BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H206949

GLENDA FAY LURRY, EMPLOYEE **CLAIMANT**

COCA-COLA CONSOLIDATED, INC., EMPLOYER **RESPONDENT**

INDEMN. INS. CO. OF NO. AMER., CARRIER **RESPONDENT**

OPINION FILED JANUARY 5, 2024

Hearing before Administrative Law Judge O. Milton Fine II on October 27, 2023, in Marion, Crittenden County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 27, 2023, the above-captioned claim was heard in Marion, Arkansas. A prehearing conference took place on August 28, 2023. The Prehearing Order entered that day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. They are the following, which I accept:

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

2. The employee/employer/carrier relationship existed among the parties on July 7, 2022, when Claimant sustained a compensable injury to her lower back by specific incident.

3. Respondents accepted this claim as a medical-only one and paid benefits pursuant thereto.

4. Claimant's average weekly wage of $1,045.64 entitles her to compensation rates of $697.00/$523.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. The following were litigated:

1. Whether Claimant is entitled to additional medical treatment.

2. Whether Claimant is entitled to temporary total disability benefits from October 22, 2022, to a date yet to be determined.

All other issues have been reserved.

Contentions

The respective contentions of the parties read as follows:

Claimant:

1. Claimant contends that she is entitled to additional benefits in connection with her stipulated compensable lower back injury.

Respondents:

1. To date, all benefits to which Claimant is entitled have been paid and have not been controverted.

2. Respondents accepted this claim as a compensable, medical-only claim.

3. To date, Respondents have paid for all reasonable and necessary medical treatment. Dr. John Brophy released Claimant at maximum medical improvement with no work restrictions, no impairment, and an additional recommended treatment on September 26, 2022.

4. Respondent employer provided work within Claimant's restrictions throughout this claim. She returned to work for Respondent employer. Claimant was released to return to work without restrictions on September 26, 2022. Respondent employer offered working within these restrictions, but Claimant has failed and/or refused to return to work. To date, Respondents are not aware of any work restrictions after September 26, 2022. Therefore, they are not responsible for any temporary disability benefits related to this claim pursuant to Ark. Code Ann. § 11-9-526 (Repl. 2012).

5. Claimant requested a change of physician to Dr. Jordan Walters. Respondents authorized the initial visit with Dr. Walters on December 27, 2022. They have, however, taken the position that no additional treatment is reasonable and necessary in relation to the compensable back injury sustained on July 7, 2022.

6. In the alternative, if it is determined that Claimant is entitled to any additional indemnity benefits, Respondents hereby request a setoff for all

benefits paid by Claimant's group health carrier, as well as all long and short-term disability and unemployment benefits received by her.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of Claimant and to observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that she is entitled to additional treatment of her stipulated compensable lower back injury.
4. Claimant has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits for any period in connection with her stipulated compensable lower back injury.

ADJUDICATION

Summary of Evidence

Claimant was the sole witness. Along with the Prehearing Order discussed above, the exhibits admitted into evidence were Respondents' Exhibit 1, a compilation of Claimant's medical records, consisting of one index page and 20 numbered pages

thereafter; Respondents' Exhibit 2, non-medical records, consisting of one index page and ten numbered pages thereafter; and Respondents' Exhibit 3, a DVD containing surveillance footage of Claimant.

A. Additional Treatment

Introduction. As the parties have stipulated, Claimant sustained a compensable injury to her lower back on July 7, 2022. In this action, she is seeking, inter alia, additional treatment of her back. Respondents dispute that she is entitled to additional treatment of any type.

Evidence. Claimant is 61 years old and has a high school diploma. She has completed some college, and finished a food service course of study at vocational school. Her career history has been devoted exclusively to physical labor—hotel housekeeping, manufacturing, and warehouse work.

Claimant's testimony was that she went to work for Respondent Coca-Cola in November 2010. She was employed there as a multi-machine operator. She explained:

> I was operating like two, three different machines . . . I was running Odmi, and the Odmi is where the full bottle of products comes in, and I was just walking for packaging it to be shipped out to the warehouses . . . I ran a High Cone, and the High Cone . . . [is a] machine where they had the little plastic that holds the six-packs and the eight-packs together for six-packs and eight-packs.

The following exchange occurred:

Q. Now back on July 7 of last year, how did you hurt your [back]?

A. Pushing a big—pushing a big pallet of trays . . . with a hand jack . . . a little jack that you—you have to lift—pump it up and get ready to push stuff, yeah.

. . .

Q. Okay. Was it loaded down with Coca Cola products?

A. It was loaded down with a big bale of trays.

Q. A big bale of trays, okay. Do you have any idea how much the load that was on the jack weighed?

A. They'll probably weigh about three to five hundred pounds.

. . .

Q. Okay, all right. Now, you were pushing it, and did you feel some problem with your back?

A. I was pushing it, and it got stuck on the machine that was next to my machine. It got stuck. Somehow—I know I've pushed that pallet a thousand times, but somehow that day it got stuck on—on the next machine on the cone. And I pulled it back and tried to straight[en] it up, and when I pushed it forward, it felt like I stepped on a[n] electrical wire or something.

Per Claimant, she reported her injury to her employer and was thereafter taken by ambulance to Baptist Health in Little Rock. Later, she went to Concentra in Memphis, and then to Dr. Brophy.

The following exchange took place:

Q. So what kind of treatment have you had on your back?

A. I haven't had any—the only thing I ever had was I had like a couple of—I guess they call them steroid injections, steroid shots. That's all I had really.

Q. All right. You've got some—you've had some steroid injections. Did they help you?

A. No, no.

She has been prescribed muscle relaxers. But Claimant's testimony was that they afforded her no relief, either. When asked what treatment she was seeking in this proceeding, she answered: "Something to just make it better." Claimant received a one-time change of physician to Dr. Jordan Walters. However, Respondents refused to cover any treatment that Walters recommended, which included injections, as a result of his single visit with Claimant, which occurred on December 27, 2022. No treatment has been covered since then. Thereafter, she treated with Dr. Mohamad Moughrabieh, her primary care physician. While Dr. Moughrabieh has made referrals in order for her to receive additional treatment for her back, she has been unable to follow through on them because she "couldn't make the co-pay." Moughrabieh himself has not prescribed her any medication for her compensable injury. She has, however, been taking Gabapentin, which she already possessed. Her testimony was that this medication "helped, but in a way it did sometimes."

In describing her present back condition, Claimant related:

> It's basically the same. I mean, I have some days where it's better than others but it's—it's like—my 4 and 5, it's like it's just something just—I'm breathing just getting there, and it radiates into my—into my thighs, and I don't know what it is. I've got burning and pinching and stabbing and grabbing and dash all over my body. It's just like lightning or something is shooting through my body, all over my body—I'm talking about my entire body from my head to my feet. It—I don't know what it is . . . [m]y hand—my hands go dead. They go numb, five, six times a day, and just shooting, burning, throbbing . . . [m]y feet, my—I'm talking about everywhere.

Claimant likened the sensation to that caused by a toothache, and elaborated that it is present from her head to her toes, including all four limbs. She rated her pain as being 10/10 at times; at the time of the hearing, it was 8/10. She did not take any Gabapentin before the hearing.

Eventually, she ended up treating with Dr. Douglas Cannon at Campbell Clinic. Steroid injections were proposed; but she could not afford them. From there, she was referred for physical therapy. But after appointments there in November and December of 2022, she ceased going because she could not afford her deductible. She explained that she did not ask Respondents to cover this treatment. Regardless, it was her testimony that the therapy did not help.

Claimant saw Dr. Brophy on three occasions: in August 2022, then for a follow-up visit, and finally on September 22, 2022, after she underwent an MRI. She acknowledged the Brophy reviewed the MRI and did not see any herniation or nerve root compression. He was of the opinion that she did not need any other treatment of her lower back concerning the injury of July 7, 2022. It was his recommendation that that she use her private insurance to discover whether she was suffering from an "occult inflammatory process." While she underwent a nerve conduction study of her arms and legs, the results were normal.

Claimant agreed that her deposition testimony is that she cannot bend at all. But she admitted that the surveillance footage in evidence depicts her bending over to get into your Nissan Sentra automobile. She explained:

> And, yeah, you may have a little surveillance on me. Yeah, I can—I can bend, but it's going to be what I deal with after I bend. Yeah, I can drive. I mean, I don't have no—I live alone. I've got to do what I can do for myself, then I'm not trying to become no handicap nobody.

In 2001, she suffered a back injury while working for Wonder Bread. As a result, she was on light duty for approximately four months. She injured her back again in 2019 as a consequence of a motor vehicle accident. Her initial testimony was that at no time during her employment for Respondent employer did she seek treatment for her back before the July 7, 2022, accident. But shown the reports of multiple visits to Dr. Moughrabieh, where she presented with leg and lower back pain, she agreed that the testimony was not correct. Although those records reflect that the doctor prescribed her Gabapentin for neuropathy, she denied being informed of this diagnosis.

The medical records in evidence show that on March 23, 2015, Claimant went to Dr. Moughrabieh and complained of non-radiating mild back pain. She told the doctor that she "works a very strenuous job, lifting very heavy objects, and constant bending." He assessed her as having lumbago and prescribed a Medrol dose pack. Claimant returned to him on May 22, 2018, and presented with worsening back pain that began three days before but was not due to any trauma or accident. He diagnosed her as having hip pain.

On September 13, 2022, Claimant saw Dr. Brophy. The report reads in pertinent part:

> HISTORY:
> Ms. Lurry returns today for review of her lumbar MRI. Her chief complaint is inferior lumbar pain. She is a marginal historian, giving multiple different descriptions of her leg symptoms. She does describe bilateral buttock

pain, left worse than right. The leg pain seems to extend into the left, right and interior thigh, sometimes involving the tibialis anticus. As best as I can tell, the back pain is worse than the leg pain. The leg pain is intermittent in varying distribution of her left leg primarily. Overall, Ms. Lurry reports absolutely no improvement in her back pain since her injury approximately 10 weeks ago. She has not attempted a home exercise program. She is using low-dose ibuprofen. She has remained at work on a light duty status. Her regular job requires frequent heavy lifting. She has not considered alternative employment.

. . .

Physical Exam:
The patient is a 60-year-old black female who appears frustrated with her ongoing symptoms. Lower extremities—psoas, quadriceps, tibialis anticus and gastrocnemius—5/5 with encouragement. Sensory—light touch intact, L3 through S1. Deep tendon remarnflexes—patellar absent; Achilles absent. Pulses—dorsalis pedis—2+. Straight leg raise elicits left buttock pain at 45 degrees. There is also increased back pain with internal and external rotation of the left hip. Back—no pain with compression or rotation; there is mild tenderness at the inferior lumbar paraspinal muscles; no definite trigger point. Gait—very slow, short steps.

Neurodiagnostic Assessment[:]
Lumbar MRI 11 September, 2022 demonstrates mild multilevel spondylosis primarily involving the facet joints. There is no evidence of HNP [herniated nucleus pulposus] or definite evidence of nerve root compression.

Impression:
Lumbar myofascial pain associated with lumbar spondylosis.

Plan:
The results of the MRI and clinical situation were reviewed in detail with Ms. Lurry. **In my opinion, there is no indication for surgical intervention or treatment with injections at this time.** We discussed the option of continued treatment with Ibuprofen up to 800 mg t.i.d. We discussed the option of attempting to progress a home endurance exercise program. Based on her lack of improvement over the last two months, **we discussed the importance of scheduling a complete physical through her personal insurance to rule out an occult inflammatory process.** She is cleared to return to work today with a 30

> pound lifting restriction. **She will be cleared to return to work at full duty without restriction 26 September.**

(Emphasis added)

Per the report dated November 21, 2022, Claimant's EMG/NCS of her lower limbs was "[n]ormal," with "[n]o entrapment neuropathy or peripheral neuropathy" and "[n]o lumbosacral radiculopathy." She underwent a nerve conduction study of her upper extremities on November 28, 2022. The findings were: "Mild median neuropathy at the left wrist. No ulnar or radial neuropathy. No cervical neuropathy."

As part of her physical therapy assessment on November 1, 2022, Claimant was asked to indicate on anatomy diagrams were her symptoms were located. She placed "X" marks all over the diagrams, representing that she was experiencing symptoms literally from her ears down to her feet, including her upper extremities. Claimant wrote that these problems began on July 7, 2022—the stipulated date of her injury.

In a form dated April 13, 2023, as part of Claimant's application for short-term disability benefits, Dr. Moughrabieh was asked whether Claimant's condition—lower back pain—was work-related. He answered, "No."

Discussion. 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). In order to prove his entitlement to the requested treatment, Claimant must also prove that it is causally related to her compensable injury. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601.

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional 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*. A claimant is not required to furnish objective medical evidence of her continued need for

medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id*. In so doing, 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 that it deems worthy of belief. *Id*.

Claimant's testimony is that she is seeking additional treatment in the form of injections or other measures to alleviate her pain. She attributes her problems to her stipulated work-related injury of July 7, 2022. But Dr. Brophy, based at least in part on her MRI findings, opined that neither injections nor surgery were indicated. To the contrary, he wrote: "PCP [primary care physician] for complete Physical for unknown source of pain[.]"

The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Based on my assessment of the evidence, I credit Brophy's opinions. His assessment is borne out by her diagnostic tests results. Her lumbar MRI showed no disc herniation or nerve root compression.

Moreover, her nerve conduction study was negative for lumbosacral radiculopathy. It must also be kept in mind that she has complained of pain throughout her body—including areas that no provider has causally related to her lower back. In addition, the evidence shows that Claimant's own personal physician, Dr. Moughrabieh, gave his opinion that her lower back problems were not work related. I credit this as well. Under *Tenner*, *supra*, Claimant has not shown that her claimed need for treatment is causally related to her stipulated compensable lower back injury. Thus, apart from her ability or inability to establish the other elements of this issue, she has not proven her entitlement to such by a preponderance of the evidence due to this clear shortcoming.

In making this finding, I wish to reiterate that Claimant by all appearances is a sincere individual. But any belief, no matter how sincere, is not a substitute for credible evidence. *Graham v. Jenkins Engineering*, 2004 AR Wrk. Comp. LEXIS 79, Claim No. F112391 (Full Commission Opinion filed March 12, 2004).

B. Temporary Total Disability

Introduction. Claimant has also alleged that she should be awarded temporary total disability benefits in connection with her lower back injury. Respondents have denied that she is entitled to such benefits for any period of time.

Evidence. According to Claimant, she returned to work on July 11, 2022, just four days after the accident in question. She continued to work light duty until Dr. Brophy released her to full duty as of September 26, 2022. Later, however, she stated that she missed no work as a result of her back injury until October 18, 2022. This was the last date she worked for Respondent employer. She has not worked anywhere for

pay since that time. Asked why this was the case, she responded: "Because my—my back hurts all the time." Her testimony was that Dr. Moughrabieh has taken her off of work and that he has issued off-work slips. Claimant explained:

> The reason why I haven't been to work is because Coca-Cola was the one that asked me to go take a leave and find out what was going on with me. And while I was out on the leave, I—I wasn't getting no—nothing had changed, so my doctor kept taking me off, and he kept sending me—kept telling them that I needed to go see the orthopedic doctor.

Elaborating, Claimant recounted that after Dr. Brophy gave her a full-duty release, because her back condition had made her unable to perform her job standing up, she began performing it while sitting. This was not allowed. After 19 days of doing this, her supervisor, Brandon Gross, questioned her on October 18, 2022, regarding whether she could still stand while working. When she answered in the negative, she was sent home that day with instructions to find out what was wrong with her condition. Claimant related that she told Gross that her problem was with her back and that it was related to the work-related incident of July 7, 2022. But she also stated that she informed him that her pain was throughout her body. She testified that she was unable stand up for 12 hours—the length of her shift—or for even as little as 20 minutes. Claimant went on leave as of October 22, 2022. She has not been paid for any time that she has been off of work purportedly in connection with her lower back condition. It was her admission that she has not gone back to employer and requested to be returned to work.

Shown her application for short-term disability benefits that Dr. Moughrabieh filled out on her behalf, which again reflects that he checked "No" when asked whether her condition was work-related, Claimant stated that his answer "probably was a

mistake . . . had to be a mistake." In testifying that she has applied for Social Security disability benefits, Claimant explained: "my 4 and 5, it's something seriously going on wrong with it . . . [a]nd it's causing all this stuff going on with my body, sir. I was fine up until that day at Coca-Cola." Her application referenced "that throbbing stuff [that Claimant has] going on everywhere." She reiterated: "All of this stuff comes from that day." The following exchange occurred:

> Q. Before your hurt your back at Coke on July 7 of last year—and this is—that's the date that everybody seems to agree you were doing this thing with the—with the—the hand jack and it got stuck and you said you hurt your back—before that date, were you having this all-over pain that you described to us today?
>
> A. No, sir.
>
> Q. were you having any paid before that day?
>
> A. No, sir.
>
> Q. No pain at all?
>
> A. No, sir.
>
> Q. You were pain-free?
>
> A. Yes.

Discussion. Claimant's stipulated compensable lower back injury is unscheduled. *See* Ark. Code Ann. § 11-9-521 (Repl. 2012). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which she has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the

disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Also, a claimant must demonstrate that the disability lasted more than seven days. *Id*. § 11-9-501(a)(1). Claimant must prove her entitlement to temporary total disability benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012).

Dr. Brophy rendered the opinion that Claimant could return to work at full duty without restriction as of September 26, 2022. I credit this, and further find that the preponderance of the evidence establishes that Claimant reached the end of her healing period as of that date—which is before the beginning of the time period that she is claiming temporary total disability benefits, October 22, 2022.[1] As for her testimony that Dr. Moughrabieh has taken her off of work since that time, assuming only for the sake of argument that this is true, this is irrelevant. This is because I have credited Moughrabieh's opinion that the ostensible reason for his doing this—her lower back problem—is not work-related. *See supra*. Consequently, she has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits for any period of time.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for additional benefits is hereby denied and dismissed.

[1]Claimant's testimony made reference perhaps to the period beginning October 19, 2022. The result would be the same.

IT IS SO ORDERED.

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Honorable O. Milton Fine II
Chief Administrative Law Judge