

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G804085**

**LISA SOWELL, EMPLOYEE**

**CLAIMANT**

**VS.**

**EVERGREEN PACKAGING, LLC, EMPLOYER**

**RESPONDENT**

**ACE AMERICAN INSURANCE COMPANY /  
GALLAGHER BASSETT SERVICES, INC.,  
CARRIER /TPA**

**RESPONDENT**

**OPINION FILED JANUARY 10, 2023**

Hearing before Administrative Law Judge, James D. Kennedy, on the 1<sup>st</sup> day of December 2022, in Pine Bluff, Arkansas.

Claimant is represented by Mr. Larry J. Steele, Attorney-at-Law, Walnut Ridge, Arkansas.

Respondent is represented by Mr. William C. Frye, Attorney-at-Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 1<sup>st</sup> day of December, 2022, to determine the issues of whether the Arkansas Workers' Compensation Act is unconstitutional due to denial of due process and equal protection under the 14<sup>th</sup> Amendment of the United States Constitution because the claimant was denied an updated MRI and was thus unable to treat with her choice of physician, additionally whether the claimant is entitled to additional medical treatment (including medication and physical therapy) for her compensable low-back injury, and also whether the claimant is entitled to permanent total disability benefits, plus any attorney fees. The respondents admitted that the claimant did request a different doctor, but that they were unable to obtain a name for a second doctor requested by the claimant, and further, that the change of physician rules do not require the respondent to pay for another MRI, and the MRI is not reasonable and

necessary. A copy of the Prehearing Order was marked “Commission Exhibit 1” and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers’ Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed at all relevant times including on or about May 31, 2018, when the claimant sustained a compensable injury to her lower back. At the time of the compensable injury, the claimant was earning an average weekly wage of \$1,250.00, entitling her a TTD/PPD rate of \$673.00/\$505.00, respectively, and that all issues not litigated herein are reserved under the Arkansas Workers’ Compensation Act. There was no objection to these stipulations.

It should also be clarified that the claimant had also filed an action in the United States District Court in Pine Bluff regarding the respondent, and her deposition in that matter was introduced herein, without objection.

The claimant’s and respondent’s contentions are all set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. The sole witness consisted of Lisa Sowell, the claimant. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed at all relevant times including May 31, 2018, when the claimant sustained a compensable injury to her lower back. At the time, the claimant earned an average weekly wage of \$1,250.00

a week, sufficient for temporary total disability and permanent partial disability rates of \$673.00 / \$505.00 per week, respectively.

3. That the Arkansas Workers' Compensation Act is constitutional and applicable.
4. That the Functional Capacity Evaluation was found to be admissible.
5. That the claimant has failed to satisfy the required burden of proof to show that she is entitled to an additional medical treatment, specifically an additional MRI and physical therapy.
6. That the claimant has failed to satisfy the required burden of proof to show that she is entitled to permanent total disability benefits.
7. That all other issues are moot.
8. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The Prehearing Order, along with the prehearing questionnaires of the parties, and the claimant's amended response to the prehearing questionnaire were admitted into the record without objection. The claimant and respondents both submitted a voluminous amount of documents, which were admitted into the record, without objection, with the exception of a Functional Capacity Exam submitted by the respondent, which the claimant objected to. The Functional Capacity Exam was found to be admissible at the time of the hearing, based upon the wide discretion available to the Commission in regard to the admissibility of evidence.

The claimant was the sole witness and testified she was fifty-five (55) years old at the time of the hearing and graduated the twelfth grade. She had previously worked at Tysons for seventeen (17) years in security which involved a lot of standing and had started working for Evergreen in 2003 as a "floater". (Tr. 22, 23) In 2018, she was an "Operator" for Evergreen, where she fell while going down some stairs returning to her

office. (Tr. 24) The claimant was knocked unconscious due to the fall and first saw Dr. Vargus, who became her treating physician, ordered an MRI, and opined she should not lift over five (5) pounds. (Tr. 25, 26)

In regard to the Functional Capacity Exam and her failing to complete it, she stated that there was a chair in front of her and she was requested to kneel down in front of the chair, and every time she attempted to kneel down, she would feel like she was falling towards the chair. (Tr. 27) She also talked about a weight that was placed on her ankles, which caused her to scream due to it hurting. She stated she never recovered from the injury in regard to falling down the stairs where she was not in pain, but did reach a point where she was no longer prescribed medication. (Tr. 28) She admitted obtaining pain medication, an injection, from the emergency room, once. She also admitted receiving an MRI at Jefferson Regional Medical Center in 2019, in regard to Social Security, a month before an automobile accident. The claimant denied being in an accident between the time of the accident at work and the MRI at Jefferson regional. (Tr. 29, 30)

The claimant also admitted she was involved in an automobile accident after the MRI, where the back part of a truck came over in her lane and hit her, but denied spending anytime in the hospital. She stated Social Security had declared her totally disabled. (Tr. 31)

Under cross-examination, the claimant admitted she was not aware that Dr. Vargas had determined there were no limitations in regard to her neck. She also agreed she was sent to physical therapy in regard to her lower back. She stated Dr. Vargas told her he was going to take care of her back first. She was then questioned specifically about her going into the clinic where the reports provided her low back was getting better.

She responded, “That’s not correct” and went on to state that since she fell, she has been having problems with her back. She admitted Dr. Vargas told her the same thing that Dr. Wilkins told her, which was that it “was starting to be arthritis to build up”. She denied being told there were no objective findings of an injury in regard to the MRI. (Tr. 32 - 34)

The claimant was also questioned about a nerve conduction study on August 23, 2018, which provided “no evidence of any lumbar problems.” She responded, “Well, he said, my nerves was good in my left leg” but he did not tell me that. (Tr. 36) In regard to complaints about her neck, the claimant again responded that she was told they were going to take care of her back first. The claimant was also questioned about an examination on October 4, 2018, that provided that, “Muscle motor, unable to establish, since patient’s lack of effort hurt the examination,” and the claimant responded, “I mean, I’m not getting it. What was I supposed to do? What is this about.” (Tr. 37, 38) The claimant also testified she was not aware of the fact the Functional Capacity Exam provided she did not give good effort in regard to her hands and she failed all the strength tests provided. (Tr. 39, 40)

The claimant was also questioned about the Social Security MRI of September 18, 2019, where Dr. Smith provided the MRI, “showed simply mild degenerative disc disease at L3-4 and L4-5” and whether Dr. Smith went over the report with her, and she responded “Yes.” She stated that at that time she thought, “I could do some things.” She also admitted Dr. Vargas did not place any restrictions on her when he released her and no doctor since Dr. Vargas had placed her under any restrictions. (Tr. 43)

The claimant also admitted she went to the emergency room after her automobile accident and then followed up at Liberty Chiropractic, where she stated she had injured

her shoulder, legs, neck, back, and arms due to the accident. The claimant testified the chiropractic treatment failed to improve her condition. She was then asked about where the report provided that the claimant reported an eighty to eighty-five percent (80% - 85%) improvement and did the chiropractor get that wrong and her response was, “As far as me being real sore and tense, yeah, but it didn’t help my condition.” (Tr. 45) The claimant denied any attempt of returning to work. (Tr. 46)

In regard to documentary evidence, the claimant submitted five (5) exhibits. The pertinent medical records from Jefferson Regional Ortho and Spine Clinic and Dr. Jason Smith, dated September 19, 2019, provided the claimant returned after obtaining an MRI of the lumbar and cervical spine which provided she suffered from multilevel degenerative disc disease, with no significant central canal stenosis or foraminal narrowing and that the lumbar spine actually looked fairly benign. There was a left foraminal disc bulge at L3-4 which correlated with the left anterior thigh pain, but it only caused minimal stenosis and no obvious neural compression. The assessment provided for cervical spondylosis and chronic lumbar radiculopathy and further provided under the plan that he did not have much to offer her and recommended her joining the aquatics facility and considering bariatric surgery. The report went on to provide that the reason for the referral was dietary. (Cl. Ex. 2, P. 5-7) A part of the report that had been apparently entered on September 11, 2019, provided she had developed increasing neck pain, tingling and numbness to her arms, with a sense of weakness to her arms. (Cl. Ex. 2, P. 8-11) The part of the report entered August 22, 2019, provided the claimant had earlier fallen down some stairs and since that time had developed significant back and leg pain, but had gradually improved with the recommended physical therapy. (Cl. Ex. 2, P. 12-15)

The MRI of the spine dated June 15, 2018, provided for a left neural foraminal zone disc protrusion without neural foraminal narrowing at L3-4 and L4-5 as mentioned supra. (Cl. Ex 3, P. 1) A follow-up by Dr. Wilkins on July 2, 2018, provided the claimant reported having muscle spasms of her back and had not returned to work due to too many restrictions. (Cl. Ex. 3, P. 5) An initial evaluation by Dr. Vargas dated July 9, 2018, provided the claimant had been referred by Workers' Comp for an evaluation of back and hip pain after a fall down some stairs. She presented with pain and numbness on the left side which had been acute since the accident. The report provided for physical therapy of the lumbar spine with a burst of steroids and a Medrol dose pack. The report also provided the claimant could return to work on June 10, 2018. (Cl. Ex. 3, P. 9) The claimant returned to Dr. Vargas on August 6, 2018. This report provided for mild-multilevel degeneration of the disks with some mild protrusions. The report also mentioned degenerative arthritis and facet arthropathy at L4-5. Dr. Vargas opined that the report provided no objective findings of injury. (Cl. Ex. 3, p. 10)

A sensory and motor nerve study was performed on August 23, 2018, and the report provided no electrodiagnostic evidence of a lumbar radiculopathy, peripheral neuropathy, or focal tibial or peroneal nerve entrapment. In addition, the L2-3 muscles were screened due to thigh complaints and were normal with no focal lateral femoral cutaneous sensory loss seen on the physical exam. (Cl. Ex. 3, P.11)

An office visit on September 6, 2018, provided the claimant suffered from multilevel degeneration of the disks with some mild protrusions at different levels that were more pronounced at the L4-5. (Cl. Ex. 3, P.12) Dr. Vargas released the claimant to full-duty on

October 4, 201, at maximum medical improvement, with a zero percent (0%) permanent impairment of the lower back. (Cl. Ex. 3, P.14)

A Functional Capacity Evaluation was performed on October 15, 2018. The results of the evaluation indicated that an unreliable effort was put forth with only 14 of 50 consistency measures within the expected limits. Consequently, the functional capacity of the claimant was unknown. (Cl. Ex. 3, PP. 15-16) The claimant obtained a change of physician by an Order from the Commission dated June 7, 2019, to see Dr. Noojan Kazemi, a member of the respondent's certified managed care organization. The Order provided that any party feeling aggrieved by the Order could appeal within thirty (30) days, but no appeal was noted in the record. (Cl. Ex. 3, P. 17) The doctor would not see the claimant without a new MRI and the respondents would not authorize one. (Cl. Ex. 3, P. 18)

The claimant received two (2) lumbar medial branch blocks on March 5, 2020. (Cl. Ex. 3, P.20) Later on June 31, 2019, Stephanie Whaley, the case manager issued an email which provided that Dr. Kazemi's office had cancelled the claimant's appointment due to an out-of-date MRI, but would reschedule once an MRI was performed. The previous attorney for the claimant withdrew. (Cl. Ex. 3, P.21)

The trauma assessment documents in regard to the claimant's visit to Jefferson Regional Emergency Room on May 31, 2018, provided the claimant had fallen down three (3) stairs on her left side. (Cl. Ex. 4, PP. 25-27) The diagnosis provided for a contusion of the left and right hand, a knee contusion, and a lumbar strain. (Cl. Ex. 4, PP. 29–31) The radiology reports in regard to her spine provided that vertebral body heights and intervertebral disc spaces were normal and no acute or osseous lesions were



demonstrated. (Cl. Ex. 4, PP. 32–35) An MRI report dated June 15, 2018, provided for normal alignment, vertebral body heights and intervertebral disc spaces. (Cl. Ex. 4, P. 54) An MRI report dated September 18, 2019, provided that there were no acute posttraumatic abnormalities but multilevel degenerative changes in the mid to lower cervical spine, specifically degenerative disc disease at L3-4 and L4-5. (Cl. Ex. 4, PP. 209-210)

A cervical MRI was obtained on February 9, 2021, due to a history of neck pain. The report provided multilevel degenerative changes, with mild foraminal stenosis on the left at C3-4 and bilaterally at C 4-5. (Cl. Ex. 4, P. 264) The claimant returned to Jefferson Regional for left foot pain and an x-ray was provided on February 23, 2022. An unremarkable radiographic evaluation of the foot resulted. (Cl. Ex. 4, P. 284)

It is noted that “Claimant’s Exhibit Six” is a repeat of an earlier exhibit.

The respondents exhibit included the deposition of the claimant as “Respondents’ Exhibit 1” in the matter currently before the Commission. A second deposition of the claimant taken in the case of *Lisa Sowell v. Evergreen Packaging* which was pending in the United States District Court for the Eastern District of Arkansas, Pine Bluff Division, was also admitted into the record without objection. (Resp. Ex. 2) In this deposition, the claimant was asked if she was aware that her therapist had indicated that her complaints were inconsistent with the severity of her injury and she responded she had not been told that. (Resp. Ex 2, PP. 62-63) The claimant also admitted in this deposition that Dr. Vargas had removed her work restrictions. (Resp. Ex. 2, P. 68) The claimant was also questioned about a letter she had written where she stated she was disabled, could not lift over five (5) pounds, could not bend over, could not stand over fifteen (15) minutes, and could not

sit over twenty (20) minutes, and in response she admitted that no doctor had told her that. She also admitted that when she wrote the letter, Dr. Vargas had already released her to return to full-duty. (Resp. Ex 2, P. 74)

The respondents also submitted the deposition of Dr. Victor Vargas, which was admitted into the record without objection as “Respondents’ Exhibit 3”. He was questioned about a Functional Capacity Evaluation and responded, “The functional capacity evaluation is tailored to evaluate the patient and they supposed to do a standardized evaluation and physical and that’s why the report it come to us after it’s done, but there are some providers who do that. I don’t do functional capacity evaluations.” He agreed that a physical therapist performed the evaluation. (Resp. Ex. 3, PP. 15-16) Dr. Vargas admitted he had performed a physical evaluation of the claimant when she came with an MRI, after being referred by the workers’ compensation carrier. He went on to state, “I did not find specific injury. I found a complaint of symptoms of back pain and we did evaluation with x-rays, did not show any evidence of acute injury. And I reviewed a report of the MRI that was at that moment only available, no images, that showed no evidence of acute injury.” He acknowledged disc protrusions at L3-4 and L4-5. (Resp. Ex. 4, PP. 20-21) The following questioning then occurred:

Q. Are those injuries consistent with the type of fall she had?

A. These are not injuries. Those are degeneration of the disk, and other changes that she has in the lumbar spine are consistent with degeneration. The MRI was done a few days after the injury.

Q. You didn’t attribute it to degeneration at the time?

A. No. No. There’s no relation in those findings with the injury.

Q. Sir?

A. The findings of the MRI, those are not injuries. Those findings are degeneration of the spine.

Q. You're making a subjective decision on that, are you not?

A. That's what we know about those findings and the MRI. That, along with the other findings she has in the lumbar spine, it shows some mild protrusions of the disks, those are degeneration. Bulging of the disks are not considered posttraumatic, like fractures or other herniated disks with extrusions. (Resp. Ex. 3, P. 22)

Dr. Vargas was then asked the following question:

Q. Well do you agree that the disk protrusions are consistent with a fall, whether they're due to degenerative disease or aggravated? Do you agree that that's consistent with that type of accident?

A. No. I don't consider that those findings on the report are consistent with an injury to the spine. That's what I said. There's a degeneration of the spine. There's no evidence in that MRI report that she had an injury to the spin. So those bulging disk and protrusions are, in my opinion, not post traumatic. (Resp. Ex. 3, P. 24)

He did admit that the fall could have aggravated her problem. (Resp. Ex. 3, P. 25)

The respondents also submitted a complaint filed in the Eastern District of the United States District Court alleging a violation of 42 U.S.C. 12112(a) and an EEOC claim. (Resp. Ex. 4, PP. 1-8) In regard to the change of physician, an email from the Commission dated November 4, 2021, provided that a change of physician had been requested, and it requested a recommendation for a referral so the matter could be sent to the physician for review. An email from the Steele Law Firm appeared to state that an attempt to locate a doctor who would see the claimant without a new MRI was being attempted. (Resp. Ex. 4, PP. 9-16)

Finally, the respondents also submitted medical records in regard to this claim, and which additionally included physical therapy reports from July 13, 2018, through July 23, 2018, with the reports referring to probable multiple level degenerative changes and

lumbar strain/sprain. (Resp. Ex. 5, PP. 7-20) The claimant returned to physical therapy on the dates of July 24, 2018, through August 3, 2018, with the reports again providing for multiple level degenerative changes and referring to ischial bursitis. (Resp. Ex. 5, PP. 23-34)

The claimant presented to Dr. Vargas on August 6, 2018, and his report provided that the MRI showed degenerative disc disease and recommended weight loss and an EMG study. (Resp. Ex. 5, PP. 35-37) The claimant continued to receive physical therapy from August 6, 2018, through August 23, 2018. The respondents also submitted the EMG nerve conduction study performed by Dr. Sprinkle as mentioned, *supra*. In addition, the report by Dr. Vargas as described, *supra* was included which provided for a zero percent (0%) impairment rating.

The respondents also introduced the emergency room records for the claimant after an automobile accident where there was a complaint of neck and low back pain, and the report provided for normal x-rays and a discharge home. (Resp. Ex. 5, PP. 96-104) The respondents also introduced records from Liberty Chiropractic, with the initial visit on December 13, 2019, which referred to the automobile accident of November 11, 2019, and shoulder, legs neck, back and arm pain along with two (2) big toes. The physicians report from Liberty Chiropractic on January 16, 2020, provided the claimant had made a complete recovery. (Resp. Ex. 5, PP. 105-128)

## **DISCUSSION AND ADJUDICATION OF ISSUES**

### **I.**

In regard to the issue of constitutionality and due process regarding the Arkansas Workers' Compensation Commission, the Arkansas Court of Appeals has soundly rejected similar arguments in regard to the Arkansas Workers' Compensation

Commission Act being unconstitutional. *Sykes v. King Ranch Ready Mix, Inc.*, 2011 Ark App. 271; *Rippe v. Delbert Hooten Logging*, 100 Ark. 277, 266 S.W. 3d 217 (2007); *Long v. Wal Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007). That based upon the above, it is found that the challenges to the Arkansas Workers' Compensation Act are without merit and the Act is in fact constitutional.

## II.

Additionally, the claimant objected to the admissibility of the Functional Capacity Evaluation and contended that *Daubert* was applicable, and consequently, the evaluation was inadmissible. The evaluation was admitted at the time of the hearing due to the clear fact that the Commission has broad discretion in regard to the admissibility of evidence, and that its decision will not be reversed absent a showing of abuse of discretion. *Brown v. Alabama Elec. Co.*, 60 Ark. App. 138, 959 S.W.2d 753 (1998). Ark. Code Ann. §11-9-705(a) goes as far to state that the Commission, "shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure.

A deeper review of *Daubert* provides that Arkansas courts have adopted the *Daubert* standard on other issues and it requires the trial court to conduct a preliminary inquiry focusing on the reliability of the process used to generate the evidence, the possibility that admitting the evidence would overwhelm, confuse, or mislead the jury, and finally review the connection between the evidence to be offered and the disputed factual issues in the particular case. *Farm Bureau Mutual Ins. Co. v. Foote*, 341 Ark. 105, 14 S.W.3d 512 (2000). Here there is no jury to mislead and the Functional Capacity Evaluation has been used for years with the Commission proving itself competent and comfortable in evaluating these tests and giving it the appropriate weight in reaching its decisions. Further, there is clearly a connection between the evidence offered by the test

and the disputed factual issue. Consequently, the Functional Capacity Evaluation is admissible.

### III.

In the current matter before the Commission, Dr. Vargas the treating physician, nor any other physician placed any restrictions on the claimant. Although the claimant has asked for another MRI, she has received multiple MRIs from the date of the fall on the stairs. The multiple MRIs always provided for multilevel degenerative disc disease. A sensory and motor nerve study was also performed which provided for no electrodiagnostic evidence of lumbar radiculopathy, peripheral neuropathy, or focal tibial or peroneal nerve entrapment. Dr. Vargas released the claimant on September 6, 2018, to full-duty with an entitlement to a zero percent (0%) impairment rating in regard to her lower back. Claimant was later involved in an automobile accident and the radiology reports in regard to her spine following the accident provided her vertebral body heights and the intervertebral disc spaces were normal, and later this appeared to be at least partially confirmed by an MRI of the cervical area, which also referred to degenerative changes in the mid to lower cervical spine. Dr. Vargas testified he found no specific injury and the physical therapy reports involving the claimant also referred to degenerative changes. Finally, Liberty Chiropractic records after the automobile accident provided that the claimant had made a complete recovery.

It was stipulated that the claimant suffered a compensable lower back injury. The claimant is therefore not required to establish “objective medical findings” in order to prove that she is entitled to additional benefits. *Chamber Door Indus., Inc. v Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997). However, when assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze the

proposed procedure and the condition that it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation filed December 13, 1989. (Claim No. D512553). The respondent is only responsible for medical services which are causally related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. *Foster v. Kann Enterprises*, 2009 Ark. App. 746, 350 S.W.2d 796 (2009). Liability for additional medical treatment may extend beyond the treatment healing period as long as the treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 180 S.W.3d 31 (2004). *Dalton v. Allen Engineering Co.*, 66 Ark. App. 260, 635 S.W.2d 543. Injured employees have the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary for the treatment of the compensable injury. *Owens Plating Co. v. Graham*, 102 Ark. App. 299, 284 S.W. 3d 537 (2008). What constitutes reasonable and necessary treatment is a question of fact for the Commission. *Anaya v. Newberry's 3N Mill*, 102 Ark. App. 119, 282 S.W.3d 269 (2008). Here, even if totally disregarding the Physical Capacity Evaluation, all the remaining evidence provides that the claimant's problems are the result of degenerative disc disease and not a work-related injury, based upon the evaluations by Dr. Vargas and other healthcare providers, along with various x-rays and MRIs. Consequently, it is clear the claimant has failed to satisfy the required burden of proof for additional medical treatment and specifically for an additional MRI and additional physical therapy.

**IV.**

In regard to Permanent and Total Disability benefits, Ark. Code Ann. §11-9-519(e) provides:

- (1) Permanent and total disability means inability because of compensable injury or occupational disease to earn any meaningful wages in the same or other employment.
- (2) The burden of proof shall be on the employee to prove inability to earn any meaningful wage in the same or other employment.

Ark. Code Ann. §11-9-102 (4) (F) provides as follows:

- (ii) (a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.
- (b) If any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

Here, the claimant has failed to prove that the compensable injury was the major cause of any permanent and total disability. When making this determination in regard to the issue of permanent and total disability based upon the applicable law and the evidence discussed *supra*, there is no alternative but to find that the claimant has failed to satisfy her burden of proof in demonstrating, by the credible evidence of record, that she is permanently and totally disabled.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy her burden of proof that she



is entitled to additional medical treatment, specifically an additional MRI and physical therapy. Additionally, the claimant has failed to satisfy her burden of proof that she is entitled to permanent total disability. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge