

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E712760**

**LINDA SATTER, EMPLOYEE**

**CLAIMANT**

**LITTLE ROCK NEWSPAPERS, INC. d/b/a  
ARKANSAS DEMOCRAT GAZETTE, EMPLOYER**

**RESPONDENT**

**WAUSAU BUSINESS INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED OCTOBER 8, 2003**

Hearing before Administrative Law Judge Dail Stiles on September 4, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Zan Davis, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

A hearing was held on September 4, 2003, to determine the compensability of a February 17, 2002 injury occasioned by the claimant.

It was stipulated that the claimant sustained a compensable injury on October 10, 1997, and that appropriate benefits have been paid by respondents on that claim.

The claimant contends that on February 17, 2002, she sustained an injury which was a compensable consequence or a recurrence of her October 10, 1997 compensable injury. The claimant seeks medical benefits as a result of the February 17, 2002 injury.

The respondents controvert any benefits associated with a February 17, 2002 injury contending that the injury of February 17, 2002, constituted an independent intervening incident or that the injury of February 17, 2002, was an aggravation of a pre-existing condition.

## **STATEMENT OF THE CASE**

In October of 1997, the claimant was working as a reporter for the respondent employer and was struck by an automobile while she was a pedestrian.

The claimant sustained fractures in her low back. The claimant initially treated with Dr. Lisa McPeak and then treated with Dr. Johnny Smelz. The claimant eventually came under the treatment of Dr. Kevin Collins, an orthopedist, who remained her primary treating physician.

After the claimant began treating with Dr. Collins, she began a physical therapy regimen at HealthSouth. The claimant testified that she had continued on a weekly basis to go to HealthSouth, do exercises and work with a physical therapist. The claimant admitted on cross-examination that she had not seen Dr. Collins for 18 months to two years.

The claimant stated on February 17, 2002, as she and her fiancé were walking their dogs, she turned to point out a property to her fiancé when she felt a pain in her back. She stated that she could not stand up straight and walked back to her house bent over. She stated that the pain, "was the exact same kind of pain, you know, as right after the accident." The claimant stated that she had some leftover prescriptions for pain which she took, and she saw Dr. Collins on February 18, 2002, and was given a prescription for pain. Dr. Collins indicated in a clinic note of February 18, 2002, that he felt a bone scan was indicated and ordered that test to be performed. Dr. Collins also ordered continuing physical therapy.

The claimant testified that she was never asymptomatic or pain free from her compensable injury of October 10, 1997. The claimant testified that she did not have pain on a daily basis but that she was bothered by some pain on an intermittent basis, and that that was why she had continued physical therapy at HealthSouth.

Omar Green, the claimant's fiancé, testified on the claimant's behalf. Mr. Green testified that he had known the claimant approximately eight months prior to February 17, 2002, and stated that he observed from time to time that she seemed to experience pain in her low back, and that she seemed to obtain some relief from that by doing exercises at HealthSouth on a weekly basis.

Mr. Green described the February 17, 2002 incident as the claimant merely turning to point out a property and then crying out in pain with her back.

Dr. Kevin Collins, in a February 25, 2002 letter to Jeremy Johnson, the claim case manager in this matter, stated:

Patient is in today with a denial from an insurance company concerning future evaluations on her previous fracture of her sacrum. Patient's assertion is that this is an exacerbation of a pre-existing injury. My medical opinion is concurrent with hers. Based on the fact that her exam hurt in the same place as before and also she has never really been fully out of therapy. She has been on a chronic home exercise program with Rob Tillmon at Healthsouth which I have always known about. I actually believe that is why she has done so well. I previously said I hadn't seen her in a couple of years, but to be specific, it was 18 months.

In the meantime, I feel that it is medically indicated that we go forth with further treatment and I continue to stand by my request for a bone. Patient has done well with her medications thus far.

I would like this letter to serve as a letter of medical necessity that a poor bone scan and the fact that I do think that this is just a re-injury of a pre-existing problem.

### **FINDINGS OF FACT**

1. The claimant's injury of February 17, 2002, constitutes a recurrence or compensable consequence of her compensable injury of October 10, 1997.

2. Respondents have controverted benefits associated with the February 17, 2002 injury.

## DISCUSSION

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer remains liable. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence is not a new injury but simply another period of incapacitation resulting from a previous injury. Pinkston v. General Tire & Rubber Co., 30 Ark. App. 46, 782 S.W.2d 375 (1990). The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998). If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances.

In the instant case, the claimant's testimony is that she never became asymptomatic from the October 10, 1997 compensable injury. Dr. Collins corroborates that testimony. The claimant continued to take physical therapy right along, and Dr. Collins was aware of that. The claimant's activity that precipitated her injury of February 17, 2002, was not activity on her part which was unreasonable under the circumstances. See Georgia-Pacific Corp v. Carter, supra.

The evidence in this case preponderates in favor of the claimant's assertion that her injury of February 17, 2002, was a recurrence or compensable consequence of her October 10, 1997 injury.

**AWARD**

Respondents are directed to pay benefits associated with the claimant's injury of February 17, 2002.

Respondents are directed to pay the claimant's attorney, Mr. Zan Davis, the maximum attorney's fee on this award pursuant to Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

---

DAIL STILES  
Administrative Law Judge