

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F206808**

<b>JULIE STRATTON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>WAL-MART STORES, INC., SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>CLAIMS MANAGEMENT, INC., TPA</b>	<b>RESPONDENT</b>

**OPINION FILED SEPTEMBER 10, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on April 17, 2003, at El Dorado, Union County, Arkansas.

Claimant represented by the HONORABLE LEWIS D. SMITH, Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE PATRICK L. SPIVEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On March 18, 2003, a prehearing conference was conducted in this claim from which a prehearing order of March 20, 2003, was filed. The prehearing order reflects the stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as Commission Exhibit No. 1.

The testimony of Julie Stratton, the claimant, Ms. Kira Tidwell, and Mr. Loie Howlett, coupled with medical reports and other documents comprise the record in this claim.

**DISCUSSION**

Julie A. Stratton, the claimant, with a date of birth of March 17, 1958, is a high school

graduate with two years of post-secondary education, to include an associate degree in nursing. The claimant commenced her employment with respondent on September 1, 1997. The claimant last discharged employment duties for respondent on June 18, 2002.

The claimant presents a varied employment history, to include working in retail sales in a family-owned business, Gamble's Skomos Stores, in Michigan. The claimant's family operated a local ambulance service in their hometown of Cheboygan, Michigan, and claimant later worked at the hospital. The claimant has also worked as an emergency medical technician.

Claimant worked for Community Memorial Hospital, in Cheboygan, Michigan until 1988 or 1989, as a nursing assistant. The claimant also owned and operated her own auto body and mechanical repair shop during the time of her employment at Community Memorial Hospital. While employed at Community Memorial Hospital the claimant suffered an injury to her low back, which required medical treatment and rendered her totally incapacitated from engaging in gainful employment for a substantial period of time. The claimant's back injury was treated with conservative modalities, to include medication and physical therapy. While further diagnostic studies were recommended and attempted, to include an MRI of the claimant's spine and a myelogram, in an effort to address her low back injury, the same was not possible due to the claimant's size. On April 4, 1989, the claimant underwent a vertical ringed gastroplasty (RX1, p. 19). The claimant ultimately settled the 1988 workers' compensation claim against Community Memorial Hospital.

On September 1, 1997, the claimant was employed by respondent in its Cheboygan, Michigan store as a part-time associate in the automotive department. At the time of the claimant's employment by respondent there was in place a 25 pound lifting restriction on her employment

activity, and the same was disclosed. The claimant also maintains that the 25 pound lifting restrictions grew out of a diagnosis of reflex sympathetic dystrophy, for which she received medical treatment. The claimant's testimony reflects, with respect to her job duties in the Cheboygan, Michigan Wal-Mart:

I was a sales associate. I also worked in the garage, changing oil and tires, helped the manager get things going. I was trained by the department manager because she was going into the management program at that time.

\* \* \*

Oh, yes, sir. I was working anywhere from 50 to 60 hours a week and as a part-time associate, and I advanced very quickly, going to department manager of toys for a six- to eight-month period of time, possibly even a year, that I received a support manager support position shortly thereafter and then was promoted to a division six manager for Wal-Mart 2100 in Cheboygan, Michigan. (T. 10)

The claimant's testimony reflects that she was told by the regional manager that if she could transfer to the Saginaw, Michigan store and help rejuvenate sales in it, she could then go down to Arkansas and from there go into the home office of respondent. The claimant did in fact transfer to the Saginaw, Michigan store, and after a period, was transferred to Store 171 in Camden, Arkansas in February of 2001.

The evidence in the record reflects that the claimant received medical treatment in 1999 for low back pain which radiated down both her legs. On June 17, 1999, the claimant underwent an MRI of her lumbar spine which disclosed narrowing and dessication and L4-S1 disc spaces as well as degenerative disc disease in the lumbar region. The claimant was referred by Dr. Catherine S. Zimmerman to Dr. Beverly A. Zelt, for treatment relative to her complaint. On August 10, 1999, Dr. Zelt assessed the claimant's complaint as degenerative disc disease of the lumbar spine, low back

syndrome, and right sacroiliitis. The claimant underwent epidural steroid injections under the care of Dr. Zelt, for the afore complaints. (RX1, p. 12-13).

The evidence in the record reflects that on March 12, 2000, the claimant suffered an injury to her right knee in the form of a median meniscus tear when she fell down some stairs. Claimant maintains that March 2000 injury was sustained when she fell down some stairs at work for respondent. Claimant acknowledged that in seeking medical treatment for the right knee injury she relayed to medical providers that the accident had occurred at home. Claimant maintains that she was encouraged by management personnel to file the injury on her personal insurance and to report the same as having occurred at home in order to maintain a perfect record of non-work related injuries at that particular store.

In February 2001, the claimant moved to Arkansas and began working in Store 171, in Camden, Arkansas. Claimant denies having physical problems with her back which required medical treatment from the time she moved to Arkansas until January 25, 2002. Claimant's position at the Camden store was that of division 6 manager of automotive, a salaried member of management. The testimony of the claimant reflects that she sustained an injury to her low back on January 25, 2002, when she went to the back of the store to retrieve some key blanks for a sales floor associate:

And went back there to get some key blanks for a customer, and there was a pile of batteries on the right-hand side of the cabinet. The cabinet sat in the middle, and there is a steel door on this side, and I opened the door, reached over to get the keys, they are on the bottom, so I am sliding and bending getting the keys, stood up, shut the door, and the batteries tipped over toward me. And I don't know if the associates, main technicians piled them that high, they were four

high in that corner, and they tipped, you know, forward, toward me.

In order to protect myself, my legs, I backed up against the wall with force and ended up like sliding down the wall with my knees bent up and sitting on the floor with the batteries at my feet.

\* \* \*

Yes. They are yellow batteries. They are the great big batteries that are marine batteries (indicating). They are separated by corrugated cardboard which does dissolve on occasion if battery acid is leaked from those batteries. (T. 12-13)

Claimant acknowledged that there was no one else present in the garage at the time of the accident.

The claimant testified that she experienced pain in her low back as a result of the accident. After the incident, the claimant testified:

I got back up and picked up the batteries so my other associates wouldn't get hurt on them, made sure there was no acid leaking so if anybody else would get hurt. That is a safety issue. And picked them back up and piled them back up and went back in. I had a customer waiting. That is my priority, my customer. (T. 13)

Claimant noted that the accident occurred at approximately 4:30 p.m. on Friday, January 25, 2002. Although she experienced sharp and shock-like sensation pain in her back following the accident, claimant continued to perform her employment duties and completed her shift, which ended at approximately 6:00 p.m. The claimant's testimony reflects, with respect to her employment activities following the incident on January 25, 2002:

Yes, sir, I sat at my desk until about 6:00 on getting paperwork finished up and things that I needed to take care of for the rest of the day, follow up for the

weekend. I am not quite sure if it was an ad weekend or not, but there is a lot of work that goes into it if it is an ad weekend. (T. 14)

The claimant's testimony reflects that at the conclusion of her shift she went home and rested over the weekend. Claimant was not scheduled to work again until Monday, January 28, 2002. Claimant testified that she experienced debilitating pain during the weekend:

It was back pain and leg pain, with no relief, over-the-counter analgesics. I do have – With the reflexive sympathetic dystrophy, I did have pain management tools which is medications that are prescription drugs that I did take on a daily basis for pain management.

The following Monday, I came into work, made a call to Lew's voice mail, Lew Howlett's voice mail, which is my district manager, that I was going to a doctor appointment. (T. 14)

On Monday, January 28, 2002, claimant went into the store, however, experienced difficulty moving due to pain. Claimant testified that she left a message on Mr. Howlett's voice mail relaying that she had hurt her back on Friday, was going to a doctor, and would be seeing Dr. Hatley, in El Dorado. The claimant's testimony reflects that she left the store and proceeded to El Dorado to be seen by Dr. Hatley.

The testimony of the claimant reflects that Dr. Hatley was not her family physician, but rather she had gained information regarding his qualifications from associates. Likewise, the claimant testified that she was not aware of the identity of the respondent's designated medical provider for work-related injuries. The claimant did testify that as a manager she had taken an injured employee to receive medical treatment at the emergency room of Ouachita Clinic in Camden.

The claimant further testified that respondent's policy with respect to reporting of work-related

injuries mandated that within five days it has to be reported, if not immediately.

The claimant acknowledged that she selected Dr. Hatley for treatment relative to the January 25, 2002 injury. Further, the claimant asserts that at the time she was seen by Dr. Hatley initially on January 28, 2002, she related a history of her injury. Claimant concedes that she furnished her group health insurance card to personnel in Dr. Hatley's office when she presented for treatment, however denies that she informed Dr. Hatley that she experienced the onset of pain as a result of sneezing. The claimant asserts that she was not aware of the erroneous history in the medical records of Dr. Hatley until she requested a copy of her records, after being referred by Dr. Hatley to Dr. Germann.

Claimant maintains that upon returning to the store in Camden following her initial visit to Dr. Hatley on January 28, 2002, she completed documents which were furnished to her by Ms. Kira Tidwell, the assistant manager of the store. The claimant acknowledged that she filled out a leave of absence form because Dr. Hatley had directed her to remain off work, relative to the treatment of her injury along with providing her pain medication and muscle relaxants. Claimant further maintains that she executed or signed a number of other documents, some of which she believed to be a workers' compensation claim. Claimant asserts that when she requested copies of the documents the request was denied.

Claimant's testimony reflects that within ten days of seeing Dr. Hatley on January 28, 2002, she was referred by same to Dr. Robert Germann, an El Dorado neurosurgeon. Claimant relayed a history of injury to Dr. Germann at the time of the initial consultation. In March 2002, claimant underwent her first surgery under the care of Dr. Germann relative to the January 25, 2002 injury, and was off work for six weeks.

The testimony of the claimant reflects that when she returned to the employment of

respondent in mid-April 2002, she performed her managerial job duties, to include hiring and firing , running her shop, running the sales floor, and designating people to do what they were supposed to do. Claimant testified that when her hours were increased more demands were placed on her and she suffered a recurrence of her back injury. Claimant noted that as a salaried member of management she was required to work over forty hours a week.

The testimony of the claimant reflects that she may have exceeded the limitations placed on her by her treating physician after she returned to work in April 2002 because she was fearful of losing her job. Claimant asserts that on the last day that she worked her symptoms were such that she could barely stand. Claimant attributes an exacerbation of her injury to being requested and demanded to do more than she was supposed to do:

By the day I left, I could hardly stand. I mean, it was that bad. And I was on narcotics the whole time I was there because of having to be overworking. I had to be in the garage painting the floor because I could not give overtime to my technicians, and that's not something that a person after a back injury with back surgery should be doing, being on the floor painting with yellow paint in the night. (T. 25)

The claimant's testimony reflects that within 2-1/2 weeks following the last day that she worked in June, 2002, she underwent a second surgery under the care of Dr. Germann. Further, claimant testified that she learned for the first time that there had not been a claim filed for a work lost/ time lost problem relative to the January 25, 2002 incident following the last day that she worked in June 2002. Thereafter claimant filed a claim for workers' compensation benefits.

Claimant continued to treat with Dr. Germann through March 2003, at which time he left the El Dorado area and moved to Phoenix, Arizona. Claimant testified that she was referred by Dr.

Germann to Dr. Baskin, a pain specialist, in Little Rock. Following her evaluation by Dr. Baskin claimant testified that was referred to another neurosurgeon, Dr. Risa Shaihim, who performed a third surgery, in the form of a fusion, on March 21, 2003. The claimant appeared for the April 17, 2003 hearing using a walker and continuing to recuperate from the most recent surgery.

Mr. Loie Howlett, the district manager for the tire/lube/express division, was the claimant's immediate supervisor on January 25, 2002. Mr. Howlett's testimony reflects that in late January 2002, he was attending a meeting in Kansas City, Kansas. Mr. Howlett testified regarding his first knowledge of an injury having been sustained by the claimant:

The first report I had of the injury, actually, was from a voice mail from the store director, Marion Cole, followed by one by the acting manager in charge of my district while I was absent, Ray Dillard. That is how I was initially aware that there was an incident. (T. 44)

Mr. Howlett testified that after returning from Kansas City, while at his mother-in-law's residence in Mayflower, Arkansas, he had his first conversation with the claimant:

I had returned from Kansas City, made a phone call to the store manager to find out, you know, the details of what had gone on. I contacted Julie, actually from my mother-in-law's house, to check on her and see how things were doing. She indicated that, you know, she did not wish this incident to be a workmen's comp because she kind of quoted that she was not that kind of person, which, naturally, that concerned me greatly, and I reiterated that if an injury occurred at work, then, naturally, it should be filed as a workmen's comp. (T. 45)

Mr. Howlett testified that following his conversation with the claimant he contacted the store and requested that a workers' compensation claim be filed regardless of what the claimant wanted.

Further, Mr. Howlett testified that he spoke with the claims adjuster with Claims Management, Inc. regarding the conversation that he had with the claimant.. Mr. Howlett testified that he later learned that CMI had in fact turned around, did an investigation, and closed the claim based on the investigation, which included an interview or discussion with the claimant, the contents of which he was unaware.

Ms. Kira Diggins Tidwell, a nine year employee of respondent, holds the position of assistant manager at Store 171 in Camden. Ms. Tidwell testified that the claimant reported her injury on Monday when she got back from the January 28, 2002, visit to Dr. Hatley. Ms. Tidwell's testimony reflects that at the time the claimant reported the injury the lost prevention individual, Tim Hadden, was also present in the office. Ms. Tidwell testified that once the claimant reported the incident, she went and inspected the area where the accident was reported to have occurred. Ms. Tidwell testified that the batteries were stacked three or four high neatly and that none were broken or cracked. Ms. Tidwell testified that once a workers' compensation claim is filed the decision to accept or to deny the claim is left totally up to CMI.

The medical in the record reflects that the claimant was seen by Dr. R. Eric Hatley on January 28, 2002 with complaints of low back pain since Friday, January 25, 2002. The report further reflects that the claimant, after sneezing had an acute onset of severe low back pain. The claimant was provided medication. After being seen in follow-up on February 11, 2002, an MRI of the lumbar spine was arranged, along with physical therapy and a refill of medication. (RX 1, p. 35-38).

On February 22, 2002, the claimant was evaluated by Dr. Robert E. Germann, an El Dorado neurosurgeon, pursuant to the referral of Dr. Hatley. The February 22, 2002 report of Dr. Germann reflects that he had reviewed an MRI, which showed a large herniated disc at left L5-S1 as well as

right L5-S1. (CX1, p. 1)

The claimant underwent surgery under the care of Dr. Germann on March 5, 2002. (RX1, p. 39). On June 18, 2002, claimant was again seen by Dr. Germann and taken off work (CX1, p. 3)

From all the evidence, I make the following:

### **FINDINGS**

- \_\_\_\_\_1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 25, 2002 the relationship of employee-employer existed between the parties.
3. On January 25, 2002 the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$425.00/\$319.00 for temporary total disability/permanent partial disability benefits.
4. On January 25, 2002 the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the periods beginning January 28, 2002 through April 14, 2002 and June 18, 2002 and continuing through the end of her healing period or until such time as she is released to return to work.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of January 25, 2002.
7. The respondent has controverted this claim in its entirety.

### **CONCLUSIONS**

The principal issue before the Commission at this juncture is that of compensability. Specifically, the claimant asserts that on January 25, 2002, while discharging employment duties

within the course and scope of her employment with respondent retrieving key blanks, a stack of batteries began to fall, and in her effort to avoid being struck by the batteries, she jumped back with her back striking the wall.

As a result of the January 25, 2002 injury, claimant asserts she has been rendered temporarily totally disabled from engaging in gainful employment for a period of time and has undergone three surgical procedures in the treatment of the injury. Respondents deny that the claimant suffered an injury in the course and scope of her employment on January 25, 2002. The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of the injury having been sustained subsequent to the effective date of the afore provision.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, is defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. Mickel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant claim, it is undisputed that the claimant suffered a prior injury to her low back in 1988, while employed at Community Memorial Hospital in Cheboygan, Michigan. The claimant

did not undergo surgery relative to her low back injury, although she was removed from the job market for a period of approximately six years. A review of the medical records relative to the claimant's treatment growing out of the 1988 injury reflects a possible diagnosis of a herniated disc, however the same was never confirmed by objective diagnostic studies. During the time the claimant received medical treatment relative to the 1988 injury under the care of Dr. John M. Cilluffo, a Michigan neurosurgeon, she was unable to undergo either an MRI of her lumbar spine or a myelogram, due to her size. Because of the claimant's complaint, in a November 14, 1989 report Dr. Cilluffo noted:

Certainly, I do think she has something that may be bothersome to her, but I don't know how I can answer your question as to whether I regard her condition as serious. She says her legs get numb and she has severe pain. I have been unable to demonstrate any definite neurological abnormalities, but I think she has symptoms that could be compatible with lumbar stenosis or a disc herniation.

In the meantime, I don't think any physical therapy is likely to help her, other than I would encourage her to walk and continue to lose weight until she gets to be in a reasonable condition so that we can properly evaluate her and, if necessary, proceed with treatment as indicated by diagnostic studies. (RX1, p. 17)

An August 10, 1999 report of Dr. Beverly A. Zelt relative to the claimant reflects, in pertinent part:

MRI of lumbar spine performed June 17, 1999, impression by the radiologist showed narrowing and dessication at L5-S1 disc spaces, degenerative disc disease of the lumbar region. (RX1, p. 30)

The claimant did undergo epidural steroid injections in the lumbar spine under the care and treatment of Dr. Zelt in August 1999.

On September 1, 1997, the claimant commenced her employment with respondent, in its Cheboygan, Michigan store. As previously noted, the claimant did receive medical treatment for low back pain and leg pain under the care of Dr. Beverly A. Zelt, in August 1999, in the form of an epidural steroid injection. There is no evidence in the record that the claimant was off work for an appreciable period of time for low back complaints subsequent to the time she commenced her employment with the respondent in September 1997.

The evidence in the record reflects that after rejuvenating her department in the Cheboygan, Michigan store, the claimant transferred to a store of respondent in Saginaw, Michigan. The claimant's transfer to the Saginaw, Michigan store was a calculated strategy on her part to advance to the home office of respondent-employer in Arkansas. In furtherance of the afore, when the claimant suffered an injury to her right knee as the result of a fall down stairs at work on March 12, 2000, she did not file the same as a workers' compensation claim, but rather on her personal insurance. The claimant's action relative to the March 12, 2000 right knee injury serves as a precursor to her action relative to the January 25, 2002 claim.

The claimant arrived in Arkansas in February 2001 and was assigned to store 171 in Camden, Arkansas. There is no dispute regarding the claimant's job duties during her employment with respondent. There is no evidence in the record to reflect that the claimant sought or obtained medical treatment relative to her low back from the time she arrived in Arkansas in February 2001 until January 25, 2002.

The testimony of Kira Diggins Tidwell, assistant manager at Store 171, reflects that she has held the position throughout the time of the claimant's employment at the store. Ms. Tidwell saw the claimant on a regular basis during the claimant's employment and had no recollection of the claimant

registering complaints relative to her back prior to January 2002. Likewise, Ms. Tidwell was unaware of any time that the claimant took off from work because of illness or injury during her employment at the Camden store prior to January 25, 2002.

The evidence in the record reflects that Ms. Tidwell, as the assistant manager of the Camden store, was the claimant's supervisor on January 28, 2002, and one to whom a report of injury would be made. Ms. Tidwell learned of the claimant's injury on January 28, 2002, after the claimant had been seen by Dr. Hatley. Since the claimant re-stacked the batteries following the accident on January 25, 2002, it is not surprising that at the time Ms. Tidwell inspected the accident scene on January 28, 2002, following the report of injury by the claimant, that she would find the batteries neatly stacked and in order.

There is no evidence that the claimant had treated with Dr. Eric Hatley prior to her initial visit to same on January 28, 2002. The evidence in the record reflects that at the time the claimant first had a conversation with Mr. Loie Howlett, her immediate supervisor, following the January 25, 2002 accident, she had already been seen by Dr. Hatley on January 28, 2002. Further, the credible evidence in the record reflects that as with the March 12, 2000, right knee injury, when claimant was seen by Dr. Hatley on January 28, 2002, she did not attribute her need for medical treatment to a work-related accidental injury, but rather to sneezing on Friday, January 25, 2002. (RX1, p. 35). In the instant claim, claimant has proven to be her own worst enemy.

The credible evidence in the record reflects that the erroneous history was provided by the claimant to Dr. Hatley in an effort to demonstrate that she was a "team player". Indeed, the evidence in the record reflects that the claimant's immediate supervisor, Mr. Loie Howlett had been made aware of the claimant's injury as a result of messages left on his voice mail by other supervisory

personnel prior to his conversation with the claimant.(T. 44) Mr. Howlett credibly testified regarding his conversation with the claimant when she informed him that she did not wished to file the claim as a workers' comp claim because she was not that type of person:

Her quote was that she was not that kind of person. And it concerned me, so I reiterated the fact that, you know, if it happened at work, then, you know, that is the way needs to be filed. I was not at all comfortable with that. That is why I instructed the store and said, "Regardless, I want the claim filed." We can file the claim, even though, you know, she did not request the attention. CMI turned around, did the investigation and closed the claim based on, and I am not familiar with the legal terminology, but closed the claim based on the discussions that she had as well with CMI, which I had no knowledge of what was said during that interview. (T. 50-51)

When questioned regarding claimant's description of how she sustained her injury on January 25, 2002, Mr. Howlett credibly testified:

I honestly do not recall. I would assume that she would have stated exactly what she has stated today. The exact specifics of that I do not recall, you know, the exact word for word. I was just really concerned with the fact that, "It is not the way I am, I am not going to file it that way. That is what I have private insurance for." (T. 51)

The facts that in her initial visit for medical treatment the claimant recited a history of an onset of acute pain following a sneeze and presented her personal insurance card to Dr. Hatley's office corroborates that despite having honestly reported the accident to supervisory personnel of respondent, claimant's plan was to not file the claim as a work-related injury. An April 19, 2002 e-mail from claimant's immediate supervisor, Loie Howlett, placing the claimant on intermittent leave speaks to and is corroborative of claimant's misguided efforts at career advancement. (RX1, p. 41)

The credible evidence in the record reflects that the claimant sustained an injury arising out of and in the course of her employment with respondent on January 25, 2002, when she jumped backward to avoid being struck by a stack of batteries that was falling toward her and she struck her back against the wall. The claimant sought and obtained medical treatment relative to the January 25, 2002 accident on January 28, 2002, under the care of Dr. Eric Hatley. The claimant was prescribed medication for her injury, to include Vicoprofen, a pain medication, and Zanaflex, a muscle relaxer. When seen in follow-up on February 11, 2002, a refill was had for Loracet and Zanaflex relative to the claimant by Dr. Hatley. Dr. Hatley also arranged for an MRI during the February 11, 2002 visit. Following the MRI of the claimant's lumbar spine, she was referred by Dr. Hatley to Dr. Robert E. Germann, an El Dorado neurosurgeon.

The February 22, 2002 report of Dr. Germann, relative to his initial evaluation of the claimant reflects that Dr. Germann had reviewed the MRI which showed a large herniated disc at left L5-S1 as well as right L5-S1 (CX1, p. 1).

The claimant was taken off work by Dr. Hatley following the January 28, 2002 initial visit. On March 5, 2002, the claimant underwent surgery under the care of Dr. Germann in the form of a right L5-S1 intralaminar laminotomy and removal of herniated disk. (RX1, p. 39) The evidence preponderates that the diagnosed herniated disk suffered by the claimant on January 25, 2002, was caused by a specific incident and identifiable by time and place of occurrence, in the employment of respondent. The medical evidence is supported by objective findings of the injury. Further, the injury required medical services and resulted in a period of disability. The claimant has sustained her burden of proof by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment on January 25, 2002, in the form of a herniation at L5-S1. Respondents

have controverted this claim in its entirety.

As noted above, the threshold issue before the Commission in the present claim is that of compensability. The evidence preponderates that the claimant did in fact suffer a injury arising out of and in the course of her employment on January 25, 2002, as a result of a specific injury identifiable by time and place of occurrence. Further, the claimant was off work following the January 25, 2002 injury as a result of same, commencing January 28, 2002 and continuing through April 16, 2002. The claimant returned to the employment of respondent pursuant to the limited duty release of Dr. Germann and continued discharging employment duties for respondent through June 18, 2002.

On June 18, 2002, the claimant was again rendered totally incapacitated from engaging in gainful employment as a result of a recurrent herniated disc growing out of her employment with respondent. The claimant had never been released fully from Dr. Germann subsequent to February 22, 2002, relative to the January 25, 2002 compensable injury. The claimant continued to receive active treatment under the care of Dr. Germann after returning to the employment of respondent under restrictions, in April 2002. A June 18, 2002 off-work document from Dr. Germann, relative to the claimant, reflects, in pertinent part:

In regards to Julie Stratton, she is to be out of work for one month secondary to recurrent low back pain and right leg pain. The patient is being worked up for a recurrent herniated disc, which is due to employer not following restrictions. (CX1, p. 3)

The claimant underwent a second surgical procedure under the care of Dr. Germann approximately two and one-half weeks following the June 18, 2002, last date she discharged employment duties for respondent. The second surgical procedure was a lumbar laminectomy at the L5-S1 site. In March

2003, the claimant underwent a third surgical procedure in the form of a fusion and remains under the active treatment of her physician. The claimant remains within her healing period and totally incapacitated from engaging in gainful employment.

**AWARD**

Respondent is hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$425.00 for the period covering January 28, 2002 through April 14, 2002, and June 18, 2002 and continuing through the end of her healing period or until such time as she is released to return to work as a result of the January 25, 2002 compensable injury in the employment of respondent. Said sums accrued shall be paid in a lump without discount. The respondent may claim credit for sums heretofore paid toward the discharge of the aforementioned obligation.

Respondent is further ordered and directed to pay all reasonably related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of January 25, 2002.

Maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable Lewis D. Smith, on the controverted portions of this award, pursuant to Arkansas Code Annotated §11-9-715, and in accordance with Holiday Inn-West v. Coleman, 31 Ark. App. 224, 792 S.W.2d 345 (1990).

This award shall bear interest at the legal rate pursuant to Arkansas Code Annotated §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**ANDREW L. BLOOD**  
**Administrative Law Judge**