

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F211881**

**CHARLENE STROUD**

**CLAIMANT**

**ARKADELPHIA HUMAN DEVELOPMENT CENTER**

**RESPONDENT CARRIER**

**PUBLIC EMPLOYEE CLAIMS**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED DECEMBER 11, 2003**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE C. BURT NEWELL, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on October 31, 2003. A prehearing conference was held and a prehearing order was filed on September 4, 2003. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. Employer/employee relationship existed on October 2, 2002.
2. The temporary total disability rate is \$174 and the permanent partial disability rate is \$155.

The claimant contends that she sustained a compensable specific incident injury on October 2, 2002 and she is entitled to medical benefits and temporary total disability

benefits from October 2, 2002 to a date to be determined.

The respondents contend that there is a lack of objective clinical findings to support a compensable injury. The claim has been controverted in its entirety.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. Employer/employee relationship existed on October 2, 2002.
2. The temporary total disability rate is \$174 and the permanent partial disability rate is \$155.
3. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings.
4. The respondents are responsible for additional reasonable and necessary medical the claimant has pursued.
5. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from October 3, 2002 through March 3, 2003.

## DISCUSSION

The claimant, 52 years old, worked in maintenance and laundry for the respondent employer where she was laundry supervisor for four years. The job duties involved using a “truckster” to pick up dirty laundry from the various facilities and bringing this laundry to the main facility and washing, then drying and folding the laundry and returning it to the proper facility. The claimant described her job duties as picking up laundry bags with dirty laundry weighing from 2 to 60 pounds and throwing these bags into the truck. The commercial washers hold 125 pounds. According to the claimant, she and another employee washed from 700 pounds to 1,600 pounds of laundry per day. According to the claimant, on October 2, 2002, as she was taking some clothes out of the washer, she found they were tangled. She attempted to untangle the clothes and then started pulling on the wet clothes when she felt her hip and back start hurting and her leg went numb on the left side. The claimant reported the incident and got an appointment to see Dr. Michael Ford, the company doctor. The claimant testified that she has also seen Dr. Kevin McLeod, an orthopedic surgeon, Dr. Wayne Bruffett, a spine specialist, and Dr. Jacob Abraham, her current physician. The claimant contends her condition has worsened.

The claimant testified to having muscle spasms in her legs at night. The claimant testified that she had worked most of her adult life in various physical jobs such as a cook, at a motel, and at her job for the respondent employer and has no back injury history. She testified to having previous restless leg syndrome problems but her condition has worsened. According to the claimant, she took Bextra and Darvocet for her restless leg condition before the work incident.

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

In the present case, the claimant has proven by a preponderance of the evidence that she sustained a specific incident injury on October 2, 2002. The claimant presented credible testimony about her work duties on the day of October 2, 2002, and about pulling the wet, tangled clothes out of the washer and feeling pain in her back, hip and leg. The claimant described tugging and pulling on the clothes and the immediate onset of pain. She reported the incident to her supervisor and immediately obtained an appointment with the company doctor. The contemporaneous medical report from Dr. Ford provides a history of the claimant describing her back and leg pain and the incident at work. Dr. Ford diagnosed her with lumbar strain with evidence of radiculopathy and prescribed a medrol dosepack along with Flexeril and Darvocet. Dr. Ford advised the claimant to remain off work and suggested physical therapy for two

weeks. On November 19, 2002, Dr. Ford has noted in his progress report under the assessment section that the claimant has “back pain with paraspinous muscle spasm and lumbosacral strain.” Cl. Exh. No. 1, p. 35. Again, on March 19, 2003, Dr. Ford’s report notes lumbar spasms. The claimant has met the objective findings requirement of Ark. Code Ann. §11-9-102(4)(D). I found the claimant to be a credible witness and she presented a plausible un rebutted account of her work incident, which was properly reported and, finally, medical evidence of objective findings to support her injury. The November 4, 2002, diagnostic MRI did reveal normal findings; however, the claimant testified about a second MRI.

The claimant complained of pain in her back and continuing down her hip and leg at the time of the hearing. The claimant had not returned to work. The claimant has treated with Dr. Wayne Bruffett, an orthopedic surgeon, and his June 26, 2003, report reveals that without a history of back problems, the claimant’s current condition is related to her work incident. Dr. Bruffett did not mention any surgical procedures in this report but did recommend continued conservative care. On August 7, 2003, Dr. Jacob Abraham, a pain specialist, opined that while the claimant may have some degenerative disc disease, this condition was exacerbated by the on-the-job injury. Dr. Abraham had administered some epidural steroid injections and lumbar facet joint injections.

I give great weight to the opinions of both Dr. Bruffett and Dr. Abraham, since they are treating physicians who have examined, reviewed the records and have provided treatment to the claimant. The respondents asked Dr. Earl Peebles to review the records of the claimant without actually seeing the claimant or evaluating her and asked for an opinion. Dr. Peebles opined that her condition was not ratable and

suggested that neither MRI documents an “injury.” Dr. Peeples recommended psychological profile testing and conservative treatment only. Dr. Peeples seemed to concentrate on the two diagnostic MRI reports when he was attempting to provide his opinion. While he opined that both MRI reports were normal and neither documents an “injury,” Dr. Peeples did not opine in his report that the claimant did not have a work injury. I find respondents are responsible for the reasonable and necessary medical treatment the claimant has pursued for her compensable lumbar injury.

The claimant next contends that she is entitled to temporary total disability benefits from October 2, 2002, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from October 3, 2002 through March 3, 2003. While the claimant has testified that she is unable to work and has not returned to work, the medical records introduced into evidence provides that Dr. Ford, on February 27, 2003, returned the claimant to work on light duty on March 3, 2003. The remaining medical evidence does not provide any additional insight into whether the physicians had taken the claimant off work after that date.

**ORDER**

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings. The respondents are responsible for additional reasonable and necessary medical the claimant has pursued. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from October 3, 2002 through March 3, 2003.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**