

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NOL E409341**

**LINDA WILCUT, EMPLOYEE**

**CLAIMANT**

**BASLER ELECTRIC CO., INS., EMPLOYER**

**RESPONDENT**

**TWIN CITY FIRE INSURANCE CO., CARRIER**

**RESPONDENT**

**OPINION FILED DECEMBER 10, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 17, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by the HONORABLE TODD WILLIAMS, Attorney at Law, Jonesboro, Arkansas.

**STATEMENT OF THE CASE**

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

On August 12, 2003, a prehearing conference was conducted in this claim from which a prehearing order of the same date was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issue. The prehearing order is herein designated a part of the record as Commission's Exhibit #1.

The testimony of Linda Wilcut, the claimant, coupled with medical reports and other documents comprise the record in this claim.

**DISCUSSION**

Linda Wilcut, the claimant, with date of birth of February 16, 1954, has an eleventh grade education. Claimant commenced here employment with respondent in November 1972, claimant last

discharged employment duties for respondent in February 1995.

There is no evidence in the record to reflect that the claimant suffered complaints relative to her low back or legs prior to January 15, 1994. Further, the record is devoid of claimant having received medical treatment relative to complaints regarding her low back or lower extremities prior to January 15, 1994.

Claimant commence her employment with respondent on November 27, 1972, performing janitorial work at the Corning, Arkansas facility of respondent-employer. In describing the mechanics of the accident, claimant's testimony reflects:

I was carrying out these big metal tubs of, barrels of trash and I feel out and went down like that (indicating) on the ice, the back door. (T. 10)

Claimant's testimony reflects that the injury sustained in the January 15, 1994 accident was on her right, but mostly on her left hip and across the lower back along the tailbone area. Claimant's testimony reflects that the injury was reported to appropriate supervisor personnel of respondent on the date of the occurrence. Claimant sought and obtained medical treatment relative to the injuries growing out of the January 15, 1994, accident, in Poplar Bluff, Missouri.

A review of the medical in the record reflects that claimant was seen at Doctors Regional Medical Center in Popular Bluff, Missouri on January 15, 1994 in the emergency room. Diagnostic studies were obtained, in the form of x-rays, relative to the claimant's lumbar spine and hips. Thereafter, claimant was seen by Dr. Dennis Basco, a chiropractic physician. Dr. Basco diagnosed the claimant's complaints as a subluxation L5 lumbar strain, and involuntary myospasm. After a period of treatment under the care of Dr. Basco, claimant was referred by same to Dr. Jaun D. Cazano.

Dr. Jaun Cazano later referred the claimant to Dr. Peggy Brown, a Paragould neurologist.

An April 11, 1994, report of Dr. Brown relative to her contact with the claimant reflects:

She is a 40 year old lady who complains of pain in her legs and her back. She states the pain starts in the mid lower back and radiates down the right leg to below the calf on the right side, down the left leg to about the mid thigh.

Linda reports this began in January 1994. She reports she was taking out some trash and she fell outside the door at work. She landed on her left foot and right knee and outstretched left hand. She went to the Urgent Care Center in Poplar Bluff. She had x-rays done that showed no fractures. She was returned to work. Linda reports she took two weeks of her own vacation time off because of pain. She subsequently saw Dr. Cazano who did a chest x-ray and low back films and those were essentially unremarkable. Linda got chiropractic care for six to eight weeks but it hasn't really helped.

Today Linda complains that she has pain in her low back. She describes it as bees in her bottom and stinging pain. . .

\* \* \*

Linda C. Wilcut is a 40 year old lady complaining of pain in her back, radiating down both lower extremities. Her examination does not reveal any motor or sensor deficits. She does not have any restrictions on range of motion testing but she does report she does very poorly during the day, sleeps very poorly at night and has radiation of pain down the legs. When she fell she landed on her knee and foot and possibly may have twisted her back. I don't find any evidence of any permanent injury at this visit. She most likely has severe muscle strain but however it has persisted for several months and she is complaining of radicular spread of the pain.

I have recommended Linda have a nerve conduction study. That was completed today and was within normal limits. She was also scheduled for an MRI of the lumbar spine to be completed later today at Arkansas Methodist Hospital. I do recommend she start physical therapy which may be done at Northeast Arkansas Rehabilitation Hospital or other facility of her choosing. I recommend this be completed late in the day because of Linda's work schedule. She may continue her regular job if it doesn't involve much heavy lifting.

In regard to medications, I have recommended switching to a combination of Ibuprofen and Skelaxin for pain and muscle spasm. . .(RX.1, p8-10)

Claimant underwent a battery of tests under the directions of Dr. Brown during the May 20, 1994, visit. Dr. Brown, noted that the claimant MRI studies showed only arthritic changes. The May 20, 1994, report of Dr. Brown concluded:

I recommended that Linda try an injection of the Methylprednisolone 80 mgs. IM and that was given today. I also recommended a Medrol dosepak. She will remain off work through May 30, 1994 and return on May 31, 1994. She is scheduled to have daily physical therapy through May 27. Perhaps we can try managing her with intermittent cortisone shots. Another option would be to send her to the pain clinic in Jonesboro under Dr. Hackbarth's care for possible epidural injections if this isn't working. . . .(RX 1, p17)

On May 30, 1994, the claimant was seen by Dr. Reginald Rutherford at the Pain Care Clinic for clinical assessment and possible treatment. After obtain a history of the claimant's injury, reviewing pertinent medical, and conducting physical examination, the June 10, 1994, report of Dr. Rutherford concludes:

Ms. Wilcut's symptom complex appears most in

keeping with myofascial pain and dysfunction. A diagnostic trial of myofascial release comprise a five day treatment program in Little Rock to compare trigger point injections on Monday, Wednesday and Friday with daily stretch and spray physical therapy Monday through Friday. In conjunction with this, Doxepin will be discontinued with substitution of Amitriptyline in escalating dosage commencing with 25mg po q hs to be increased after one week to 50mg po q hs. Mrs. Wilcut was advised that there was no currently available test to allow for confirmation of the proposed diagnosis which ultimately is substantiated by response to treatment, on which basis the proposed treatment should be viewed not only as a potential therapeutic modality, but also as a diagnostic exercise. Arrangements will be made for a trial of myofascial release as indicated above, with clinical follow-up with Mrs. Wilcut subsequent tot his to review the clinical efficacy of myofascial therapy.(RX . 1, p21)

The testimony of the claimant reflects that she has never been pain free since the occurrence of the January 15, 1994 accident. The testimony of the claimant reflects that after undergoing the trigger point injections pursuant to the directions of Dr. Rutherford, she continued to experience symptoms and complaints attributable to the January 15, 1994 accident.

The medical in the record reflects that on October 25, 1994, claimant came under the care of Dr. Mark Hackbarth at the Center of Pain Management at St, Bernard Regional Medical Center in Jonesboro. Following his examination of the claimant, after reviewing prior pertinent medical and obtaining history of the claimant, Dr. Hackbarth's assessment of the claimant complaint was that chronic low back pain myofascial pain and possibly S.I joint pain. Epidural steroid injections were recommended by Dr. Hackbarth. A February 21, 1995 correspondence of Dr. Hackbarth reflects, pertinent part:

Ms. Wilcut has been seen at the Pain Center at St. Bernards Regional Medical Center in Jonesboro, Arkansas since 10/25/94 with a chief complaint of low back pain. The patient has undergone multiple modalities of treatment which include lumbar epidural steroid injections as well as medications adjustments. Unfortunately, the patient has not shown any improvement and is also receiving presently, biofeedback, psychological counseling for coping with her pain, and physical therapy. At the present time, this has not shown significant improvement and the patient states that physical therapy actually increases her pain.

At this point in time, I do not feel I have very much more to offer this patient and thus, I am discharging her from the center. I feel that she has reached maximum medical improvement. I will be sending her for a disability rating and a functional capacity evaluation. (RX 1, p70)

On March 4, 1995, claimant perform the B-200 at Physical Medicine & Sports Rehabilitation Center in Jonesboro. The report reflects, in pertinent part:

Patient reveal the following results:  
Patient had 12 abnormal indicators and zero non physiological signs. This does indicate severe back dysfunction. With zero non physiological signs suggests the patient gave effort throughout the entire B-200. (RX 1, p49)

On March 16, 1995, claimant was evaluated by Dr. Terence Braden, III, D.O relative to an impairment rating. The March 16, 1995, report of Dr. Braden details the history of the claimant injury, diagnostic studies conducted relative to the injury, and treatment received by the claimant relative to her January 15, 1994, injury. Dr. Braden's assessment of the claimant complaint was that of chronic pain syndrom, The March 16, 1995 report concluded:

It appears that although Ms. Wilcut continued to

suffer from her reported pain, there is no objective evidence that the injury she sustained at work resulted in any objective findings. (RX 1, p99)

Claimant noted that following the injection received under the care of Dr. Hackbarth, she was released to return to work. Claimant maintains that she was in such severe pain that she was physically unable to perform any employment duties. Respondents last paid indemnity benefits in this claim on or about February 3, 1995, as well as medical benefit on said date. Claimant was later evaluated by Dr. Braden on March 16, 1995. Respondents paid the cost of the evaluation by Dr. Braden. Respondents takes the position that the claimant reached maximum medical improvement as of the date she was released by Dr. Hackbarth on February 5, 1995.

The credible testimony of the claimant reflects that she continues to experience residuals attributable to the January 15, 1994, compensable injury such that she requires medical treatment to address the pain. After respondents refused to pay for further medical treatment associated with the injury, claimant sought medical treatment on her own from various medical providers. A review of the medical in the record reflects claimant has constantly attributed her complaints of low back pain to the January 15, 1994 injury sustained in the employment of respondent. Claimant has received treatment at the Corning Area Health Care Center under the care of various physicians assigned to that facility. A review of the medical records reflects that claimant has been provided medication to address her complaint of low back pain and has undergone additional diagnostic studies under the care of various physicians. (CX 1)

Claimant denies that she has suffered any other injury to her back other than that sustained in the employment of respondent on January 15, 1994. Likewise, claimant denies that she suffered a fall at home which would account for her continuing complaints of low back pain or need for

continuing medical treatment. Claimant acknowledged that a portion of the medical expenses for treatment received subsequent to March 1995, has been paid by medicare. With respect to further medical treatment from complaints attributable to the January 15, 1994, accident, claimant's testimony reflects:

I'm fixing - - I was going to go to Gross, he's over here at Pain Management for the shot treatments. He was going to do another MRI and see about doing the epidural shorts and/or some kind of surgery. But, then a lot of doctors say you have to live with the pain buy I mean he, you know, I'm going to try him. I've tried everybody else. (T. 12)

In addition to the testimony of the claimant, the record consist of medical reports relative to claimant's treatment for her January 15, 1994, injury through March 16, 1995. Further, the record contains medical records relative to treatment received by the claimant subsequent to March 16, 1995. (CX1)

After through consideration of all of the evidence in this record, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 15, 1994 the relationship of employee-employer-carrier existed among the parties.
3. On January 15, 1994, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$160.00.
4. On January 15, 1994, the claimant sustained an injury arising o ut of and in the course of her employment.
5. The claimant was paid appropriate temporary total disability benefits through

November 8, 1994; and temporary partial disability benefits from November 8, 1994 through February 3, 1995.

6. Medical treatment rendered to the claimant subsequent to March 16, 1995, relative to her January 15, 1994, compensable injury was reasonably necessary medical treatment for which respondents are liable pursuant to Ark.. Code Ann. §11-9-508(a).

7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of January 15, 1994.

8. Respondents have controverted claimant entitlement to medical benefits subsequent to March 16, 1995.

### **CONCLUSIONS**

Claimant was employed by respondent for a period of approximately 22 years prior to suffering an injury within the course and scope of her employment on January 15, 1994. There is no evidence in the record to reflect that the claimant sought or required medical treatment relative to her lower back or lower extremities prior to her compensable injury of January 15, 1994.

The mechanics of the January 15, 1994, compensable injury of the claimant are detailed in the various medical records. The evidence in the record reflects that respondents paid appropriate medical and indemnity benefits to and on behalf of the claimant relative to the January 15, 1994, compensable injury through February 3, 1995. Claimant later underwent an evaluation under the direction of Dr. Terence Braden on March 16, 1995, relative to an impairment rating. Respondents paid the cost of the afore.

Claimant asserts that following her January 15, 1994, compensable injury, she has experienced continued pain in low back and lower extremities. Claimant acknowledged having

received medical treatment to address the residuals of her injuries, to include physical therapy, chiropractic adjustments, trigger point injections, epidural injections. Additionally, claimant acknowledged having undergone a battery of diagnostic studies and work-ups in addressing her symptoms.

Claimant asserts that she continued to require medical treatment relative to the January 15, 1994, compensable injury. Claimant maintains that following her final visit of February 3, 1995, to Dr. Mark Hackbarth, at which time she was released from the care of same, she continued to require medical treatment relative to her compensable injury. Respondents deny liability for further medical treatment following the claimant's February 1995, release by Dr. Hackbarth as having reached maximum improvement. Respondents did pay for a March 16, 1995, evaluation by Dr. Braden relative to an impairment rating regarding the claimant.

The present claim is one governed by provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. As previously noted, the compensability of the January 15, 1994, work-related injury of the claimant is not disputed. At issue is claimant's entitlement to additional workers' compensation benefits relative to the compensable injury, in form of medical benefits.

Ark. Code Ann. §11-9-102(4)(F)(i) provides, in pertinent part:

When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary disability as provided by this chapter.

Ark. Code Ann. §11-9-508(a) provides, in pertinent part:

The employer shall promptly provide for an injury employee such medical, surgery, hospital, chiropractic, . . ., and nursing services and medicine, crutches, . . ., and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

In the instant claim, claimant received extensive medical treatment relative to her compensable injury following the occurrence of same. Claimant had no history of back injury or medical treatment relative to same prior to her compensable injury of January 15, 1994. At the time of claimant's discharge from the care of Dr. Mark Hackbarth the assessment of her complaint was that of chronic low back pain with myofascial pain and possible SI joint pain. Dr. Terence Braden assessment of the claimant's complaint was that of chronic pain syndrome.

Respondents refused to pay for the medical relative to the claimant's January 15, 1994, compensable injury following the evaluation by Dr. Braden. Thereafter, claimant sought medical treatment for continuing complaints from various medical providers. A review of the medical in the record reflects that the claimant continued to attribute her complaints relative to her low back and lower extremities to the January 15, 1994, injury in the employment of respondent.

On September 4, 1997, claimant was evaluated by Dr. Gregory F. Ricca, a Jonesboro neurosurgeon, relative to her low back pain and bilateral lower extremity pain. In his report of September 4, 1997, Dr. Ricca detailed the history of the claimant's injury and medical treatment relative to the injury. The September 4, 1997, report of Dr. Ricca reflects, in pertinent part:

I reviewed a CT scan of the L-spine done at Randolph County Medical Center on 9/5/96. Radiology read this as not showing any evidence of disc ruptures. I felt that the patient had at the least central bulging disc at L4-5 and L5-S1 and possibly small HNP's at these levels.

Impression: Low back pain and bilateral lower extremity pain.

I reviewed the options with Ms. Wilcut and I feel a fresh evaluation is indicated. I plan to obtain L-spine flexion and extension views, bone scan and lumber myelogram with post-myelogram CT. All of the above was reviewed with her, as well as her various options.  
..(CX. 1)

On September 16, 1997, claimant was admitted to St. Bernards Regional Medical Center where she underwent the above diagnostic studies under the directions of Dr. Ricca. Following the diagnostic studies Dr. Ricca's impression of the claimant's complaint was that of chronic low back pain with bilateral lower extremity pain and central disc bulging at L4-5 and L5-S1 larger at L4-5. The report further reflects:

I talked at length with the patient and her husband. I believe Ms. Wilcut is an honest, straightforward woman and I believe her history is genuine. I, however, did not find a clear cause of her symptoms. She has failed rather extensive non-surgical measures.

I recommended that her next course of treatment to be weight reduction. I explained that this is not to be critical of her size nor is it for the purposes of looking good. I explained that the less weight her spine has to carry, the better it is for it and this alone may relieve her symptoms. If she should lose weight and still have problems with her symptoms, then one might one to consider diskography. I talked about diskogram and its pros and cons. I have explained that the most neurosurgeons do not believe in diskography, nor perform it. I also explained that this a more aggressive procedure and the purpose would be to look for tears within the disk that could possibly be responsible for the patient's symptoms. I also explained that it is painful and may lead to surgery that would not even benefit her. On the other hand, as I started, I believe she is honest and straightforward

and I believe her symptoms are real. If she should adequately lose weight and not respond, then diskography may be indicated to identify true diskogenic pain. This is a syndrome that I believe does exist and if is accurately diagnosed, a fusion could significantly benefit the patient. (CX.1 )

After undergoing the additional diagnostic studies pursuant to the records of Dr. Ricca, claimant returned to her regular treating physician and underwent a weight loss regiment. Nevertheless, claimant's symptoms have not abated.

Claimant has continued to treat at the Corning Area Health Care Inc., and most recently with Dr. Gonzalez. Claimant was referred by Dr. Gonzalez to the Pine Center, in Jonesboro and Dr. Calin A. Savu. Claimant was seen by Dr. Savu at the Pain Center on August 15, 2003. The August 25, 2003, report of Dr. Savu reflects a history of the claimant's injury and complaints, review of previous diagnostic studies, and an assessment relative to the claimant's complaint. Finally, the August 25, 2003, report set forth a treatment plan to include individual therapy. Claimant expressed a desire to go forth with the treatment plan recommended at the Pain Center, in light of her continued symptoms attributable to the compensable injury.

As previous noted, Ark . Code Ann. §11-9-508(a) requires the employer to prove such medical services as may be reasonable necessary in connection with the employee injury. Cox v. Klipsch Associates, 71 Ark. App. 433,30 S.W. 3d 764 (2000). The Arkansas Court of Appeal has noted that whether a medical procedure or device is reasonable and necessary treatment is a question of fact. In the instant claim, the evidence preponderates that prior to the claimant's January 15, 1994, she did not require medical treatment relative to her low back nor is there evidence in the record to reflect that she had registered complaints relative to the afore area. Since her January 15,

1994, compensable injury, claimant has consistently registered complaints relative to her low back, and attributed same to the injury. The fact that the claimant may have reached maximum medical improvement following a compensable injury does not remove the responsibility of respondent to provide reasonable necessary medical treatment relative to the compensable injury. The evidence in the record preponderates that the claimant continued to suffer legitimate residual symptoms and complaints attributable to the January 15, 1994, injury in the employment of respondent. Treatment recommended by the Pain Center, in Jonesboro, is reasonable and necessary treatment relative to the compensable injury. Respondents have controverted the payment of medical benefits in this claim subsequent to March 16, 1995.

**AWARD**

Respondents are hereby ordered and directed to pay all reasonable related medical, hospital, and other apparatus expenses relative to the claimant's compensable injury of January 15, 1994.

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §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**