is suggestive of a good prognosis for re-innervation via sprouting.

Dr. Cutler gave the following impression on September 21, 2022:

“Crush injury to left lower extremity with left S1 radiculopathy complex regional pain syndrome and left foot drop. Because of the EMG report that this would like to go ahead and get an MRI of her lumbar spine. I will continue her on the gabapentin. I need to get her a brace for her foot drop to help with ambulation. Continue to be off work.”

An MRI of the claimant’s lumbar spine was taken on October 3, 2022:

HISTORY: Back pain. Prior surgery. Left lower extremity radiculopathy....

FINDINGS: Standard lumbar spinal numbering. Prior posterior decompression and interbody fusion at L4/L5 and L5/S1 along with posterior fusion construct in place from L4-S1. Vertebral body heights are well-maintained. No osseous

mass or marrow edema. Grade 1 degenerative retrolisthesis at L3/L4. No significant scoliosis.

No paraspinous fluid collection or inflammatory changes.

Postoperative denervation muscle atrophy evident. Normal appearance of the visualized distal spinal cord. The conus medullaris terminates at L1/L2. No thickening or dumping of the cauda equina. No epidural fluid collection.

T11/T12 M-L2/L3: Normal.

L3/L4: Grade 1 degenerative retrolisthesis. Mild disk height loss and disk bulging. Mild facet hypertrophy with slight facet widening. No narrowing.

L4/L5: Prior laminectomy and interbody/posterior fusion. No narrowing. No scar tissue evident on this noncontrast study.

L5/S1: Prior laminectomy and interbody/posterior fusion.

There is some nonspecific intermediate signal material within the left lateral recess contacting the traversing S1 nerve root. No canal or foraminal stenosis.

IMPRESSION: 1. Intermediate intensity signal material within the left lateral recess at L5/S1 contacting and possibly encasing the traversing left S1 nerve root. Unable to exclude scar tissue given the prior surgery. Correlate with any left S1 radicular symptoms.

2. Prior decompression and interbody/posterior fusions at L4/L5 and at L5/S1. Mild adjacent segment disease at L3/L4 with grade 1 retrolisthesis and mild bulging of the disk. No narrowing at L3/L4.

Dr. Cutler gave the following impression on October 4, 2022: "Status post being run over by a garbage truck with severe left lower extremity radiculopathy and peripheral nerve issues. Left foot drop from peripheral nerve as well as a large lateral L5-S1 herniation. At this time because of the continued foot drop need to get her back into her spine surgeon Dr. Segura Little Rock for evaluation for possibility of a selective nerve root injection versus surgical intervention."

Dr. Saer reported on October 25, 2022:

Ms. Lawrence is now 44 years old. I have seen and treated her in the past. She had TLIF at L5-S1 in 2007 and then at L4-5 in November 2016.

She is back today with back and left lower extremity pain, especially in her knee and ankle, that occurred on June 16, 2022. She got out over the passenger side of a truck driven by a coworker. She was checking clearance when someone came up behind the truck and honked. Her coworker [moved] the truck forward, knocking her down. She says the truck actually ran over her. She [was] on her side and her left lower extremity went between the rear dual wheels.

She was taken to the ER and evaluated. No fractures were found but she says she had bruised kidneys. She developed significant back pain which persists. This is present when she sits or stands and gets better when she lies down. She says it feels like "something is moving" in her back. She also reports pain in the lateral hip area and burning down the left lower extremity as well as a feeling of weakness. She [has] been going to physical therapy for her hip and leg...She is seeing Dr. Cutler for her knee and ankle pain.

Exam: She is a well-developed woman who walks on a walker. She holds her left lower extremity with hip and knee slightly flexed and the left foot inverted and plantarflex. Her back is not really tender to palpation. Motion is limited in all directions.

Lower extremities had no distal edema, intact pulses. Reflexes are diminished but equal at knees and ankles with no clonus. Motor testing reveals weakness in all groups on the left lower extremity. She has no active dorsiflexion or plantarflexion of the left foot, trace inversion and eversion. In fact she has trace quads and hamstrings, which does not exactly match up with her walking, because she is holding both hip and knee slightly flexed. SLR is negative.

X-rays: Standing AP lateral lumbar films today show instrumentation L4-S1 with interbody fusion at both levels. Fusion appears solid. Other levels are relatively unremarkable although she has some very early degenerative changes at L3-4 anteriorly.

MRI lumbar spine done October 3, 2022 shows slight retrolisthesis and very mild stenosis at L3-4, with mild desiccation of the disc there. Otherwise it is fairly unremarkable.

Assessment: She does not have a definite bony injury in her lumbar spine and there is no definite nerve root compression. She certainly could have an injury to the peroneal nerve or a neuropraxia even the lumbar plexus. I do not see anything in her spine now that looks like she needs any further treatment. Continuing therapy is probably her best bet.

Dr. Saer's assessment on October 25, 2022 was "1. Low back pain" and "2. Body mass index 30+ - obesity."

Dr. Cutler reported on November 9, 2022:

This is a 44 year old female who is being seen for a chief complaint of left lower extremity. Work comp – left lower extremity radiculopathy and foot drop post referral. Alice comes in today continuing to make progress in her lower extremity and the motion and pain. But still very frustrated as she cannot sit comfortably because of left hip and low back pain. She still has a foot drop on the left. States that she went to previous spine surgeon in Little Rock where she was extremely disappointed with. States that she did not feel listened to at all. States that he asked the same question 8 times about her having an EMG where she is already had 1....
Impression/Plan: Status post to run over by a garbage truck which is caused severe left lower extremity radiculopathy and foot drop. EMG and MRI of the lumbar spine are consistent with new herniations from this injury. Do recommend having second opinion performed as she did not feel like she got any additional treatments from this spine evaluation. Continue with physical therapy and gabapentin. Unfortunately off work still. Follow-up in 4 weeks.

Dr. Cutler performed an injection into the claimant's left SI joint on November 9, 2022.

Dr. Rodrigo Cayme performed electrodiagnostic testing on December 15, 2022 and gave the following impression:

1. Abnormal electrodiagnostic study.

2. There is electrodiagnostic evidence suggestive of a mild nonlocalizable peroneal neuropathy with no focal slowing seen at the fibular head and no active denervation in any peroneal innervated muscles tested. In addition, there were inconsistencies seen between functional and volitional activity throughout the study as pt seen doing activities such as ambulating, able to get on exam table on own accord, rotate on table, extend and flex legs, but volitional activity was minimally seen.
3. There is no electrodiagnostic evidence of any other focal nerve entrapment, generalized peripheral neuropathy, or left lumbar radiculopathy.
4. Of note, EMG is not a completely sensitive study, and does not evaluate small sensory pain fibers. Thus, lack of active denervation on today's study does not exclude an active radiculopathy. Clinical correlation is needed to determine the significance of today's electrodiagnostic examination findings.

Dr. Saer reported on December 15, 2022:

Ms. Lawrence returns today in follow-up after an EMG/NCV of the left lower extremity. She continues to complain of pain medially and laterally in the left knee, as well as some pain that comes out of the back and goes into the groin. Sitting causes pain down the left lower extremity posteriorly. She has been going to physical therapy. She says not much is really changed since she was here. She still walks with a walker with the left knee and hip slightly flexed and the foot inverted, dragging her toes a little bit. EMG/NCV study done earlier today was reviewed. I spoke with [the] APRN. There is no slowing of the peroneal nerve at the fibular head and no active denervation in any of the peroneal muscles. The tester also noted some inconsistencies in patient's actual movement spontaneously and when observed. I reassured her that this did not show anything that she needed surgery for. I think this will improve with time. She needs to continue working on this on her own also. I will see her as needed.

The claimant continued to follow up with Dr. Cutler, who noted on December 28, 2022 that the claimant wished to be referred to another spine surgeon.

Dr. Cutler reported on February 6, 2023:

This is a 45 year old female who is being seen for a chief complaint of left lower extremity. Patient is following up for left lower extremity radiculopathy from work injury on 6/16/22. Continues to complain of pain and weakness in her left lower extremity. States she is still unable to pick up her foot. Did finally get the brace for her left lower extremity but it does not help her foot dorsiflexion secondary to the foot drop but it does help keep it from rolling. She states that she can tell a difference if she misses a dose of her gabapentin.

Exam: Comes in today using a walker and her left ankle arthrosis. Is ambulating much better than she has been through still has a foot drop. Straight leg raise on the left is less positive than it was. Still has 2 out of 5 strength for dorsiflexion of her foot. Her hip and knee range of motion is much improved. Passive motion of her ankle is nearly normal.

Impression/Plan: Status post crush injury to left lower extremity. Her refill on gabapentin. Continue physical therapy as she continues to make improvements. We will have her follow-up in 3 months to see how progress is. Hopefully by then she has been able to get into pain management and a second opinion on her back.

Dr. Cutler assigned Work Restrictions on February 6, 2023. Dr. Cutler instructed, "No driving, alternate sitting and standing if she can." If no alternative work was available, then the claimant was to remain off work until May 8, 2023. Dr. Cutler also signed a form on or about February 6, 2023 indicating, "Pain management for left LE pain."

The parties stipulated that the respondents paid temporary total disability benefits through March 2, 2023, and that no temporary total disability had been paid since that time.

Dr. Cutler gave the following impression on March 22, 2023:

Low back pain with severe left lower extremity radiculopathy secondary to being crushed by a garbage truck almost a year ago now. This time watching the patient ambulate and get around. I do not think she is doing well with this. She has made great progress with pain control with physical therapy and recommend continuing that to help with the pain. I would also recommend a C brace to her left lower extremity to assist with [her] function and ability to be more independent with simple ambulation. I would also recommend [an] independent spine evaluation as I still think that many of these problems are coming from her lumbar spine or even lumbar plexus. Recommend pain management to see if she is a candidate for a spinal stimulator or if any injections would be of help with her pain.

Dr. Cutler planned on May 10, 2023, "Discussed with patient how I am still advocating for her to get a brace for her left lower extremity to help her ambulate. Continue with therapy to help stimulate. Vascular referral her again for pain management to assist her to see if there is anything far (sic) and plan wise to help her left lower extremity." Dr. Cutler continued to keep the claimant off work.

A pre-hearing order was filed on August 3, 2023. According to the pre-hearing order, the claimant contended, "She suffered a compensable injury to her left lower extremity, low back, and other body parts after she was run over by a garbage truck at work. The low back was and is, at the

very least, an aggravation of a preexisting condition, and is, therefore, respondents' continued responsibility, for medical care purposes, payment of indemnity benefits, and for any and all other benefits related thereto and allowed by the Act. The workers' compensation doctor is Justin Cutler, D.O., a Harrison orthopedic surgeon. While respondents continue to pay for Dr. Cutler's medical care, they have denied at least two of his treatment recommendations, namely a C-brace for claimant's leg and a referral to pain management for left lower extremity pain. This constitutes reasonable, necessary, and related medical care, and respondents should be required to provide it. Claimant continues to treat with Dr. Cutler at respondent's expense; she remains in a healing period and in an 'off work' capacity secondary to her various injuries; at least one of her injuries is scheduled; and she has not returned to work. She is, therefore, entitled to an award of additional temporary total disability benefits from the date last paid (approximately May 10, 2023) through a date to be determined. Claimant's counsel is entitled to payment of a statutory attorney's fee on all controverted indemnity benefits. Claimant respectfully reserves the right to amend and/or otherwise alter the above contention as discovery progresses. All other potential issues are expressly reserved for litigation at a later date including, but not necessarily limited to, anatomical impairment, permanent total disability, wage-loss disability, vocational rehabilitation,

Section 11-9-505(a) benefits, and any other additional benefit allowed by law. This is a claim for additional compensation, and claimant renews her request for an award of any and all benefit to which she may be entitled, under the Arkansas Workers' Compensation Act.”

The respondents contended, “The claimant’s left lower extremity was accepted, and all appropriate benefits have been paid. The claimant’s back condition is preexisting and there is no objective evidence to support a compensable injury to the lower back. The treatment suggested by Dr. Cutler is for the back and symptoms related to the back. The claimant’s period of disability, if there is one, is related to her back which is not compensable.”

The parties agreed to litigate the following issues:

1. Compensability, regarding claimant’s back injury.
2. If compensable, whether claimant is entitled to additional medical treatment.
3. Whether claimant is entitled to temporary total disability benefits.
4. Compensation rate.
5. Attorney’s fees. All other issues are reserved by the parties.

The claimant followed up with Dr. Cutler on August 16, 2023:

This is a 45 year old female who is being seen for a chief complaint of left leg. Patient is here severe left lower extremity radiculopathy. Patient comes in with continued minimal use of her left lower extremity. Complains of inability to drive to take herself to and from doctors appointments or physical therapy appointments. Patient has not been able to work and so her husband has

had to pick up additional jobs including long haul truck driving to pay their bills. Patient states that she is following (sic) a multitude of times and shows evidence of her walker having multiple did not send it from her falls (sic). Continues to complain of inability to be able to sit upright secondary to the severe low back pain and hip pain that it causes. Has to stay in a semirecumbent position.

Exam: Patient is clean and well-groomed today. Her skin is intact without rash lesion or open wounds. She ambulates with a walker with her left foot completely abducting and underneath of her walking on the dorsal aspect of it. She has to swing her leg through. On exam she has good passive motion of her hip elbow and ankle....Today I took a needle puncture into her legs throughout. Nearly the entire leg a separate small area of the anterior thigh is without sensation. Patient reacted extremely well to the contralateral leg and 2 areas above the hip line to be improved.

Impression/Plan: Patient is status post being run over by a dump truck with a complete loss of function of the left lower extremity. [Has] been reported from Worker's Comp that she had a previous low back injury with a nerve root impingement. This is nothing like that type of injury. This is a completely additional ordeal. Patient has no functional use of her left lower extremity. Patient requires of substantial on the amount of assistance and cannot drive or even ambulate without significant help. Patient would greatly benefit from a C brace to help control her hip knee and ankle motions. This would allow her to have more independence with activities of daily living. Even where patient did have a documented previous back injury from many years ago. This is an injury that has more than aggravated those problems. In reality this is a completely new injury causing severe nerve function dysfunction to her entire left lower extremity.

Dr. Cutler signed a form on August 16, 2023 indicating that the claimant was to remain off work until November 16, 2023.

On or about September 28, 2023, the respondents filed a **MOTION FOR INDEPENDENT MEDICAL EXAM**....Respondents ask that the

claimant be ordered to attend an appointment with Dr. Robert Martin pursuant to A.C.A. §11-9-511 and A.C.A. §11-9-811.”

A hearing was held on October 26, 2023. At that time, the parties stipulated that an accident occurred on June 16, 2022 and that the respondents accepted a left leg injury. An administrative law judge took under advisement the respondents’ motion for an independent medical examination.

The claimant’s testimony indicated that the respondent-carrier continued to pay for treatment provided by Dr. Cutler. The claimant testified, however, that the respondents had terminated her employment.

Dr. Chelsea S. Mathews provided a report on January 25, 2024:

“46-year-old female presents today for IME secondary to spasticity and poor motor control of left lower extremity. She has a history of lumbar spine surgery by Dr. Saer in November of 2015. At some time surrounding the procedure she had radiculopathy and footdrop which improved. This seems to have again worsened after the crush injury in June of 2022. She has been seen by Dr. Cutler who has performed a very thorough workup including multiple EMG used to evaluate her peroneal nerve.

She has pain with standing and difficulty using the left lower extremity secondary to spasm and equina varus positioning of the foot and ankle. She has very limited motor control and ambulates with a walker.”

She is here today for follow-up of MR neurography on the left lower extremity....

“Inspection: Examination of the left lower extremity demonstrates some atrophy of the subcutaneous fat on the medial aspect of the calf. There is no evidence of this laterally. When resting she maintains the foot and equinovarus position. There does appear to be some spasm

of the tibialis anterior. I made a full to passively reduce to neutral. She exhibits no voluntary motor function in eversion or dorsiflexion....When standing her foot naturally [rests] on the lateral aspect of the mid and forefoot. When ambulating this foot drags. The tibialis anterior tendon does appear to be firing when performing this. She is able to passively correct the foot it begins to drag underneath her again. Regards to more proximal exam she is able to perform quad extension 2+ out of 5."

I have reviewed the following images/outside documentation:
1. MR enterography of the left lower extremity demonstrates no evidence of nerve damage around the knee or fibular head that would explain changes in this area after her crush injury.

Assessment

46-year-old female with history of prior insult to lumbar spine and nerves resulting in footdrop which reportedly improved and has again worsened since her crush injury.

Plan

We had a long discussion today regarding her MR enterography results. There is no radiographic evidence of damage to the nerve at the area of her leg crush injury. She does report to me today that the vehicle ran over her leg as high as her thigh which was unclear to me prior to today's visit. None the less I do not see any evidence of peroneal nerve damage or compartment damage in the leg to explain her foot contracture and spasticity. This may be explained by a double hit phenomenon to the nerve more proximally. This is outside the realm of my expertise as a foot ankle orthopedic surgeon. If she would like a more clear answer she may seek independent examination by someone who specializes in spine and hip pathology.

Based upon her clinical examination I do not feel that she is capable of caring (sic) out prior work duties including working a truck. She would be unable to ambulate any long distance over 10 ft. She will be unable to climb ladders, stairs, squat or carry any weighted objects.

An administrative law judge filed an opinion on June 20, 2024. The administrative law judge found, among other things, that the claimant

proved she sustained a compensable injury to her left leg and back on June 16, 2022. The administrative law judge found that the claimant was entitled to temporary total disability benefits beginning March 3, 2023 until a date to be determined. The administrative law judge ordered the respondents to pay benefits in accordance with the findings of fact. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

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 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 [.]

A compensable injury must 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).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). 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).

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 an 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 an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

An administrative law judge found in the present matter, "2. Claimant has met her burden of proving that she suffered a compensable injury to her left leg and back on June 16, 2022." The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable back injury. The evidence demonstrates that the claimant began suffering from chronic low back pain no later than 2007. Dr. Saer performed surgery in 2007 and noted in January 2008, "her left toe drags." Dr. Saer reported in February 2008 that the claimant "will still drag her toe when she walks on the treadmill." An APRN reported in

December 2016 that the claimant “was walking up steps and could not pick up her left foot. It caught and she fell into the wall.”

The claimant testified that she became employed with the respondents, Searcy County, on November 29, 2021. The parties stipulated that the employment relationship existed on June 16, 2022. The claimant testified that, while performing employment services, she was hit and knocked down by a moving truck. The claimant testified, “It went up on my left foot....The wheels stopped on my lower back[.]...I had tire tread on my back where he stopped.” 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 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 credibility determination is not binding on the Full Commission. *Roberts, supra*.

In the present matter, the Full Commission does not find credible the claimant’s testimony that there was “tire tread” on her back following the June 16, 2022 accidental injury. The medical evidence did not corroborate the claimant’s testimony in that regard. As we have discussed, the claimant received emergency medical treatment on June 16, 2022, at which time she

complained of “left thigh and knee pain. Patient denies any other associated symptoms.” There was no indication that the claimant had sustained a back injury. An x-ray of the claimant’s pelvis on June 16, 2022 did not indicate that the claimant had sustained a back injury. The claimant was discharged on June 16, 2022 with the diagnoses “Crush Injury of the Foot” and “Knee Sprain, Adult.”

The Full Commission recognizes Dr. Abiseid’s notation on June 20, 2022 that the claimant was complaining of low back pain. However, the evidence does not demonstrate that Dr. Abiseid’s assessment of “intervertebral disc disorders” was causally related to the June 16, 2022 accidental injury. An MR of the claimant’s lumbar spine on July 7, 2022 showed “mild spinal stenosis L3-4” but there is no indication that this degenerative condition was causally related to the accidental injury. Dr. Saer reported on October 25, 2022, “MRI lumbar spine done October 3, 2022 shows slight retrolisthesis and very mild stenosis at L3-4, with mild desiccation of the disc there. Assessment: *She does not have a definite bony injury in her lumbar spine and there is no definite nerve root compression* [emphasis supplied].” Yet Dr. Cutler opined in part on November 9, 2022, “EMG and MRI of the lumbar spine are consistent with new herniations from this 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 medical 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 Dr. Saer's opinion is credible and is entitled to more evidentiary weight than Dr. Cutler's opinion. The medical evidence corroborates Dr. Saer's expert opinion, "She does not have a definite bony injury in her lumbar spine[.]"

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a "compensable injury" to her low back or lumbar spine. The claimant did not prove that she sustained an accidental injury causing internal or external physical harm to the low back or lumbar spine. The claimant did not prove she sustained an injury to her low back or lumbar spine which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove she sustained an injury to her low back or lumbar spine as the result of a specific incident identifiable by time and place of occurrence on June 16, 2022 or any other date. Additionally, the claimant did not establish a compensable injury to her low back or lumbar spine by

medical evidence supported by objective findings. Nor did the claimant prove that she sustained a compensable aggravation of a pre-existing condition. See *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). The dragging or “foot drop” of the claimant’s left lower extremity, which was first noted in January 2008, cannot be interpreted as objective medical evidence establishing a compensable injury to the claimant’s back or lumbar spine.

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 (2005). 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 70 (1984).

An administrative law judge found in the present matter, “3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant’s compensable injuries.” The claimant did not prove she sustained a compensable injury to her low

back or lumbar spine. However, the respondents agreed that the claimant sustained a compensable injury to her left lower extremity as a result of the accidental injury occurring June 16, 2022. The Full Commission finds that the claimant proved the medical treatment of record provided in connection with her left lower extremity injury on and after June 16, 2022 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). An emergency physician noted on June 16, 2022 that the claimant's "left leg was run over....Patient complains of left thigh and knee pain." The claimant was diagnosed with "Crush Injury of the Foot" and "Knee Sprain, Adult." Dr. Abiseid reported "multiple bruises on the left side of her leg and thigh" on June 20, 2022. The claimant began treating with Dr. Cutler on July 19, 2022.

Dr. Cutler's recommendation on February 6, 2023 was "Pain management for left LE pain." The Full Commission finds that pain management for the claimant's left lower extremity, as recommended by Dr. Cutler, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). Dr. Cutler stated on March 22, 2023, "I would also recommend a C brace to her left lower extremity to assist with [her] function and ability to be more independent with simple ambulation." Dr. Cutler reiterated on May 10, 2023, "Discussed with patient how I am still advocating for her to get a brace for her left lower extremity to help her

ambulate.” The Full Commission finds that the claimant proved the prescription for a “C brace,” as recommended by Dr. Cutler, was reasonably necessary in connection with the compensable injury to the claimant’s left lower extremity.

C. Temporary Disability

Finally, for scheduled injuries the injured employee is to receive compensation for temporary total disability during the healing period or until the employee returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Whether an employee’s healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

An administrative law judge found in the present matter, “4. Claimant is entitled to temporary total disability benefits beginning March 3, 2023 until a date to be determined.” The Full Commission finds that the

claimant proved she was entitled to additional temporary total disability benefits beginning March 3, 2023 and continuing through January 25, 2024. As we have discussed at length, the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her left lower extremity on June 16, 2022. The claimant's compensable injury was scheduled in accordance with Ark. Code Ann. §11-9-521(a)(Repl. 2012). The claimant testified that she did not return to work following the compensable scheduled injury. The claimant treated conservatively with several physicians including Dr. Abiseid, Dr. Cutler, and Dr. Saer. Dr. Cutler assigned Work Restrictions on February 6, 2023 and stated, "No driving, alternate sitting and standing if she can." If no alternative work was available, then the claimant was to remain off work until May 8, 2023.

The parties stipulated that the respondents paid temporary total disability benefits through March 2, 2023. Dr. Mathews examined the claimant on January 25, 2024 and reported, "1. MR enterography of the left lower extremity demonstrates no evidence of nerve damage around the knee or fibular head that would explain changes in this area after her crush injury....There is no radiographic evidence of damage to the nerve at the area of her leg crush injury....I do not see any evidence of peroneal nerve damage or compartment damage in the leg to explain her foot contracture and spasticity."

Based on the evidence of record to include Dr. Mathews' report, the Full Commission finds that the claimant reached the end of the healing period no later than January 25, 2024. The evidence demonstrates that the underlying condition causing the claimant's disability had become more stable no later than January 25, 2024, and nothing further in the way of treatment would improve the underlying condition related to the crush injury sustained by the claimant on June 16, 2022. See *Nix, supra*. The record shows that, by January 25, 2024, the claimant was as far restored as the permanent character of the injury would permit. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). Temporary total disability benefits cannot be awarded after the healing period has ended. *Id.* We recognize Dr. Mathew's assignment of work restrictions, including "She will be unable to climb ladders, stairs, squat or carry any weighted objects." Nevertheless, the Full Commission finds that the work restrictions assigned by Dr. Mathews can be classified as permanent and do not alter our finding that the claimant has reached the end of the healing period for the crush injury she sustained on June 16, 2022.

The Full Commission's finding that the claimant has reached the end of her healing period is not inconsistent with our award of pain management and a "C brace." It is well-settled 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). We find in the present matter that additional pain management and a "C brace" are geared toward management of the claimant's compensable injury.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable back injury. We find that the claimant proved the medical treatment of record provided in connection with her compensable left leg injury, including pain management and a "C brace," was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The Full Commission finds that the claimant proved she was entitled to additional temporary total disability benefits from March 3, 2023 through January 25, 2024. The claimant did not continue within a healing period for her compensable scheduled injury after January 25, 2024. 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 in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner