

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G907985

TERESA SARNO-LISTY, EMPLOYEE	CLAIMANT
BENTONVILLE SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, WCT., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 16, 2021

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

Claimant represented by the HONORABLE JASON M. HATFIELD, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed March 24, 2021. In said order, the Administrative Law Judge

made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on December 2, 2020 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met her burden of proving by a preponderance of the evidence that the medical treatment recommended by Dr. Blankenship is

reasonable and necessary medical treatment for her compensable injury.

3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits from November 3, 2020 through a date yet to be determined.
4. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's March 24, 2021 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code

Ann. §11-9-715(Repl. 2012). For prevailing on appeal to the Full Commission, 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.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority's finding that the Claimant is entitled to additional medical treatment in the form of surgery as recommended by Dr. Blankenship in connection with her compensable injury of November 6, 2019. As a result of my *de novo* review of the record in its entirety, I find that the claimant has not proven by a preponderance of the evidence that additional medical treatment in the form of surgery. Said surgery contradicts the findings of the other treating medical professionals (specifically, those by Dr. Knox, Dr. Miedema, and Dr. Hronas) and is not

supported by any of the objective medical findings. In other words, the conditions for which Dr. Blankenship proposes surgery simply do not exist.

It appears that Dr. Blankenship based his conclusions, at least partly, on incorrect information. In his initial evaluation, Dr. Blankenship noted that Claimant was “on a school bus that was hit from behind” and that she “has no prior history of pain.” Neither of these facts are true. Claimant had low back pain from a car wreck in 2009 and again in 2016. Claimant was treated for the 2016 injury for nearly a year before being released at maximum medical improvement between 95% to 99%.

Likewise, Dr. Blankenship’s report of June 18, 2020, indicates that Claimant “has undergone ENZA-A stabilization with partial reduction at the lumbosacral with bilateral pedicular fixation. The construct is stable without complications.” There is no mention in the medical records of the Claimant ever having had this ENZA-A stabilization surgery.

In a January 14, 2021, Dr. Blankenship explained the nature of his findings and the reasoning behind his proposed surgery. He wrote,

1. The objective findings on the MRI: She has hyperlordosis of the lumbar spine which is too much curvature. She also has retrolisthesis which is a posterior slip at L4-L5 and L5-S1. She had gross annular fissuring laterally at both levels. What this means is that the annular ring around the confined disc has been torn. This typically at her age is traumatic. This can lead to the segmental instability that is noted on her plain films and her MRI.

2. The surgical offering was done because the patient had failed routine and usual conservative measures. I do feel that her mechanical back pain is related to her hyperlordosis and instability. She likely has a facet component to her pain but unfortunately, she has not responded to treatment for that to the point that I think the facets are the major component. I think it is the malalignment and the posterior slip that are creating increased stress on the facet joints.
3. The surgical procedure that I offered her was an anterior lumbar interbody arthrodesis at L4-L5 and L5-S1. We approach this from the left side with Dr. J. Mullis a co-surgeon. I place implants in the disc space at L4-L5 and L5-S1 to establish better alignment and correct her hyperlordosis and slip. She would then undergo a same-day staged posterior operation with disruption of her facet joints as well as unilateral cortical screw placements in the pedicles to stabilize her from behind.
4. The procedure that we offered her is designed to correct her malalignment as well as disrupt the facet joints. Even though the facets are not the primary component, it takes a while in younger people for the facets to actually fuse unless you disrupt them. If we disrupt them and put bone in the facet joints, the nerve cannot grow back in there. The main purpose of the surgical procedure is to correct her alignment and her segmental instability with the retrolisthesis.

The medical records do not support these findings. Claimant had an MRI on January 14, 2020, and another on August 10, 2020. Claimant has also had flexion extension x-rays of her lumbar spine on April 6 and October 15, 2020. The January 14, 2020 MRI showed no abnormality present at the L5/S1 level. Dr. Blankenship's own interpretation of the August 10, 2020 MRI, indicates "no significant malalignment." Dr. Paglianite, Dr. Miedema, Dr. Knox, and Dr. Hronas all agree that there is no

significant malalignment, and all refute Dr. Blankenship's findings of hyperlordosis, retrolisthesis, gross annular fissuring and segmental instability.

Given the overwhelming number of treating professionals who disagree with Dr. Blankenship's findings, the incorrect medical history (including that Claimant had undergone ENZA-A surgery), and the self-conflicting findings by Dr. Blankenship, I find the opinions of the other treating professionals more credible than those of Dr. Blankenship. Accordingly, I would find that the surgery recommended by Dr. Blankenship is not reasonable and necessary medical treatment. Therefore, I must dissent from the majority opinion.

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CHRISTOPHER L. PALMER, Commissioner