

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NOS. F000826 (8/14/99); F107988 (1/29/00);  
F107989 (7/8/01); & F212641 (8/11/02)**

<b>KATHRYN C. DOBBS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CRAIGHEAD COUNTY NURSING HOME, EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>CANNON COCHRAN, CARRIER</b>	<b>RESPONDENT NO. 1</b>
<b>PINEDALE NURSING HOME, EMPLOYER</b>	<b>RESPONDENT NO. 2</b>
<b>WAUSAU, CARRIER</b>	<b>RESPONDENT NO. 2</b>
<b>OAKDALE NURSING HOME, EMPLOYER</b>	<b>RESPONDENT NO. 3</b>
<b>CANNON COCHRAN, CARRIER</b>	<b>RESPONDENT NO. 3</b>
<b>WOODBRIAR NURSING HOME, EMPLOYER</b>	<b>RESPONDENT NO. 4</b>
<b>CANNON COCHRAN, CARRIER</b>	<b>RESPONDENT NO. 4</b>

**OPINION FILED MAY 5, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 5, 2004, at Newport, Jackson County, Arkansas.

Claimant appeared pro se.

Respondents No. 1, 3, and 4, represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE GUY A. WADE, 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 November 18, 2003, a pre-hearing conference was conducted in these claims from which a pre-hearing order of November 19, 2003 was filed. The pre-hearing order reflects the stipulations

entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The pre-hearing order is herein designated a part of the record as Commission Exhibit No. 1.

The testimony of Kathryn C. Dobbs, the claimant, and Catherine Gilmore, coupled with the medical reports and other documents comprise the record in this claim.

### **DISCUSSION**

Kathryn C. Dobbs Wingate, the claimant, with a date of birth of September 29, 1955, has a ninth grade education. The claimant has been a licensed CNA (certified nursing assistant), since 1998.

The testimony of the claimant reflects that in 1992 she attempted to get Social Security disability benefits following injuries suffered when she slipped on some liquid on the steps of the county courthouse and fell down the stairs. The claimant asserts that she suffered a spasmodic back as a result of the accident. The claimant asserts that she was in the hospital for a period of approximately two weeks as a result of the 1992 injury, and that after her discharge she continued to have problems with her back for a period of time. The claimant was not employed at the time of the 1992 injury.

The testimony of the claimant reflects that she suffered another injury to her back in 1996 when she fell through the floor of a trailer house. The claimant asserts that following diagnostic studies in 1996 she discovered that she had fluid on the left side of her brain and the lower part of her neck. Claimant acknowledged that pursuant to the report of Dr. David Marzewski she had x-rays of her back in 1987, 1991, 1995, and 1996. The claimant also had a CT scan of her head, which disclosed objective findings. The claimant testified that it was because of her head injury that she

elected to commence her employment in the nursing home industry:

I didn't have that back pain when I started working. I went to work in the nursing homes because my head injury in case anything was to happen to me I would be there around people that I could get immediate help from plus, I needed the money. . . (T. 54)

The testimony of the claimant reflects that the first nursing home that she worked at was Rolling Hills where she got her CNA license. Thereafter claimant was employed at Pinedale Nursing Home for a period of six days before securing employment with Craighead County Nursing Home, respondent No. 1. The claimant noted that approximately thirty days prior to her August 14, 1999 injury, she suffered a slip and fall at work.

The testimony of the claimant reflects that on August 14, 1999, she worked the 10:00 p.m. to 6:00 a.m. shift. Claimant presents paychecks covering two pay periods during her employment with respondent No. 1 as evidence of her average weekly wage. (CX 6)

On August 14, 1999, the claimant was discharging employment duties of a certified nursing assistant when she suffered a fall at work:

. . . And during our break, we're allowed to do our ADLs, because most of the time that's only the time that we get to do the ADLs. So I went around to the nurses' station and got my – my ADL book and sat down and began to stretch in a swivel chair. And when – as I was stretching backwards, because the chair leaned, leant backwards, the back of it, you know, went like straight like a bed type thing. And as I was stretching and yawning the chair broke in half throwing me backwards on the concrete floor on my head and back. (T. 13)

The testimony of the claimant reflects that the injury was reported to appropriate supervisory personnel on duty. Claimant maintains that medical treatment was not immediately provided to her following the accident nor was she examined by medical personnel of respondent. The claimant asserts that she was placed back to work following the accident. Further, the claimant testified that

she did not see a doctor for her injury until the office of respondent opened.

The medical in the record reflects that the claimant was seen by Dr. Joe McGrath on August 14, 1999 for injuries suffered as a result of hitting her head on the floor after a chair broke. The August 14, 2003, report of Dr. McGrath reflects that in addition to complaints relative to her head the claimant relayed that she was having sharp pains in her right hip and multiple sore spots on her body. Further, the report reflects that Dr. McGrath advised the claimant to go to St. Bernard's emergency room to be evaluated and for more detailed x-rays. (CX1) The record reflects a NEA clinic report relative to the claimant regarding her evaluation by Dr. McGrath. (CX3) The record further reflects a document entitled Request for Medical Care which identifies a date of injury of August 14, 1999, regarding the claimant, and a diagnosis of left elbow, right hip and low back strain. The report, authored by Dr. McGrath, noted that the claimant could return to modified work of lifting no more than 20 pounds during her twelve hour shift. The claimant was assigned modified work for 24 hours and was to return to regular duties as of August 16, 1999. (CX3).

The medical in the record reflects that the claimant was seen by Dr. Jeff Barber on September 26, 1999, at the Newport Hospital and Clinic and provided prescriptions of Ibuprofen and Flexeril. Claimant was seen at the emergency room in Newport by Dr. Barber with complaints of low back pain. The claimant's complaint was diagnosed as a low back strain for which she was directed to remain off work due to illness and allowed to work Monday, September 27, 1999. A review of the medical records relative to the claimant's September 26, 1999, visit to the Newport Hospital and Clinic reflects that she attributed her back pain to injuries suffered in the employment of respondent and also lists the respondent as her employer. (CX2)

The testimony of the claimant reflects that she was provided light duty work by respondent

#1 pursuant to the limited duty release of August 14, 1999. The claimant asserts that within thirty days of her August 14, 1999 accident, respondent #1 terminated her employment. The claimant asserts as the basis for the termination:

Well, they said it was because I wasn't listening to them and I wasn't doing my job properly. But I was under medication and I also had to deal with a lot of pain. And I didn't feel that – and when I did try to explain myself, they would cut me short, tell me that I was, you know, out of hand and stuff. So they discharged me. (T. 18)

While claimant maintains that she had not been released to regular duties at the time of her discharge from the employment of respondent, the evidence in the record reflects that the only limited duty release authored by a physician relative to the August 14, 1999, injury allowed the claimant to return to work for duties as of August 16, 1999. There is medical in the record to reflect that the claimant was seen at the emergency room in Newport on September 26, 1999, and that she attributed her complaint of low back pain to a work-related injury in the employment of respondent. However, the only restriction on the claimant's employment activity as a result of the September 26, 1999, Newport Hospital visit by the claimant excused the claimant from work the balance of the day and noted that she could resume her job duties on Monday, which was September 27, 1999.

There is no evidence in the record to reflect that claimant was provided a Form N by the respondent #1 following the August 14, 1999 injury. The evidence clearly reflects that the claimant was referred by personnel of respondent #1 to NEA Clinic and thereafter St. Bernard Regional Medical Center emergency room relative to the August 14, 1999, compensable injury. There is no evidence in the record to reflect that the claimant suffered another injury between August 14, 1999, and the September 26, 1999, visit to the emergency room at the Newport Hospital and Clinic.

Following her discharge from the employment of respondent # 1, claimant filed for

unemployment benefits. The testimony of the claimant reflects that she received benefits for a period of approximately three months at the rate of either \$148.00 or \$178.00 per week. (T. 21).

There is evidence in the record to reflect that in December 1999, claimant submitted an application for employment with Pinedale Nursing Home, respondent #2, as a certified nursing assistant. The claimant commenced her employment with respondent #2 in January 2000, working the 10:00 p.m. to 6:00 a.m. shift. Claimant testified that she received between \$6.50 to \$7.00 per hour in her employment with respondent # 2. Claimant noted that she had been employed by respondent # 2 for less than one month when she suffered an injury in its employment.

Claimant testified that while she performed her assigned job duties she was much slower than the other CNAs, which she attributed her slowness to residuals of her prior injury. Regarding the January 29, 2000, injury suffered in the employment of respondent # 2, the claimant's testimony reflects:

Yes, I wasn't there for very long before I had the door slammed on – I don't – I had went to – I was working and there was a resident that needed some more blanketing, more warmth, and I went across the hall and approached the closet. And as I was fixing to turn on the – I opened the door like this, and the hall is real slim. You can't see hardly nothing in there. Then there's a small door there where you – you know, I don't know what it went to, another closet or whatever it was. And as I opened the door, I went in and turned around to flip on the light switch, and the door hit me from behind, slamming me between the door facing and the door. And she said she did not mean to shut the door. (T. 24-25)

Claimant maintains that she suffered injuries to her left shoulder and arm as a result of the January 29, 2000, incident. The claimant asserts that her left arm was swollen twice its usual size as a result of the injury and that following the accident, it was reported to appropriate supervisory personnel of respondent # 2. The claimant maintains:

Yes. At the time of the accident, sir, Ms. Ellis and the – nurse, or someone, wrote that I did not make out an accident report. But I did, because the nurse told me to come over here behind the desk, sit down, and tell – you know, write down on an accident report about what happened to me, and that’s what I did. She did not check me for bruising, injury, or anything of that sort. She kept me on the hall the rest of the night until the next day and then I went home. The pain continued. The swelling continued until I went to the emergency room (T. 25)

The claimant’s testimony reflects that she received medical treatment at the emergency room of Newport Hospital relative to the January 29, 2000, injuries. Medical treatment rendered to the claimant relative to the afore injury included medication and a prescription for physical therapy. Claimant was also provided a limited duty work release. Light duty work was provided to the claimant by respondent, during which time she passed out ice. While the claimant acknowledged she was released from physical therapy by the therapist on February 8, 2000, she maintains that the same was at her request. The claimant asserts that respondent #2 declined to provide further authorization for physical therapy because it maintained that it did not have documentation of the January 29, 2000, injury.

The claimant’s assertion that the injury was reported and that she followed proper reporting procedures is corroborated by documentation in the possession of the respondent #2. Specifically, the testimony of Ms. Catherine Gilmore, an administrative assistant at respondent # 2, reflects that a review of the personnel record of the claimant reflects that as of February 3, 2000, the claimant was placed on administrative leave pending an investigation of the proper way to handle the workers’ compensation claim. (T. 87) Further, Ms. Gilmore testified that the claimant’s personnel file reflected written statements wherein the claimant and another CNA argued about the other CNA shutting a door on the claimant. (T. 88) Ms. Gilmore further related that the claimant’s personnel

file reflected, with respect to an investigation of an incident of January 29, 2000:

No and in further investigation the administrator had wrote that the ADON which was Vicki Vaughn has spoke to this lady, Kathryn Dobbs, on January 30 and Ms. Dobbs said she did not feel well but she did not state that she was hurt or injured. (T. 92)

While Ms. Gilmore asserted that there was no evidence contained in the personnel record of respondent # 2 that claimant had been assigned to light duty, the evidence in the record was to the contrary. The claimant maintained that she suffered an injury to her left shoulder and arm in the January 29, 2000, accident. (CX2)

On January 31, 2000, the claimant was seen at the emergency room at the Newport Hospital for complaints of left shoulder pain attributable to the January 29, 2000, incident at work in the employment of respondent # 2. The claimant was provided medication, to include a prescription for Naprosyn, an anti-inflammatory, and a prescription for physical therapy, three times a week for two weeks. The claimant was also provided a prescription for Skelaxin, a pain medication. Further, the claimant was directed to return to the emergency room if her symptoms worsened. The claimant's injury was diagnosed as a light contusion to the left shoulder. An aftercare instruction sheet, in addition to reflecting directions for taking medication, also provided that the claimant was to rest and apply heat to the affected area. (CX2)

The testimony of the claimant reflects that she was summoned to the office by the director of nursing in February 2000, and, following a harsh exchange, was directed to go straight home. Claimant maintains that she was informed that she would be contacted later regarding when she should return to work. The evidence in the record reflects that the February 2000, meeting with the director of nursing occurred on February 2, 2000. A document contained in the record reflects a list

of claimant's assigned job duties as of February 2, 2000, prior to her meeting with administrative personnel of respondent #2. As a consequence of the February 2, 2000, meeting with the director of nursing and administrative personnel of respondent #2, the claimant was placed on administrative leave while the incident of the January 29, 2000, encounter with the other CNA and injury suffered by the claimant was investigated. (CX2)

Ms. Catherine Gilmore, an administrative assistant for respondent # 2, testified that her review of the records of respondent-employer relative to the claimant, reflects that the administrator of respondent-employer #2 at the time, Ms. Billie Wright, tried to call the claimant several times following the February 3, 2000, administrative leave, but the claimant did not return her calls. (T. 88) The claimant's testimony reflects that she never received a call from respondent-employer # 2 after February 2, 2000, when she was directed to go home:

No, I never did, and I never did go back to work. They never did call me to come back to work. (T. 29)

The claimant's testimony reflects that she called the respondent-employer and the carrier for respondent-employer # 2 several times because of insurance. Claimant asserts that after she did not hear back from respondent # 2 about returning to work she ultimately filed for unemployment benefits. The claimant maintains that she continued to experience residuals relative to her left shoulder injury growing out of the January 29, 2000, accident suffered in the employment of respondent #2.

The claimant's testimony reflects that after her unemployment ran out, she obtained employment at Beverly Center in Searcy, Arkansas. Claimant estimated that approximately four months elapsed between the time she was last employed at respondent # 2, February 2000, and

when she secured employment at the Beverly Nursing Center. Claimant discharged employment duties as a CNA at Beverly Center for approximately three months. Regarding the termination of her employment at the Beverly Center, claimant testified:

Because of the stressfulness that I've had to deal with the pain and such, I worked two shifts there. And they let me go. (T. 31).

Following her discharge from the Beverly Nursing Center, claimant next secured employment as a CNA at Beebe Nursing Home where she remained so employed for a period of three months before her employment was again terminated. The claimant's testimony reflects that there was a period of two months unemployment between the time her employment with Beverly Nursing Center ceased and when she commenced her employment with Beebe Nursing Home.

The testimony of the claimant reflects that after a three to four month period of unemployment following her discharge from Beebe Nursing Home she secured employment at Cabot Manor in Cabot, Arkansas, as a CNA. The claimant was employed at Cabot Manor for a period of approximately three months before quitting. The claimant explained:

Well, they were complaining about my work.

\* \* \*

They were complaining about me being too slow. The CNAs were complaining. They were like jumping ship on me. (T. 34)

The claimant attributed her slowness in discharging her employment duties as a CNA to residuals of her injuries in the employment of respondent # 1 and respondent # 2.

After leaving the employment of Cabot Manor Nursing Home, the claimant moved to Dallas, Texas, where she remained for approximately one year. While residing in Dallas, Texas, the claimant secured employment at Denton Rehab Nursing Center as a CNA. The claimant was

employed at Denton Rehab Nursing Center for four months at which time she suffered a work-related injury in the form of a chemical burns to her eyes. The testimony of the claimant reflects that the Denton Rehab Nursing Center injury was accepted as compensable and she received medical treatment. The claimant asserts that she was fired from Denton Rehab. (T. 68)

After her employment with Denton Rehab Nursing Center ended, the claimant secured employment with Justin Nursing Home in Justin, Texas, for six days. The claimant's testimony reflects that she did not draw any income or unemployment from Denton to Justin. (T. 36). Claimant asserts that because of mis-communication and traveling to various employment she was accused of fraud:

Well, sir, I was – my traveling back and forth to Dallas, when I was filing for unemployment – when I went to work for Justin, Texas with this nursing home I worked there six days and I didn't report it, my traveling. And me trying to get my unemployment and everything and then dealing with me, with the chemical burn to my eyes plus all the other injuries that I had to deal with and plus me driving back and forth to Justin to, you know, to my home in Dallas – I don't know really how that sidetracked me but anyway they stuck me with fraud. They said that I should have reported it. I said, Well, I didn't really know I had to. And at that time I didn't know that I had to. But they said that it's what it was called. (T. 74-75)

The claimant returned from Texas to Arkansas and secured employment as a CNA with Oakdale Nursing Home, Respondent # 3. During her employment with respondent # 3, the claimant worked weekends, a total of 48 hours covering Friday, Saturday and Sunday. The claimant worked a total of 21 to 22 days for respondent # 3, during which time she earned between \$7.00 to \$7.50 per hour. The claimant maintains that she suffered injuries in the employment of respondent # 3 in the form of a strain to her back and a spider bite:

I had strained my back and I had a spider bite in the center of my back. I kept complaining I'm feeling something crawling on me to the other CNA that was working with me that night. And she had to work with me because I had strained my back. I was really – I was really in a lot of pain that night, that whole weekend and I had went to the nurse and asked her to go – to let me go home. But she refused to let me go home because at a shortage – when you're short of CNAs, it puts everyone behind and it leaves someone else to get hurt possible. It's a possibility. And it's a state law that you have a certain amount of CNAs on there. (T. 37)

The claimant asserts that the strain that she experienced to her back while in the employment of respondent # 3 on or about July 8, 2001, was not the product of a specific incident, but rather a gradual onset that culminated in her symptoms. An incident report was not completed the night that the claimant reported her complaints. The claimant maintains that after she was not allowed to go home by the supervisor, after requesting to do so because of her back complaint, she remained on duty, however, her co-worker, another CNA actually pulled her load. Claimant's testimony reflects that she later called respondent #3 after experiencing a burning sensation in her back before going to the emergency room. The claimant's testimony reflects:

I called them because my back was burning me. I mean, it was like it was on fire. And it kept hurting me, so I – it was itching and burning, and I asked my granddaughter to scratch the center of my back. And when she scratched it, it started really burning bad. And she told me that there was sores on my back. (T. 39)

Claimant asserts that her mother examined her back and assessed the site as the product of a spider bite.

The claimant's testimony reflects that prior to going to the emergency room for the spider bite she called and talked to the owner of respondent-employer # 3. Claimant was seen at the

emergency room of Newport Hospital where she received treatment in the form of two injections for the spider bite and was provided medicine to put on the area. (T. 40) The claimant's testimony reflects that the incident involving the strain to her back as well as the spider bite occurred on the last night of the weekend wherein she completed her assigned job duties. The claimant sought and obtained medical treatment for her complaints attributable to the July 2001 work incidents.

The claimant's testimony reflects that when she reported for work the next weekend her employment was terminated. Regarding the termination of her employment, the claimant testified:

Yes, sir. I was in pain, I was going to the – it was lunch and I had to go get some medicine, some Ibuprofen I think. And when I left and came back, I was late apparently getting back or they thought I was late. As far as I – I know, I wasn't really late. I wasn't late. But the girl refused to work with me. (T. 41)

Following her termination, the claimant filed for and received unemployment benefits for approximately six months. The claimant received \$306.00 per week during the period of unemployment for a total of approximately \$8,000.00.

Although the claimant insists that the strain she experienced in July 2001 was as a result of her working at respondent #3, she acknowledges that she had suffered strains performing her job duties as a CNA at other nursing home facilities prior to her employment with respondent # 3. The claimant's testimony reflects:

Yes, sir, I hurt. Yes, sir. I was slow, you know, on all the jobs. That was their main objective [objection] of me was because I wasn't listening or because I was slow or because I didn't do this right or didn't do that – when you're hurting you can't expect to do things right. You can't expect to hear things right and you're on medication. You understand? I mean, you see what I'm saying. (T. 68-69)

The claimant acknowledged that her back was hurting the whole time she was working at all the

other nursing homes:

That's right. It didn't make any difference if I was home or if I was working in a residency or if I was working for faculty. My back still hurt. My head still bled and I still have fluid on my brain. (T. 69)

The claimant maintains that the spider bite she experienced while employed at respondent #3 occurred on a Sunday night, the last night of her three-day weekend work schedule:

It was my last night at working at Oakdale. I kept complaining that I felt something crawling on me. I had went and checked. I couldn't see nothing or nothing but my back was hurting me anyway. I asked to go home because of it. But I was refused to go home. (T. 69-70)

The claimant acknowledged that she did not know where the spider came from. There is no evidence in the record to reflect that the claimant actually saw a spider on her while discharging employment duties for respondent #3. The record does reflect that the claimant was seen at the emergency room of Newport Hospital on July 10, 2001, and stated that she had been bitten at a nursing home where she worked. The claimant had two small lesions or blisters on her back for which she was provided Silvadene cream to be applied. The claimant was also provided a prescription for Darvocet. The emergency room report reflects a diagnosis of skin lesions, back, etiology unknown. (CX5)

The testimony of the claimant reflects that after receiving unemployment benefits for a period of at least six months following the termination of her employment by respondent # 3, she secured employment as a certified nursing assistant with Woodbriar Nursing Home, respondent # 4, in Harrisburg, Arkansas. Claimant asserts that at the time she secured the employment at respondent # 4, she was not physically ready to return to work, however, did so out of necessity. The claimant noted that she was still having problems and still going to the hospital and the emergency room for complaints relative to her back.

The testimony of the claimant reflects that she had been employed by respondent # 4 for a period of approximately three weeks when she suffered another injury to her back while discharging employment duties. Claimant noted that because she had continued to experience pain in her back and was still experiencing the same at the time she commenced her employment with respondent # 4, she had given two weeks notice to supervisory personnel that she would be terminating her employment. The claimant's testimony reflects that she was receiving medical treatment at UAMS for her head complaint.

Nevertheless, the claimant's testimony reflects that she did suffer a specific incident injury while discharging employment duties for respondent # 4, on August 11, 2002. With respect to the August 11, 2002 injury, the claimant's testimony reflects:

It was another back strain. This was – it was more than a back strain actually. The lady – she come there – the residents, if they can stand or if they can walk or – you know, you only have the residents when they have to be helped.

\* \* \*

If they can stand on their own, they let them stand. If – if they can bathe themselves, you let them do their own thing. If not, then they have – you know, you can help them. Well, Ms. Reid, she was able to stand up and hold herself up, but her legs bowed up underneath her, you know, I mean, they just gave –

\* \* \*

--up underneath her. And she had dropped down onto the whirlpool, slipping off into the floor. And I was holding her up. And she weighed about 300 pounds. And if I hadn't of held her up, she would have probably endured probably a good size fall herself. (T. 44)

Claimant's assessment is that she actually pulled something in her back as a result of the August 11, 2002, injury assisting the patient. The claimant noted the pain was very severe following the occurrence. The claimant reported the injury to appropriate supervisory personnel of respondent #4 following the incident. Claimant asserts that she was not provided medical treatment by respondent # 4 following the occurrence, but, was directed to go home by the nurse on duty, Doshie Hart. The claimant testified:

She sent me home, but see I wasn't ready to go home because I was having headaches and I was hurting, and I was scared of driving from Harrisburg to Newport because of blackouts or anything under – you know, anything after an accident, I was always – you know, you're never really in your right mind at the time that you have a severe accident. Anything that's due to your head, your – your back, there's just something that – there's just something that you just can't – you know, you're not yourself. (T. 46-47)

The claimant maintains that she asked the nurse on duty not to send her home because of her concerns about driving from the facility of respondent-employer # 4 in Harrisburg to her residence in Newport. Nevertheless, the claimant was directed to go home by the nurse and she in fact went home.

The testimony of the claimant reflects that she sought medical treatment the following day at the emergency room of Newport Hospital for the injury sustained on August 11, 2002. The claimant did not return to the employment of respondent # 4 following the August 11, 2002, injury. Claimant asserts that after receiving the initial medical treatment the following day, she laid in bed for the next two weeks in very severe pain. The claimant noted that she took medication received from the emergency room for her back pain, Darvocet, and was physically unable to return to her

regular job duties.

Since she last discharged employment duties for respondent on August 11, 2002, the only money claimant has earned was approximately \$300.00 for sitting with a lady over a 30 day period in 2003. The claimant noted that she performed the afore duties in order to have some type of income for her medication and expenses.

The claimant asserts entitlement to medical and temporary total disability benefits as a result of the injuries suffered in the employment of respondents # 1, respondent # 2, respondent # 3, and respondent # 4. Respondent # 1, Craighead County Nursing, contends that no benefits were paid relative to the claimant's August 14, 1999 injury, and that the statute of limitations has run on said claim. Respondent # 2 asserts that the claimant did not sustain a compensable injury while in the employment of same on January 29, 2000. Respondent # 3 and respondent # 4 maintain that the claimant did not suffer compensable injuries while within their employment.

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

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 14, 1999, the relationship of employee-employer-carrier existed among the claimant and respondents # 1.
3. On August 14, 1999, the claimant earned an average weekly wage of \$351.56 which generated weekly compensation benefits rates of \$232.00/\$174.00 for temporary total/permanent partial disability benefits.
4. On August 14, 1999, the claimant sustained an injury arising out of and in the course of her employment.

5. Respondents #1 shall pay all reasonable hospital and medical expenses arising out of the injury of August 14, 1999.

6. The claimant's healing period ended September 27, 1999, relative to the August 14, 1999 compensable injury.

7. On January 29, 2000, the relationship of employee-employer-carrier existed among the claimant and respondents # 2.

8. On January 29, 2000, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$185.00 for temporary total disability benefits.

9. On January 29, 2000, the claimant sustained an injury arising out of and in the course of her employment.

10. The claimant was temporarily totally disabled for the period beginning January 30, 2000, and continuing through February 8, 2000. Pursuant to Ark. Code Ann. §11-9-501, claimant is entitled to the payment of temporary total disability for the period February 6, 2000, through February 8, 2000.

11. Claimant's healing period ended on February 8, 2000, as a result of the January 29, 2000, compensable injury.

12. Respondents # 2 shall pay all reasonable hospital and medical expenses arising out of the injury of January 29, 2000.

13. On July 8, 2001, the relationship of employee-employer-carrier existed among the claimant and respondents # 3.

14. On July 8, 2001, the claimant did not sustain injuries, in the form of a low back strain or a spider bite, arising out of and in the course of her employment with respondents # 3.

15. On August 11, 2002, the relationship of employee-employer-carrier existed among the claimant and respondents # 4.

16. On August 11, 2002, the claimant sustained an injury arising out of and in the course of her employment.

17. The claimant was temporarily totally disabled for the period beginning August 12, 2002, and continuing through the end of her healing period, a date to be determined.

18. Respondents # 4 shall pay all reasonable hospital and medical expenses arising out of the injury of August 11, 2002.

19. Respondents have controverted these claim in their entirety.

### **CONCLUSIONS**

The claimant was employed by respondents as a certified nursing assistant. Claimant maintains that she suffered injuries arising out of and in the course of her employment with each of the respondents for which she is entitled to medical and indemnity benefits. Each respondent-employer has denied the compensability of the claims asserted by the claimant. Additionally, respondent # 1 maintains that any claim for workers' compensation benefits filed by the claimant growing out of the August 14, 1999, claimed injury is barred by the statute of limitations.

The present claims are governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provision.

It is not disputed that the claimant was employed by each of the respondents during the pertinent time periods. Further, the evidence reflects that prior to 1999 and her employment with respondent # 1, the claimant suffered injuries and complaints relative to her back as a result of

various accidents. There is no evidence to reflect that prior to August 14, 1999, the claimant was unable to perform her employment duties for respondent # 1.

The credible evidence in the record reflects that at the time the claimant suffered the injury to her back on August 14, 1999, she was performing employment duties when the chair back broke. The claimant suffered injuries to her left elbow, right hip, and a low back strain. The claimant was directed to remain on light duty for a period of 24 hours and thereafter return to regular duties on August 16, 1999. The claimant was seen by doctor on August 14, 1999, pursuant to the direction of respondent-employer # 1. The claimant was provided with Ibuprofen for pain and Flexeril, an anti-inflammatory (CX3).

While it is not disputed that the claimant had suffered complaints with her back and undergone diagnostic studies in the form of x-rays, since 1987, as previously noted, there is no indication that she was unable to perform her job duties prior to her August 14, 1999, injury in the employment of respondent #1. The evidence preponderates that a specific incident occurred on August 14, 1999, when the claimant fell and injured her hip and arm while discharging employment duties for respondent # 1. The claimant was assigned light duty work as a result of the treatment provided by the treating physicians relative to the August 14, 1999 injury.

In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 64 (1990). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

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, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) an injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the claim, compensation must be denied. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

With respect to the August 14, 1999, accident sustained in the employment of respondent the evidence preponderates that the claimant suffered an injury within the course and scope of her employment. Specifically, the claimant was in the process of performing her ADLs when the chair in which she was seated collapsed causing her to fall in the floor. The injury was reported to appropriate supervisory personnel of respondent. The evidence further preponderates that the claimant sought and obtained medical treatment as a result of the injury sustained in the August 14, 1999 injury. Dr. Joe McGrath noted that the claimant was seen on August 14, 1999, saying that the chair had broken that she was sitting on and that she had hit her head on the floor. The claimant also related during the August 14, 1999, visit that she experienced sharp pain in her right hip and multiple sore spots on the body. (CX1) The evidence clearly reflects that the claimant was seen by Dr. McGrath on August 14, 1999. In fact it was Dr. McGrath who diagnosed the claimant's complaint as left elbow right hip and low back sprain, and imposed restrictions or modifications on her employment activities for a period of 24 hours. Dr. McGrath, as previously noted, directed the

claimant to be seen at St. Bernard's Medical Center for x-rays. The claimant presented credible evidence regarding her complaints and symptoms subsequent to the August 14, 1999, compensable injury in the employment of respondent # 1. The evidence preponderates that the claimant has sustained her burden of proof by a preponderance of the credible evidence that she sustained an injury arising out of and in the course of her employment with respondent to her left elbow, right hip, and low back, on August 14, 1999, which required medical treatment.

The evidence further reflects that the claimant was again seen for complaints relative to her low back on September 26, 1999. The treatment rendered to the claimant by medical providers relative to her low back injury of August 14, 1999, was reasonable, necessary, and related to the compensable injury. Respondents are liable for the payment of said medical benefits.

The claimant asserts that she is entitled to the payment of temporary total disability benefits as a result of the August 19, 1999, compensable injury. The evidence reflects that respondent provided work for the claimant within her restrictions. Further, based upon the September 26, 1999, emergency room report from Newport Hospital, the evidence reflects that the claimant was working at the time of the visit. Indeed, the attending emergency room physician of September 26, 1999, authored an off-work slip reflecting that the claimant could return to work the following day, Monday, September 27, 1999.

While claimant asserts that at the time her employment was terminated by respondent # 1 approximately 30 days subsequent to the August 14, 1999, injury, she remained on light duty, the evidence in the record is to the contrary. The claimant did receive unemployment benefits after her employment with respondent #1 was terminated.

Respondent # 1's assertion that the claimant's claim for workers' compensation benefits relative to the August 14, 1999, compensable injury is barred by the statute of limitations is not persuasive. The evidence reflects that on or about July 18, 2001, the claimant filed a claim for workers' compensation benefits relative to the August 14, 1999, accident. In its response to the prehearing questionnaire, respondent # 1 contends that no benefits were paid relative to the August 14, 1999 accident. Ark. Code Ann. §11-9-702 provides that a claim for compensation on account of an injury shall be barred unless filed with the Commission within two(2) years of the date of the compensable injury. In the instant claim, the evidence preponderates that the claimant's injury occurred on August 14, 1999. Since respondents #1 maintain that they did not pay benefits in the claim, claimant had to on August 14, 2001, to file her claim for workers' compensation benefits. In the instant claim, claimant filed her claim for workers' compensation benefits on or about July 19, 2001, prior to the two year limitation.

The evidence discloses that claimant was employed by Respondent # 2 in January 2000, as a certified nursing assistant. Claimant, on January 29, 2000, suffered an injury to her left shoulder and arm within the course and scope of respondent. The evidence in the record in the reflects that claimant while discharging employment duties, suffered an injury when a door was closed on her by a co-worker. While there is some indication that the injury suffered by the claimant in the January 29, 2000, incident, was intentional on the part of the co-worker, there is no evidence to reflect that claimant was an aggressor in the incident. The evidence further reflects that the injury was reported to appropriate supervisory personnel of respondent and the incident documented. The evidence reflects that claimant sought and obtained medical treatment relative to the January 29, 2000, injury on January 30, 2000.

Claimant received medical treatment relative to the January 29, 2000, injury in the employment of Respondent # 2, relative to her left shoulder. A review of the medical records reflects a objective findings of the injury to include an edema in the left forearm and hand of the claimant as reflected in the February 4, 2000, physical therapy evaluation report. Claimant's injury was assessed as a light contusion to the left shoulder. Claimant received medical treatment relative to the injury to include anti-inflammatory pain medication as well as the previously noted physical therapy. There is evidence to reflect claimant was assigned to light duty work and permitted to perform said duties until she was placed under administrative leave by respondent-employer on February 3, 2000. The evidence preponderates that claimant last discharged employment duties for Respondent # 2, on February 2, 2000. Claimant did not reach maximum medical improvement until February 8, 2000, when she was discharged by the physical therapist.

Medical treatment provided to the claimant relative to her January 29, 2000, compensable left shoulder injury, was reasonable, necessary, and related to the injury. Respondents # 2 are liable for the payment of said medical treatment, to include medical related travel. Further, claimant is entitled to the payment of temporary total disability benefits, pursuant to Ark. Code Ann. §11-9-501, for the period February 6, 2000 through February 8, 2000.

The duration and extent of the claimant's employment by Respondent #3 is not disputed. Claimant asserts that on or about July 8, 2001, she suffered compensable injuries to her back in the form of a back strain and a spider bit. Respondent # 3 deny the compensability of the claimant's asserted injuries.

The evidence in the record reflects that by the time claimant commenced her employment with Respondent #3, which lasted for approximately twenty-two days, she had suffered her

compensable injury to her eyes while employed at a nursing facility in Dallas, Texas, in addition to the prior injuries sustained in the employment of Respondent #1, and Respondent # 2.

Claimant was employed by Respondent # 3, for a period of approximately twenty-two days. Claimant concedes that when she commenced her employment with Respondent # 3, she was experiencing back pain. Claimant maintains that she suffered a injury to her back in the form of a gradual onset while in the employment of Respondent # 3, in July 2001. Claimant also maintains that she suffered a spider bite in her lower back while employed by Respondent #3.

In order to prove that she is entitled to compensation for her back injury the claimant is required to prove either that she sustained an injury arising from a specific incident identifiable by time and place of occurrence or that she sustained an injury arising out of and in the course of her employment that is the major cause of her disability or need for treatment. In the instant claim, claimant does not assert a specific incident injury relative to her low back as a result of her employment with Respondent # 3, in July 2001. While the evidence does disclose that claimant sought and obtained medical treatment at the emergency room at Newport hospital, on July 10, 2001, and registered complaints relative to a spider bite on her back and back pain, there is on evidence to reflect that the afore was the product of an injury in the employment of Respondent # 3.

With respect to the spider bite, claimant reported to the attending emergency room physician that she had been bitten by a spider. Claimant conceded that she did not see a spider on July 8, 2001, while discharging employment duties, only that she felt something crawling on her. Claimant does not present evidence that she was bitten by a spider at work on July 8, 2001, or any other insect on said date. While the medical reflects that claimant received treatment for two small blisters on her back from the emergency room medical physician on July 10, 2003, the same does not preponderate

that it arose out of and in the course of her employment with Respondent # 3.

Additionally, claimant does not present evidence with preponderates that she suffered a gradual onset injury to her back within the course and scope of her employment with Respondent # 3. Claimant has failed to sustain her burden of proof by a preponderance of the evidence that she suffered either an injury in the form of a gradual onset back injury within the course and scope of her employment with Respondent # 3 or did she suffer an injury in the form of a spider to her back within the course and scope of her employment with Respondent # 3.

Claimant was employed by Respondent # 4, Woodbriar Nursing Home, on August 11, 2002. The evidence preponderates that while discharging employment duties for Respondent # 4, claimant suffered an injury to her back when she assisted a client who was in the process of falling. Evidence in the record reflects that the client that was assisted by the claimant weighed approximately 300 pounds, and that as the patient's leg gave way under her claimant held on to her to ease her down.

The injury was reported to supervisory personnel of respondent #4 following its occurrence and claimant was directed to go home. Claimant sought and obtained medical treatment relative to the increase in her symptoms and complaints relative to her low back growing out of the August 11, 2002, injury.

On August 13, 2002, claimant was seen by Dr. Jerry Frankun and prescribed medication to include Robaxin. Dr. Frankun also prescribed medication of another during the August 13, 2002, visit for the claimant for complaints growing out of the August 11, 2002, injury. It is undisputed that claimant was scheduled to be seen at UAMS prior to her August 11, 2002, accident. Indeed, claimant had given two weeks notice to Respondent # 4, that she could be terminating her employment because her residuals head injury. Nevertheless, as previously cited, if the employment

aggravates or accelerates or combines with the pre-existing disease or infirmity to produce the disability for which compensation is sought, the same is compensable. See *St. Vincent Medical Center, supra; Nashville Livestock, supra; Arkansas Power & Light v Scroggins, 23 Ark. 932,328 S.W. 2d 97 (1959)*.

The evidence preponderates that the claimant suffered an injury arising out of and in the course of her employment with Respondent # 4 on August 11, 2002, which rendered her totally incapacitated for engaging in gainful employment commencing August 12, 2002, and continuing through the end of the healing period, a date yet to be determined. Further, the evidence preponderates that medical treatment rendered to and on behalf of the claimant relative to her August 11, 2002, compensable injury, is reasonable, necessary, and casually related to the compensable injury. Respondent has controverted claimant's entitlement to workers' compensation benefits relative to the August 11, 2002, compensable injury, in its entirety.

#### AWARD

Respondents # 1, are hereby ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of claimant's compensable injury of August 14, 1999.

Respondents # 2, are hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$185.00, for the period February 6, 2000 through February 8, 2000, as a result of the claimant's January 29, 2000, compensable injury. Said sums accrued shall be paid in lump without discount.

Respondents #2 are further ordered and directed to pay all responsible medical, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's

compensable injury of the January 29, 2000.

Respondents # 4, are hereby ordered and directed to pay to the claimant temporary total disability benefits at the appropriate compensation benefit rate for the period covering August 12, 2000, and continuing through the end of claimant's healing period, as a result of the claimant's compensable injury of August 11, 2002. Said sums accrued shall be paid in lump without discount.

Respondents # 4 are further ordered and directed to pay all reasonable related medical, hospital, and nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of August 11, 2002.

These awards shall be 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