BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. G500980, G505437 & G505438

MARGARET WATSON, EMPLOYEE	CLAIMANT
SOUTHWEST ARKANSAS DEVELOPMENT COUNCIL, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JULY 21, 2022

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part, affirmed in part.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed October 11, 2021. The administrative law judge found that the claimant failed to prove she sustained compensable injuries on December 2, 2014 or December 19, 2014. The administrative law judge found that the claimant proved she sustained a "compensable temporary aggravation of her

preexisting degenerative condition" on January 23, 2015 "which resolved no later than April 8, 2015."

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury on December 2, 2014, but that the claimant did not prove she sustained a compensable injury on December 19, 2014. The Full Commission finds that the claimant proved she sustained a compensable injury on January 23, 2015. We find that the medical treatment of record provided in connection with the December 2, 2014 and January 23, 2015 compensable injuries was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a). The Full Commission finds that the claimant proved she was entitled to additional temporary total disability benefits beginning April 11, 2015 and continuing through January 10, 2017. The Full Commission finds that the claimant proved she sustained permanent anatomical impairment in the amount of 10% and wage-loss disability in the amount of 15%.

I. HISTORY

Margaret Watson, now age 55, testified that she was a high school graduate. Ms. Watson testified that she had formerly been employed with Tyson Foods for 11 months and had worked at an Arkansas State Park. The claimant testified that she became employed as a Certified Nursing Assistant (CNA) for the respondents, Southwest Arkansas Development

Council, in 1991. The claimant described her CNA duties as "Washing clothes, dishes, bathing, cooking, shopping, doctoring, carried them to the doctor, or housecleaning."

The parties stipulated that the employment relationship existed on December 2, 2014. The claimant testified on direct examination:

> Q. When did the first incident happen?
> A. December the 2nd, 2014….
> Q. Tell us what happened.
> A. I was cleaning for my client, and she yelled – she yelled at me, told me I missed a spot. And without turning my body, I just turned quickly to assist what she was saying and I heard a popping and I couldn't straighten back up.

According to the record, Dr. Patrick Antoon saw the claimant on December 2, 2014: "She presents with low back pain….chronic and never had xrays or MRI and now dependent of Narcotics from previous use." Dr. Antoon's assessment included "Low back pain" and "Lumbosacral radiculopathy."

Brenda McKamie, RN provided a written statement on December 3, 2014:

> MARGARET WATSON, CSA CALLED THE OFFICE AND REPORTED THAT SHE IS UNDER THE CARE OF DR. ANTOON FOR BACK PAIN AND THAT HE WANTS HER TO SEE DOCTOR BUTLER AND THAT SHE MAY POSSIBLY HAVE TO TAKE A FEW DAYS OFF BUT IS WORKING FOR NOW. STATES SHE WILL LET OFFICE KNOW IF SHE HAS TO BE OFF.
> THIS RN ASKED MARGARET WATSON, CSA IF SHE HURT HER BACK ON THE JOB. MARGARET WATSON, CSA STATED THE DOCTOR TOLD HER THIS WAS FROM

> LONG TERM WEAR. RN ASKED HER AGAIN IF SHE INJURED HER BACK AND ON THE JOB AND SHE STATED SHE DID NOT AND THAT SHE WAS JUST LETTING OFFICE KNOW THAT THERE IS A POSSIBILITY THAT SHE MAY HAVE TO TAKE OFF IF DR. BUTLER TELLS HER SHE NEEDS TO. DOCTOR BUTLER IS A CHIROPRACTOR.

The claimant treated at Butler Chiropractic Center on December 3, 2014. The history at that time indicated that the claimant was seeking treatment for a back and hip condition which began "over a period of time." The claimant wrote that her condition was worsened by "Mopping and sweeping, bending, lifting, stooping." J. Rob Butler, D.C. diagnosed "Primary Spondylolisthesis, Lumbosacral" and "Secondary Disc Degeneration, Lumbar." Dr. Butler noted, "Margaret stated that she would report her injury to her supervisor." Dr. Butler also reported, "During palpation, a mild muscle spasm was apparent in the bilateral upper lumbar and bilateral lower lumbar regions."

Brenda McKamie provided another written statement on December 3, 2014:

> Margaret Watson, CSA called office and spoke with Annette Watson, CSC about having back pains and related it to her Nurse Aide position. Annette had Brenda McKamie, RN to talk with Margaret Watson. Margaret Watson, CSA told B. McKamie, RN that when she left her clients home her back was hurting so she went to her doctor, Dr. Antoon who sent her to see Dr. Butler who is a Chiropractor. Brenda McKamie, Rn asked Margaret Watson twice during this same conversation if she hurt her back while working for client and she said both times that she did not hurt her back while working for client. She stated that the doctor told her the pain

> was from long term repetitive sweeping and mopping. Margaret also laughed and stated that her back has been hurting all the time for a long time. Margaret Watson told Brenda McKamie, RN that the reason she reported this to the office was so office would be aware she might have to take off a few days and they would be aware that fill in Nurse Aides might have to be available to cover her clients….
> Margaret Watson came into office around 2:30 and stated that Dr. Butler told her to come back to this office and file a report of injury. While RN was on the phone reporting this to Reginia Emanuel in SWADC HR office, Margaret told Annette Watson, CSC that she had to leave to go pick a child up at school and she would be back. She left.
> Again Brenda McKamie, Rn reported the above to Reginia Emanuel who stated she called Faye Ross with workmans comp. Regina Emanuel instructed Brenda McKamie, RN to have Margaret Watson fill out the form N and send it to her.
> At some point she told Annette Watson, CSC that she left her clients Yesterday, December 2, at 12:00 and her back was hurting and that was when she went to Dr. Antoon.
> Margaret Watson, CSA, came back to office as Annette Watson and Brenda McKamie were leaving at 4:30. She was given the Workman's Comp Form N and asked to fill it out and return it to SWADC office. Again Margaret Watson Laughed and stated that CSC and RN know her back hurts all the time.

On cross-examination, the claimant denied telling Brenda McKamie that she had not sustained a work-related back injury. According to the record, the claimant signed a Form AR-N, Employee's Notice Of Injury, on December 4, 2014. The Accident Information section of the Form AR-N indicated that the Date of Accident was December 2, 2014 and that the claimant injured her "Back." The claimant appeared to write, "I was mopping client begin to yell at me about missing a spot I twist my back mopping I couldn't twist back around it was a burning."

The claimant participated in a recorded interview on December 18, 2014:

> Q. What's the date and time of your injury?
> A. It was December 2, anywhere between 2 and 2:45….I was at my client's house. I was at Ms. Maggie Madison (sic).
> Q. Okay. What were you doing at the time?
> A. Well, I was mopping, and when she screamed at me, she's a very particular lady, somebody that ain't never like worked before, but she screamed at me, she screamed at me, and I went to turn around to see what she wanted, and I kind of jumped, I think, the wrong way, while I was mopping, because she was like, you missed a spot….
> Q. So, you say your injury is December 2, when she said something to you, you turned, did you feel pain immediately?
> A. Immediately. Immediately, I went to the doctor.
> Q. Okay. So what part of your body was injured?
> A. My lower, my lower back.

The parties stipulated that the employment relationship existed on December 19, 2014. The claimant testified on direct examination:

> Q. And when was the second incident?
> A. December the 19th, 2014.
> Q. Do you remember what happened on that day?
> A. I was – I was bathing my client and she had feces on her….And she didn't know it and I didn't know it when she got up and I was telling her that she had bowel movement on her and she got very angry and just when we got at the end of the bathroom, though, it started like dropping on her carpet and I said, "Let's sit on the toilet." And so instead of her sitting on the toilet, she pulled the space rug with her, but my feet was still on the space rug. Small bathroom. And I kind of like fell forward toward the sink, and she went on into the bathtub with this area rug….I got her cleaned up, got her calmed down, and I called the office, and I went on from there.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on December 22, 2014. The Accident Information section of the Form AR-N

indicated that the Date of Accident was December 19, 2014, and that the claimant injured her "Low Back." The claimant appeared to write, "I slipped mopping cleint (sic) removed area rug from protection."

Latesha Carter, CSA provided a statement on December 22, 2014:

> On December 19, 2014 at 1:25 p.m., NA, Margaret Watson phoned Magnolia Office to report to me that she had fell at client's residence. When speaking to her I asked at what client did she have the fall because I didn't know which client she was at. Ms. Watson responded she was at Mrs. Susie McDoyle. She then told me the client wanted her to mop floor and when the client removed the rug somehow she fell. I asked her if she was going home or stay and work, her reply was "I only have about 30 mins left to work so I will try and stay." After hanging up with NA, I charted in client chart and reported info to Admin. Dianne Marcum, who further told me to have NA come to office and fill out Workman's Comp paper. I called NA back and told her office was closing at 2pm but I will stay and wait on her to get there, she then said its already 1:45 but I will make it as soon as I get my car to start. I told her if car didn't start then she would have to come or call office Monday. I stayed at office waiting on NA until 2:20, she never called or showed.

The claimant participated in another recorded interview on December 30, 2014:

> Q. Date and time of this injury?
> A. About 1:30 on the 19th….
> Q. And where were you?
> A. I was at work.
> Q. I mean whose house?
> A. Ms. Madison.
> Q. Okay. Tell me what you were doing at the time?
> A. I was mopping, and Ms. Madison decided she wanted to go take a shower, and she jumped up and I was telling her to be careful because I was mopping and we normally get a bath, and she holds her feets up when she's mopping on the

> couch, but this day she was just in a rage, and she went into the bathroom, and when she went into the bathroom, I told her to watch out because on the end of the toilet was a area rug, where, you know, you know that little rug they have around the toilet?
> Q. Yes.
> A. And she grabbed it up, and went into the shower, and when she grabbed it up, my feet was on the end of the rug, and I slipped….
> Q. Now, let me understand, did you fall, or you just slipped?
> A. I fell to my knees….
> Q. What part of your body was injured?
> A. I reinjured my back….My lower back.

Brenda McKamie contacted Ms. Madison on December 30, 2014: "Mrs. Madison stated Margaret has never fallen at her house."

The parties stipulated that the employment relationship existed on January 23, 2015. The claimant testified on direct examination:

> Q. Did you have a third incident?
> A. Yes….January the 23rd….
> Q. And do you remember what happened on that incident?
> A. I don't remember exactly what happened. I know I was cleaning – cleaning up, and I couldn't take no more….

The claimant signed a Form AR-N, Employee's Notice Of Injury, on January 23, 2015. The Accident Information section of the Form AR-N indicated that the Date of Accident was January 23, 2015, and that the claimant injured her "Back." The claimant appeared to write, "Low back popp (sic) again when I was mopping. It began to burn with [uncontrollable] pain running up [and] down."

The claimant testified that the respondents authorized her to treat with Dr. Rodney Griffin following the January 23, 2015 accidental injury. The claimant informed Dr. Griffin on January 23, 2015 that the date of injury was January 23, 2015, "I was mopping I was in a twist couldn't untwist." The parties stipulated that the respondents "initially accepted the January 23, 2015 (G500980) injury to the claimant's back, hip, and left arm as compensable and paid certain medical and indemnity benefits."

It was noted in Dr. Griffin's clinic on January 27, 2015, "Date 1/23/15 mopping, twisted back, popped, burning in lower back." The notes from a Musculoskeletal Exam on January 27, 2015 appeared to indicate, "Marked lordosis over the paralumbar muscles bilaterally." Dr. Griffin's findings on a Radiography Report dated January 27, 2015 included "Mild straightening of the lordotic curve."

The claimant began a program of physical therapy on January 28, 2015: "Patient reports she was mopping at work on 1-23-2014. She reports she heard a popping noise and burning in her low back. She was sent home and was seen by Dr. Griffin on 1-27-2015 and referred for PT."

The claimant participated in a third recorded interview on January 29, 2015:

> Q. Alright, when were you injured?
> A. On January the 23rd.
> Q. About what time?
> A. About, anywhere between 1:50 and 2:00….

> Q. And what were you doing at the time?
> A. Mopping.
> Q. And what happened?
> A. Well, it felt like a pop, popping in my lower back. Like a burning.
> Q. Alright. And it said did you feel a pain immediately?
> A. Yes ma'am.
> Q. Alright. And is it your lower back, any specific right or left side, kind of all over?
> A. Just across.
> Q. Okay, and did you continue to work that day?
> A. No ma'am.

Dr. Griffin's assessment on February 10, 2015 was "1. Low back strain."

An MRI of the claimant's lumbar spine was taken on March 2, 2015 with the impression, "Degenerative disease, as described above."

Dr. Justin Seale evaluated the claimant on April 6, 2015:

> 48-year-old female status post a work-related twisting injury while mopping 01/23/15. She reports that her main initial work injury was on 12/2/14 which was reportedly Worker's Comp.
> She has pain in the back that radiates down both legs worse on the left. The pain is severe. The pain is aching and burning. The pain is getting worse. Heat and ice does help. The pain worsens with bending, lifting and squatting.
> She has had thorough physical therapy with no improvement in pain….
> AP and lateral x-ray of the lumbar spine ordered, obtained, and interpreted today reveals grade 2 mobile degenerative spondylolisthesis of L4-5 with disc space collapse at L5-S1. Lordosis of over 80% of the lumbar spine.
> MRI, lumbar spine reviewed on disc today reveals left-sided facet cyst at L4-5 with disc protrusion at L5-S1. Severe facet arthropathy at L4-5. The L3-4 level and above appear normal. The spondylolisthesis at L4-5 does completely reduce on supine imaging….

> My recommendation is for a bilateral L4-5 transforaminal epidural steroid injection….
> I am placing the patient on work restrictions of no bending, twisting or lifting over 20 pounds.
> The patient's MRI does not show fracture or disc protrusion. There are signs of spondylolisthesis which is pre-existing. There are no objective findings of acute injury. However, the patient's symptoms began on and after the work injury. The patient has no history of pain in the low back or down the leg prior to the work injury. Therefore it is within a certain degree of medical certainty that at least 51% of the patient's current symptoms are directly related to her work injury.

Dr. Seale assessed "1. Highly mobile grade 2 spondylolisthesis, degenerative, L4-5 with left facet cyst and neurogenic claudication. 2. Moderate to severe degenerative disc disease with disc protrusion, L5-S1."

Dr. Seale reported on April 8, 2015:

> Today I was provided with a clinic note from [Ms. Watson's] primary care physician dated 12/2/14. This note stated that the patient has chronic low back pain and leg with opiate dependence secondary to this. Thus, the patient's pain as well as her underlying objective findings of spondylolisthesis or existing to her work injury (sic).
> Therefore, the patient is at maximum medical improvement from a workers comp standpoint.
> The patient's work restrictions are to return back to work full duty without restrictions.
> The patient's impairment rating will be a 0% because her condition is pre-existing.
> I'm releasing the patient from my medical care but would like to see her back outside of the Worker's Compensation setting to help her with her problem.
> I will see the patient back only as needed….

The parties stipulated that the respondents "paid eight weeks and four days of temporary total disability benefits from the date of injury

through April 10, 2015, as well as medical expenses through April 10, 2015." The claimant testified that the respondents did not provide additional medical treatment following Dr. Seale's release.

Dr. Antoon's assessment on April 13, 2015 was "Lumbago due to displaced lumbar disc….Referral initiated to a neurosurgeon." The claimant began treating at Neurosurgery Arkansas with Dr. Tim Burson on May 12, 2015:

> This 48 year old female presents for low back pain…. Onset: on 12/2/2014. Severity level is moderate. The problem is worsening. It occurs persistently. Location of pain is lower back….Context: was mobbing (sic) felt a pop and burning sensation….

Dr. Burson assessed "Lumbar spinal stenosis" and "Lumbago."

Dr. Burson referred the claimant to Dr. Thomas A. Hunley who performed an epidural steroid injection on June 8, 2015. Dr. Burson noted on June 23, 2015 that the claimant had "failed conservative measures," and he recommended surgery.

Dr. Burson performed surgery on March 16, 2016: "1. Posterior lumbar interbody fusion, right L5-S1 with allograft spacer 9 mm Stryker dowel. 2. Arthrodesis L5-S1 with autograft and allograft bone. 3. Allograft spacer placement x1. 4. Intraoperative spinal navigation." The pre- and post-operative diagnosis was "Degenerative disk disease S1 with right

lower extremity radiculopathy." Dr. Burson provided follow-up treatment after surgery.

The claimant saw Dr. Ahmad Rafi at Pain Treatment Centers of America on December 12, 2016: "Ms. Watson presents today for assessment of chronic pain as a new referral. The patient complains of pain in lower back, buttox (sic), and hips for last several years." Dr. Rafi's assessment included "Failed back syndrome, lumbosacral." Dr. Rafi performed a Lumbar Medial Branch Block on December 20, 2016.

The claimant followed up with Dr. Burson on January 10, 2017:

> The status of the patient has worsened. The patient reports pain in the low back, B hips. The frequency of pain is persistent. The patient is using medication as prescribed and having fair response….The patient can ambulate with straight cane….Associated symptoms include numbness, tingling and muscle cramps….
> Additional information: PLIF L5/S1 3/16/16. Saw Dr. Rafi for 1 ESI, does not wish to return due to pain during/following procedure. Pain is now low back, B hips, B buttocks, B feet. Constant numbness in L toes following injection on 12/20/16. Feels pain is getting worse & experiencing muscle cramps all over body….
> Ms. Watson returns to clinic 10 months s/p L5/S1 PLIF. She continues to struggle w/low back pain. She has been seen by pain management but would not like to pursue any further injections. AP/Lat xrays show hardware intact and good alignment and fusion. She has a grade 1 L4/5 spondylolisthesis but this isn't consistent w/her low back pain complaints. At this time we will continue to recommend pain management and can see her as needed.

The parties stipulated that the claimant "reached maximum medical improvement MMI on January 10, 2017."

Correspondence from the respondents' attorney indicated that the respondent-employer, Southwest Arkansas Development Council, "ceased operations on July 30, 2017."

On June 13, 2019, Dr. Antoon filled out a questionnaire provided by the claimant's attorney. Dr. Antoon wrote "Yes" following the question, "4) Do you have an opinion as to whether or not Ms. Watson is permanently and totally incapacitated from working due to her work injury of January 23, 2015?"

On July 5, 2019, Dr. Burson filled out a questionnaire apparently provided by the claimant's attorney. Dr. Burson stated that the claimant had reached maximum medical improvement, and he opined that the claimant had sustained an estimated 30% permanent anatomical impairment. Dr. Burson wrote that the claimant was "Not totally incapacitated" from working as a result of the January 23, 2015 workplace injury. Dr. Burson opined that the claimant "Would need formal FCE/IME but should be able sedentary tasks (sic)."

The respondents' attorney examined Dr. Burson at a deposition taken February 18, 2020:

> Q. We know that you've treated Ms. Watson. And I believe you performed surgery. Is that correct?
> A. Correct.
> Q. And how did the surgery go?
> A. It seemed to go okay. She wasn't perfect afterwards….She still had some back pain and still had

problems with her lower extremities. I think it improved somewhat, but it wasn't totally gone. The surgery itself went fine….
Q. And did you assess her with a permanent impairment rating?
A. Yeah, that's – that's difficult. You had to go by the note. We did the best I could do based on the charts and the book. We gave – we said it would have been – probably would have been 30 percent to – maybe it would be more accurate if she had an FCE or something like that, but we didn't have that to look at, so -
Q. And when you came up with the 30 percent, did you use the chart? Or did you use the DRE? And whether you have to estimate what the rating is –
A. Yeah, that's what it is.
Q. Used the DRE with the book?
A. Yeah, with the book where you're going through and it gives this and that. Yes….
Q. So is it your opinion that Ms. Watson is not permanently incapacitated from the injury and treatment that you – that resulted in the treatment that you provided; is that correct?
A. Yeah, I don't that she's perm – totally incapacitated.

The claimant's attorney examined Dr. Burson:

Q. With regard to your opinion as to whether or not she was – had any permanent impairment, has that changed, based on anything that's been presented to you today?
A. No, I don't think so.
Q. So you still think that she had a 30 percent impairment rating?
A. That's what I calculate. I'm not the greatest at calculating that, and it may be somebody can calculate that different. I'm not trying to – but that's the best I could do….
Q. And your opinion, these opinions that are expressed in this, are they based on a reasonable degree of medical certainty?
A. Yes.
Q. And is that based upon a – an incident at work being the major cause of her need for treatment and impairment?
A. I'd have to say that's what she – the history she presented with us, so I would have to say yes.

A pre-hearing order was filed on April 20, 2021. The claimant contended, "The Claimant contends that she sustained injuries to her back on December 2, 2014 (G500980); December 19, 2014 (G505437) and January 23, 2015 (G500980). The Respondents controverted the December 2, 2014 (G500980) and the December 19, 2014 claims. The Respondents initially accepted the January 23, 2015 (G500980) claim and paid medical and paid 8 weeks and 5 days of TTD from February 10, 2015 until April 7, 2015. The Claimant further contends that she is entitled to TTD from April 8, 2015 (when the Respondents terminated indemnity benefits) through January 10, 2017, additional medical treatment (including reimbursement for out of pocket expenses and mileage) in the form of ongoing pain management; PPD for the Claimant's lumbar fusion which was performed on March 16, 2016. Dr. Burson assigned the Claimant a 30% impairment rating; Permanent and total disability or, in the alternative, wage loss and a controverted attorney's fee. The Claimant reserves all other issues at this time."

The parties stipulated that the respondents "have controverted the claimant's December 2, 2014 and December 19, 2014 alleged injuries to her back. No indemnity benefits are owed for these injuries." The parties stipulated that the respondents "have now controverted the two December 2014 claims, and accepted the 2015 Claimant (sic) as a temporary

aggravation." The respondents contended, "Respondents contend that the claimant did not sustain a compensable injury on either December 2, 2014, or December 19, 2014. Respondents accepted a compensable injury to the low back in the form of a strain which occurred on January 23, 2015. Respondents contend that the claimant's current condition is not related to the minor strain injury on January 23, 2015. The claimant experienced these same symptoms prior to January 23, 2015 as well as prior to any of her alleged injuries. Respondents further contend that the claimant was diagnosed with chronic low back pain with an opiate dependency on December 2, 2014, by her primary care physician. Finally, respondents contend that the claimant's pain, her underlying objective finding of spondylolisthesis, and the medical treatment she obtained after April 15, 2015 is not causally related to her minor strain injury on January 23, 2015."

The text of the pre-hearing order indicated that the parties agreed to litigate the following issues:

1. Compensability of the Claimant's alleged back injuries of December 2014.
2. Additional temporary total disability (from April 8, 2015 through January 10, 2017) and medical benefits for the January 2015 (sic).
3. Whether Claimant is entitled to an impairment rating for her alleged lumbar injury.
4. Whether the Claimant is entitled to permanently (sic) and totally (sic) disability (P&T), or in the alternative, suffered wage loss disability.
5. Attorney's fees.

Dr. Steven R. Nokes corresponded with the respondents' attorney on May 14, 2021 and stated in part:

> I have reviewed an MR of the lumbar spine performed on Margaret Watson at Magnolia Regional Medical Center dated 3/2/2015. I have previously reviewed plain films of the lumbar spine on this patient dated 12/2/2014 and 1/27/2015 and rendered an opinion. The studies were identical revealing grade 1-2 spondylolisthesis at L4-5 with severe degenerative disc changes at L5-S1 with moderate to severe facet arthropathy at L4-5 and L5-S1.
> The MR of the lumbar spine dated 3/2/2015 was interpreted as:
> **Degenerative disease**, as described above….
> In conclusion to a reasonable degree of medical certainty and more likely than not the findings on the patient's MR of the lumbar spine dated 3/2/2015 are all long-standing and chronic and are not attributable to injuries 3-4 months prior to the examination.
> Note the formal report conclusion was also: Degenerative disease.

A hearing was held on July 13, 2021. The claimant testified that she believed she was physically unable to return to work. The claimant testified that she had difficulty with bending, stooping, and lifting.

An administrative law judge filed an opinion on October 11, 2021. The administrative law judge found that the claimant failed to prove she sustained compensable injuries on December 2, 2014 and December 19, 2014. The administrative law judge found that the claimant proved she sustained "a compensable temporary aggravation of her preexisting degenerative condition" on January 23, 2015 "which resolved no later than April 8, 2015."

The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

Act 796 of 1993, as codified at 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 which 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).

An administrative law judge found in the present matter, "3. The Claimant failed to prove by a preponderance of the evidence that she

sustained a compensable injury to her back on December 2, 2014 and December 19, 2014 while working for the respondent-employer." The Full Commission finds that the claimant proved she sustained a compensable injury on December 2, 2014, but that the claimant did not prove she sustained a compensable injury on December 19, 2014.

1. December 2, 2014

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on December 2, 2014. The claimant testified that she became employed as a Certified Nursing Assistant for the respondents in 1991. The parties stipulated that the employment relationship existed on December 2, 2014. The claimant testified, "I was cleaning for my client, and she yelled – she yelled at me, told me I missed a spot. And without turning my body, I just turned quickly to assist (sic) what she was saying and I heard a popping and I couldn't straighten back up." Dr. Antoon's assessment on December 2, 2014 included "Low back pain." Brenda McKamie for the respondent-employer provided written statements on December 3, 2014 denying that the claimant reported a work-related injury. The claimant's testimony indeed indicates that she has sometimes been a poor historian. However, it is the Commission's function to determine the credibility of witnesses and the weight to be given their testimony. *Whaley v. Hardee's*, 51 Ark. App.

166, 912 S.W.2d 14 (1995). In the present matter, the Full Commission finds that the claimant was a credible witness with regard to the specific incident occurring December 2, 2014. The claimant's testimony was directly corroborated by the Form AR-N, Employee's Notice Of Injury, signed by the claimant on December 4, 2014. The claimant wrote on the form AR-N that she twisted her back while mopping in a client's home. The claimant's recorded interview on December 18, 2014 also corroborated her testimony. The claimant stated on December 18, 2014 that she injured her back while mopping in a client's home.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on December 2, 2014. The claimant proved that she sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment and required medical services. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on December 2, 2014. The claimant also established a compensable injury by medical evidence supported by objective findings, namely, Dr. Butler's palpation of "mild muscle spasm" on December 3, 2014. Muscle spasms can constitute an objective finding establishing a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). We find that Dr.

Butler's palpation of muscle spasm on December 3, 2014 was causally related to the December 2, 2014 accidental injury and was not the result of a prior injury or pre-existing condition.

2. December 19, 2014

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury on December 19, 2014. The claimant testified that she injured her back as the result of slipping on a client's bathroom rug on December 19, 2014. Nevertheless, there was no contemporaneous medical evidence corroborating the claimant's testimony or corroborating the Form AR-N signed by the claimant on December 22, 2014. The claimant stated in the December 30, 2014 recorded interview that the alleged December 19, 2014 accident occurred in the home of "Ms. Madison." With regard to the alleged December 19, 2014 accidental injury, the Full Commission places significant evidentiary weight on Brenda McKamie's December 30, 2014 note, "Mrs. Madison stated Margaret has never fallen at her house."

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury on December 19, 2014. The claimant did not prove that she sustained an accidental injury causing physical harm to the body on December 19, 2014. The claimant did not prove that she sustained an injury on December 19,

2014 which arose out of and in the course of employment, required medical services, or resulted in disability. Nor did the claimant prove that she sustained an injury which was caused by a specific incident or was identifiable by time and place of occurrence on December 19, 2014. The Full Commission also finds that the claimant did not establish a compensable injury on December 19, 2014 by medical evidence supported by objective findings.

3. January 23, 2015

The administrative law judge found, "4. The Claimant proved by a preponderance of the evidence that on January 23, 2015, she sustained a compensable temporary aggravation of her preexisting degenerative condition of the back, which resolved no later than April 8, 2015." The Full Commission does not affirm the administrative law judge's finding that the claimant sustained a "temporary aggravation" injury. The Commission must strictly construe the provisions of Act 796 of 1993. *See* Ark. Code Ann. §11-9-704(c)(3)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 42 S.W.3d 822 (2001). An aggravation is a new injury resulting from an independent incident. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996), citing *Pinkston v. General Tire & Rubber Co.*, 30 Ark. App. 46, 782 S.W.2d 375 (1990). An aggravation, being a new injury with an independent cause, must meet the requirements for a

compensable injury. *Id*. There is no Act 796 statutory provision or relevant appellate precedent to support the respondents' contention or the administrative law judge's finding that the claimant's January 23, 2015 accidental injury was a "temporary aggravation." The Arkansas Court of Appeals has even described the concept of "temporary aggravation" to be a "new, unfounded theory" that is "rather novel." *See Johnson v. Pat Salmon & Sons, Inc.*, 2011 Ark. App. 48 (Ark. App. 2011).

Nevertheless, it is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support the administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990). The Full Commission must adjudicate this claim in accordance with the provisions of Act 796 of 1993 as codified at Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012) *et seq*. There is no statutory language in Act 796 of 1993 providing for a "temporary aggravation."

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a "compensable injury" on January 23, 2015. The claimant proved that she sustained an accidental injury causing physical harm to the body. The claimant proved that the

injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on January 23, 2015. We note that the claimant's testimony was corroborated by the January 23, 2015 Form AR-N in addition to the notes of Dr. Rodney Griffin. The claimant also established an injury occurring on January 23, 2015 by medical evidence supported by objective findings. As the Commission has discussed, the respondents authorized the claimant to treat with Dr. Griffin following the January 23, 2015 accidental injury. A musculoskeletal examination in Dr. Griffin's clinic on January 27, 2015 showed "Marked lordosis over the paralumbar muscles bilaterally." Dr. Griffin's findings on a Radiography Report dated January 27, 2015 included "Mild straightening of the lordotic curve." The Arkansas Supreme Court has interpreted "straightening of the lordotic curve" to be objective medical evidence establishing a compensable injury. *See Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). The Full Commission finds in the present matter that the reports of "lordosis" in the claimant's lumbar spine following the January 23, 2015 accidental injury as was well as "straightening of the lordotic curve" were objective medical findings establishing a compensable injury. The evidence does not demonstrate

that these patent objective medical findings were the result of a prior nonwork-related injury or a pre-existing condition.

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 (2002). 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). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the claimant proved that she sustained compensable injuries to her back on December 2, 2014 and January 23, 2015. The Full Commission finds that the claimant proved the medical treatment of record provided in connection with her December 2, 2014 and January 23, 2015 compensable injuries was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). Said reasonably necessary medical treatment also includes the treatment

provided by Dr. Burson beginning May 12, 2015. Dr. Burson testified that his treatment was causally related to the claimant's compensable injury. The Full Commission finds that Dr. Burson's opinion is corroborated by the record and is entitled to greater evidentiary weight than Dr. Seale's opinion that the claimant reached maximum medical improvement no later than April 8, 2015. *Minnesota Mining & Mfg., supra*. The Full Commission also finds that surgery provided by Dr. Burson on March 16, 2016 was reasonably necessary in connection with the January 23, 2015 compensable injury. Dr. Burson testified that the claimant's condition "improved somewhat" following surgery. Post-surgical improvement can be a relevant consideration in determining whether surgical treatment was reasonably necessary. *Hill v. Baptist Medical Center*, 74 Ark. App. 250, 48 S.W.3d 544 (2001), citing *Winslow v. D&B Mech. Contractors*, 69 Ark. App. 285, 13 S.W.3d 180 (2000). The Full Commission finds that Dr. Burson's treatment was causally related to the claimant's compensable injury. Dr. Burson's treatment, including surgery, was not causally related to a prior nonwork-related injury or a pre-existing condition.

C. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing

period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12)(Repl. 2012). Whether a claimant's healing period has ended is a question of fact for the Commission. *Dallas County Hosp. v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

In the present matter, the claimant proved by a preponderance of the evidence that she sustained compensable injuries on December 2, 2014 and January 23, 2015. The claimant testified that she was physically unable to continue working following the January 23, 2015 compensable injury. The parties stipulated that the respondents began paying temporary total disability benefits and medical expenses following the January 23, 2015 accidental injury. Dr. Seale opined on April 8, 2015 that the claimant had reached maximum medical improvement. The parties stipulated that the respondents paid temporary total disability benefits through April 10, 2015. The respondents controverted additional benefits beyond that date. However, an employee's healing period has not ended so long as treatment is administered for healing and alleviation of the compensable condition and continues until the employee is a far restored as the permanent character of the injury will permit. *Arkansas Highway & Transp. Dep't v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670 (1993). The Commission has the authority to accept or reject medical opinion and the authority to determine its medical

soundness and probative force. *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999).

The Full Commission in the present matter assigns minimal evidentiary weight to Dr. Seale's opinion that the claimant reached maximum medical improvement on April 8, 2015. We find that the claimant continued within her healing period and was totally incapacitated from earning wages beyond April 8, 2015. Dr. Burson began providing reasonably necessary medical treatment on May 12, 2015. Dr. Burson performed surgery on March 16, 2016. Dr. Burson provided follow-up treatment after surgery. Dr. Burson reported on January 10, 2017 that he would see the claimant "as needed." The parties stipulated that the claimant "reached maximum medical improvement on January 10, 2017." The Full Commission therefore finds that the claimant reached the end of her healing period for the January 23, 2015 compensable injury no later than January 10, 2017. Temporary total disability benefits cannot be awarded after a claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The Full Commission finds that the claimant proved she was entitled to additional temporary total disability benefits beginning April 11, 2015 and continuing through January 10, 2017, the stipulated date of maximum medical improvement.

D. Permanent Impairment

Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used in assessing anatomical impairment. *See Commission Rule 34*; Ark. Code Ann. §11-9-522(g)(Repl. 2012). It is the Commission's duty, using the *Guides*, to determine whether the claimant has proved she is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(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). Medical opinions addressing impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Repl. 2012).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a)(Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause

must be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012).

In the present matter, the claimant proved that she sustained compensable injuries on December 2, 2014 and January 23, 2015. Dr. Seale reported on April 6, 2015 that diagnostic testing showed a disc protrusion at L5-S1. Dr. Burson performed a right L5-S1 interbody fusion on March 16, 2016. The parties stipulated that the claimant reached maximum medical improvement on January 10, 2017. Dr. Burson filled out a questionnaire on July 5, 2019 and opined that the claimant had sustained "an estimated 30% permanent anatomical impairment." Dr. Burson testified at deposition and reiterated his opinion that the claimant had sustained a 30% permanent anatomical impairment, although Dr. Burson also testified, "I'm not the greatest at calculating that, and it may be somebody else can calculate that different."

It is the Commission's duty to translate the evidence of record into findings of fact. *Gencorp Polymer Prods. v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). In the present matter, the Full Commission finds that the claimant proved she sustained permanent anatomical impairment in the amount of 10%. The claimant sustained a compensable injury to her back on January 23, 2015, and post-injury diagnostic testing showed a disc protrusion at L5-S1. Dr. Burson subsequently performed surgery at a single

level, L5-S1. The Fourth Edition of the *Guides* at page 3/113, Table 75, assign a 10% impairment of the whole person for "E. Surgically treated disk lesion with residual, medically documented pain and rigidity." The evidence demonstrates that the claimant suffered with medically documented pain and rigidity following surgery. The Full Commission finds that a 10% permanent anatomical impairment is consistent with the 4th Edition of the *Guides* and is supported by objective medical findings, including the post-injury report of a disc protrusion at L5-S1. We find that the January 23, 2015 compensable injury was the major cause of the claimant's 10% permanent anatomical impairment.

E. Wage Loss

Finally, when a claimant has sustained a permanent impairment rating to the body as a whole, the Commission is authorized to increase the disability rating based on wage-loss factors. Ark. Code Ann. §11-9-522(b)(1)(Repl. 2012); *Redd v. Blytheville Sch. Dist. No. 5*, 2014 Ark. App. 575, 446 S.W.3d 643. The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Emerson Elec. v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2011). "Permanent total disability" means inability, because of the compensable injury, to earn any meaningful wages in the same or other

employment. Ark. Code Ann. §11-9-519(e)(1)(Repl. 2012). The claimant has the burden of proving inability to earn any meaningful wage in the same or other employment. Ark. Code Ann. §11-9-519(e)(2)(Repl. 2012).

The claimant in the present matter is age 55 and is a high school graduate. Following high school, the claimant worked for a short time on the assembly line at Tyson Foods and performed custodial services for a state park. The claimant testified that she trained to become licensed as a Certified Nursing Assistant (CNA) and began working in the capacity for Southwest Arkansas Development Council in 1991. The claimant testified that her CNA duties included washing, bathing clients, housekeeping, and transportation. The claimant proved that she sustained compensable back injuries on December 2, 2014 and January 23, 2015. The claimant testified that she did not return to work for the respondents following the January 23, 2015 compensable injury. Following the January 23, 2015 injury, the respondents paid temporary total disability benefits through April 10, 2015.

Dr. Burson subsequently performed surgery which was reasonably necessary in connection with the January 23, 2015 compensable injury. The parties stipulated that the claimant reached maximum medical improvement on January 10, 2017. The Full Commission has determined that the claimant sustained permanent anatomical impairment in the

amount of 10%, and that the January 23, 2015 compensable injury was the major cause of the claimant's 10% permanent anatomical impairment.

The claimant did not prove she was permanently totally disabled or that she was unable to "earn any meaningful wage in the same or other employment" as provided in Ark. Code Ann. §11-9-519(e)(2)(Repl. 2012). Dr. Burson opined on July 5, 2019 that the claimant was "Not totally incapacitated from working." Dr. Burson stated that the claimant should be able to perform "sedentary tasks." The evidence does not demonstrate that the claimant is permanently totally disabled as a result of her compensable injury, surgery, or 10% permanent anatomical impairment. The Full Commission attaches no evidentiary weight to Dr. Antoon's opinion on June 13, 2019 that the claimant was "permanently and totally incapacitated from working."

The claimant is advancing in age at 55 and has virtually no formal education beyond high school. Most of the claimant's employment history has consisted of work as a Certified Nursing Assistant. The claimant worked for the respondents in this capacity for approximately 24 years before the January 23, 2015 compensable injury. As a result of her compensable injury and surgery, the claimant has sustained permanent anatomical impairment in the amount of 10%. The claimant has suffered from chronic pain following her compensable injury and surgery. The

evidence of record shows, however, that the claimant is not motivated to return to appropriate gainful employment within her permanent physical restrictions. The claimant's demonstrated lack of interest in returning to appropriate gainful employment is an impediment to the Commission's full assessment of the claimant's percentage of wage-loss disability exceeding her permanent anatomical impairment. *See City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W.2d 946 (1984). The claimant testified at hearing that she had not attempted to find a job in several years. The claimant testified that she is physically able to drive a motor vehicle. In consideration of the claimant's age, education, work experience, and lack of interest in returning to appropriate gainful employment, the Full Commission finds that the claimant proved she sustained wage-loss disability in the amount of 15%.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury on December 2, 2014, but that the claimant did not prove she sustained a compensable injury on December 19, 2014. The Full Commission finds that the claimant proved she sustained a compensable injury on January 23, 2015. We find that the medical treatment of record provided in connection with the December 2, 2014 and January 23, 2015 compensable injuries was reasonably necessary in accordance with Ark. Code Ann. §11-9-

508(a)(Repl. 2012). Surgery performed by Dr. Burson was also reasonably necessary. The Full Commission finds that the claimant proved she was entitled to additional temporary total disability benefits beginning April 11, 2015 and continuing through January 10, 2017. We find that the claimant proved she sustained permanent anatomical impairment in the amount of 10% and wage-loss disability in the amount of 15%. The claimant proved that the January 23, 2015 compensable injury was the major cause of 10% permanent anatomical impairment and 15% wage-loss disability.

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)(2)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

For the reasons set out below, I respectfully dissent from the majority opinion.

I. BACKGROUND

Claimant was suffering from near-debilitating back and hip problems before any of the alleged incidents that give rise to this case. Claimant admitted that she was having difficulty moving before she ever had a workplace incident. She testified that Dr. McGee was prescribing hydrocodone before any of the incidents. She had been receiving treatment for low back pain for the previous year or so before any of the incidents involved in this case.

Claimant visited her family physician, Dr. Patrick Antoon, on December 2, 2014. According to Dr. Antoon's notes from this visit, Claimant reported to him for low-back pain. Under History of Present Illness, Dr. Antoon noted that Claimant's low-back pain was chronic, ongoing, and that she was now dependent on narcotics from previous use. Dr. Antoon diagnosed Claimant with chronic pain syndrome and refilled her prescription for hydrocode/acetaminophen 10mg/325mg.

The next day, Claimant visited Dr. Rob Butler, D.C., and completed a "patient information" questionnaire. When asked "When did this condition begin?" Claimant wrote, "over a period of time." When asked the names of other doctors who had treated Claimant for this problem, Claimant identified

Dr. Ivy Read, Dr. Antoon, and Dr. Butler. At the hearing, Claimant testified that Dr. Butler told her to go back and report her condition as a work-related injury so that workers' comp could direct her care. According to Claimant, Dr. Butler took some x-rays and then told Claimant to say she got hurt at work so she could get workers' compensation benefits. The next day, Claimant filed a Form AR-N alleging she was injured at work on December 2, 2014.

At a deposition taken in April 2021, Respondent's attorney questioned Claimant about this alleged December 2, 2014 incident. Claimant testified that she hurt her back working on December 2, 2014. The following is from the transcript of that deposition:

Q. Okay and what were you doing at [the client's] house when the accident occurred?

A. Helping her.
Q. Helping her do what?
A. I don't remember.
Q. Well, how do you know you got hurt there?
A. I reported it.
Q. All right, what did you report?
A. That I had hurt myself.
Q. Well, did you fall?
A. No, ma'am.
Q. What happened?
A. I was just working and hurt myself.
Most likely, I was probably getting her out of the shower.
I don't remember.

Claimant and her attorney then went out into the hallway for a brief off-the-record discussion. Claimant then testified, "That day when I got

hurt, I don't know how it happened because I would be guessing, but if I did have to guess, I would say I was helping her get out of the shower. I just don't remember."

At the hearing Claimant offered a new explanation for how she injured her back on December 2, 2014:

> I was cleaning for my client, and she yelled—she yelled at me, told me I missed a spot. And without turning my body, I just turned quickly to assist what she was saying, and I heard a popping, and I couldn't straight[en] back up.

On Claimant's Form AR-N, she offered another explanation for her December 2 injury. There she reported that she felt a pop in her low back while mopping.

Claimant alleges that she next sustained a compensable injury on December 19, 2014. This time, Claimant says she was helping a client into the bathroom and the client pulled the rug out from under her, causing her to fall toward the sink. Claimant testified that she did not fall to the floor and grabbed hold of the sink to keep from falling.

Lastly, Claimant alleges that she sustained a third compensable injury on January 23, 2015. This time, Claimant says she was mopping when she heard a pop in her lower back. (Note, this was the same explanation Claimant gave on the Form AR-N regarding the December 2 incident, which was inconsistent with what she said in her deposition and at the hearing).

Following this incident, Claimant sought treatment from Dr. Rodney Griffin. Dr. Griffin ordered an MRI, which took place on March 3, 2015. The MRI revealed that Claimant's injuries were degenerative in nature, and not acute. In other words, the MRI is not objective medical evidence of a workplace injury. Dr. Griffin referred Claimant to Dr. Justin Seale. Initially Dr. Seale felt that the major cause of Claimant's symptoms was a work injury. When Dr. Seale received Dr. Antoon's December 2, 2014 clinic note and found out that she had been complaining of these symptoms well before any alleged workplace incident, Dr. Seale concluded that Claimant's symptoms were not work related.

Dr. Nokes also issued an opinion that based on the objective medical evidence, Claimant's injuries were due to preexisting conditions and not from any workplace incidents.

Respondents initially accepted the January 23, 2015 incident as compensable for injuries to Claimant's back, hip, and left arm. They paid medical and indemnity benefits (8 weeks, 4 days of TTD benefits) through April 10, 2015.

II. STANDARD

The law requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury received by an employee. Ark. Code Ann. §11-9-508(a).

Ark. Code. Ann. § 11-9-102(4)(A)(i) defines a compensable injury as "an accidental injury causing internal or external physical harm to the body... arising out of and in the course of employment and which requires medical services or results in disability or death." Section 11-9-102(4)(A)(i) goes on to define an accidental injury as one that is caused by a specific incident and is identifiable by time and place of occurrence.

A claimant has the burden of proving, by a preponderance of the evidence, that his injury is compensable. *Williams v. Baldor Elec. Co.*, 2014 Ark. App. 62. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code. Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the claimant. Ark. Code. Ann. § 11-9-102(16).

An employee is entitled to temporary-total-disability benefits for a scheduled injury during the healing period or when the employee returns to work. Ark. Code Ann. § 11-9-521(a); s*ee*, *e.g.*, *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Temporary total disability is that period within the healing period in which an employee

suffers a total incapacity to earn wages. Accordingly, to be entitled to temporary-total-disability benefits, a claimant must prove that she or he remains within the healing period and suffers a total incapacity to earn wages. *Smallwood v. Ark. Dept. of Human Servs.*, 2010 Ark. App. 466, *7, 375 S.W.3d 747, 751. *Hope Sch. Dist. v. Wilson*, 2011 Ark. App. 219, *2, 382 S.W.3d 782, 785.

The healing period is that period for healing of an accidental injury that continues until an employee is as far restored as the permanent character of the injury will permit. The healing period ends when the condition causing the disability has become stable and nothing in the way of treatment will improve the condition.

Generally, liability for medical treatment may extend beyond the 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, 184 S.W.3d 31 (2004). The persistence of pain, however, is not sufficient in itself to extend the healing period. *See Bray v. International Wire Group*, 95 Ark. App. 206, 235 S.W.3d 548 (2006), *Smallwood*, *supra*. Likewise, pain management that does not improve the underlying condition does not extend the healing period. *Id.*

The Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

III. DISCUSSION

The ALJ found Claimant to not be a credible witness. Given the facts of this case, I agree with this assessment. At the time of this series of alleged misfortunate events (three alleged injuries in just over a month), Claimant was actively treating for low back pain. The medical evidence suggests that Claimant's injuries are chronic, gradual in onset, and due to her degenerative disc disease and not to any workplace incident. Moreover, Claimant has offered a litany of explanations for her injuries—none of which are supported by the medical evidence. What is supported by the medical evidence is that Claimant followed the troubling advice of Dr. Butler (to say she got hurt at work so that she could receive workers' compensation benefits).

IV. CONCLUSION

For the reasons set out above, I would affirm and adopt the ALJ's Opinion filed October 11, 2021. Accordingly, I respectfully dissent from the majority's opinion.

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CHRISTOPHER L. PALMER, Commissioner