

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F204365**

**ROSIE C. GAY**

**CLAIMANT**

**ARKANSAS CHILDREN'S HOSPITAL  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED SEPTEMBER 30, 2004**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES W. STANLEY, Attorney at Law,  
Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law,  
Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on July 13, 2004. A prehearing conference was held on May 20, 2004 and a prehearing order was filed the same date. 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. There was a compensable injury on April 20, 2002.
2. The compensation rate is \$125.

The claimant contends that she is entitled to temporary total disability benefits from March 4, 2004, to a date to be determined and attorney's fees.

The respondents contend that the disability benefits the claimant is contending she is entitled to, beginning March 4, 2004 and continuing, is not causally related to the

April 20, 2002, work-related injury. The respondents contend that temporary total disability benefits were paid from April 21, 2002 through June 30, 2002, and all medical benefits have been paid except the treatment with Dr. Charles Schock, beginning January 2004.

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. There was a compensable injury on April 20, 2002.
2. The compensation rate is \$125.
3. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period following treatment causally related to her work injury and totally unable to return to work.

**DISCUSSION**

The claimant, 46 years old, sustained a low back injury on April 20, 2002, while lifting and changing patients on her job with the respondent employer. The claim was accepted as compensable and benefits were paid for a period of time.

The claimant treated with Dr. Stephen Tucker and Dr. John Wilson for a time and then requested a change of physician to Dr. Reginald Rutherford. This change of physician was authorized by the Arkansas Workers' Compensation Commission on October 8, 2002. According to the claimant, she changed doctors to Dr. Charles Schock in January 2004, without consulting the workers' compensation insurance adjuster. Dr. Schock performed back surgery on the claimant in March 2004 and the claimant continues to treat with Dr. Schock. According to the claimant, Dr. Schock took her off work for a year. The claimant testified that she sits in a recliner most of the time with her feet elevated. She does not drive, cook or clean around her house.

The medical evidence indicates the claimant was diagnosed with a lumbar strain and treated very conservatively. A MRI presented normal results with no evidence of nerve root irritation or damage or herniations. On May 26, 2002, Dr. John Wilson released the claimant to return to her normal duties. On May 29, 2002, Dr. Wilson again saw the claimant and took her off work again for two weeks in order for her to receive physical therapy. On June 12, 2002, Dr. Wilson evaluated the claimant again and released her to work with a 25-pound lifting limitation for two weeks and to make a return appointment. The claimant was evaluated again on June 26, 2002, by Dr. John Wilson and she advised the doctor that no light-duty work was available at her work. Dr. Wilson again released the claimant back to work full duty.

On September 5, 2002, the claimant was evaluated by Dr. Reginald Rutherford and he opined the claimant could return to full unrestricted duties, as had been recommended. Dr. Rutherford ordered a bone scan and EMG studies, since a MRI had already been performed. According to Dr. Rutherford, the bone scan was normal and

the EMG studies did not reveal any evidence of injury or abnormality of the peripheral nervous system. Dr. Rutherford did recommend the claimant use a TENS unit and saw the claimant again on September 18, 2002. Dr. Rutherford did not recommend surgery. Dr. Rutherford indicated the claimant did not maintain the requested follow-up with him after September 18, 2002. Dr. Rutherford was asked to review the report of the MRI taken February 25, 2004, and after a review, he opined that there was nothing in these findings to account for the claimant's complaint of right leg pain with numbness. Dr. Rutherford did not find the more recent MRI significantly different from the earlier MRI nor did he find a mild bulge at L4-5 level to be significant for a middle-aged adult. Dr. Rutherford finally did opine that a bulge could be caused by trauma or could be due to general degenerative disk disease over the years. There's no way to differentiate.

The claimant contends that she is entitled to temporary total disability benefits from about March 4, 2004, until she is released by her physician. The respondents contend the medical treatment the claimant sought about March 4, 2004, is not causally related to the April 20, 2002, work-related injury and not reasonably necessary for her condition.

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 sought treatment from a physician she chose without getting permission or authority from the insurance company or the Arkansas Workers' Compensation Commission. The claimant had previously treated with Dr. Stephen Tucker and Dr. John Wilson, but requested and received authority to

change physicians to Dr. Reginald Rutherford, a neurologist. The respondents assert it has not controverted treatment with Dr. Rutherford. The claimant testified that she chose Dr. Charles Schock on her own and began seeing Dr. Schock and using her group health insurance. Dr. Schock performed a fusion at L4-5 about March 4, 2004, and the claimant remained off work. The only medical to support the need for surgery is the June 29, 2004, letter from Dr. Schock that notes the claimant performed a job for five years that included frequent heavy lifting. Dr. Schock opined, in part:

I believe this would be a very typical history of one with degenerative disc disease and spinal stenosis at L4-5 that she had. I believe it is likely that this did come as a result of not only her injury in 04/02, but the repeated lifting she did on the job in the 5 years previous to this. I believe this to a reasonable degree of medical certainty. (Cl. Exh. No. 1, p. 1.)

I find the claimant has failed to prove by a preponderance of the evidence that the surgery and her off-work status was causally connected to the work-related injury. The claimant has on her own chosen an unauthorized doctor to treat and now perform surgery requiring her to remain off work. The claimant's two previous authorized treating specialists have both opined that surgery was not recommended and have released the claimant to return to full-duty work. The single physician report from Dr. Schock and the claimant's testimony were not persuasive in connecting the claimant's condition and need for surgery and recovery to her work-related injury, which had been diagnosed as a lumbosacral strain.

### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period following treatment causally related to her work injury

and totally unable to return to work. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**