

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F203380**

<b>BETH A. GOODWIN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MAVERICK TUBE LP, EMPLOYER</b>	<b>RESPONDENT</b>
<b>CROCKETT ADJUSTMENT, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 19, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 21, 2004, Jonesboro, Craighead County, Arkansas.

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

Respondents represented by the HONORABLE DAVID LANDIS, Attorney at Law, Jonesboro, Arkansas.

**STATEMENT OF THE CASE**

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

A prehearing conference was conducted in this claim on July 22, 2003, from which a prehearing order of July 23, 2003, 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 issues. The prehearing order is herein designated a part of the record as Commission Exhibit No. 1.

The testimony of Beth Goodwin, the claimant, Tommy Wrinkles, Jeff Hollingsead, and Danny Harris, coupled with the September 25, 2003, deposition of Dr. Manual Carro and the August 2, 2003, deposition of the claimant, along with medical reports, photographs and other documents comprise the record in this claim.

## DISCUSSION

Beth A. Goodwin, the claimant, with a date of birth of September 17, 1959, is a 1977 high school graduate. Claimant commenced her employment with respondent on May 5, 1995. Claimant last discharged employment duties for respondent on April 12, 2002, however ceased being an employee of respondent in April 2003.

During the course of her employment with respondent claimant worked in several different areas, to include the shipping department, in the mill end as a band table operator; and finally the quality control department. The testimony of the claimant reflects that the physical demands of her job in quality control entailed bending, moving around quite a bit and lifting. Claimant denies experiencing difficulties or complaints relative to her low back prior to 2002, which required medical treatment. Claimant acknowledged that she may have suffered urinary track or kidney affections prior to 2002, for which she sought medical treatment under the care of her person physician at the time Dr. David Jain. The testimony of the claimant reflects that Dr. Jain had been her family physician for a period of approximately ten years before she changed treating physician to Dr. John William, a Blytheville general practitioner.

The testimony of the claimant reflects that in January, 2002, she suffered an injury to her low back in the nature of a muscle strain while discharging employment duties for respondent, however she did not seek treatment relative to the January , 2002, incident nor was she off from work as a result of same. Further, the testimony of the claimant reflects that she fully recovered from the January 2002, incident. In early March 2002, claimant's testimony reflects that she suffered another injury to her low back in the form of muscle strain, while discharging employment duties for respondent. Claimant sought medical treatment relative to the March 2002, incident under the care

of her family physician, Dr. John Williams, however did not lose time from work. The medical records of Dr. Williams reflects the March 12, 2002, entry regarding the claimant. The entry in the records of Dr. Williams reflects an assessment of acute bronchitis-URI and lumbar back pain among other complaints. Claimant was provided medication for her complaints to include Celebrex for her back pain by Dr. Williams. (JX, 3) Dr. Williams' office note further reflects the entry of March 26, 2002, with the notation NS, indicating a no show, relative to the claimant. Claimant denies experiencing low back complaints subsequent to March 12, 2002.

On March 28, 2002, claimant worked the day shift, which commenced at 8:00 a.m. and concluded at 4:00 p.m. On said date, claimant discharged the employment duties of an inspector in the quality control department of respondent-employer. The testimony in the record reflects that between 10:00 a.m. and 10:30 a.m., on March 28, 2002, claimant was requested by her supervisor, Tommy Winkles, to assist in moving a pipe. While the claimant and Mr. Winkles were moving the pipe, a pipe underneath the one being raised stuck and subsequently came a loose. The pipe that came a loose fell and struck the claimant. In relaying the mechanics of the March 28, 2002, accident, the testimony of the claimant reflects:

There was two bundles, one stacked on top of the other. He cut the bands, and we were going to lift the top one off, and they were stuck together because there's burrs on the end of the saw—on the end of the but. So I had to get beside it to pry it backwards to get it loose, and as I did that, the one below it fell, uh, hit my hip and leg and landed on my ankle. (JX 2, p28)

The testimony of the claimant and that of Mr. Tommy Winkles, her supervisor, reflects with the addition to attempting to avoid being struck by the falling pipe, they maintained control of the pipe

being lifted. Claimant asserts that the pipe hit her on her left leg, hip, and landed on the top of her foot or ankle. Following the incident, and after successfully lowering the pipe that she and Mr. Wrinkles were lifting at the time of the accident, Claimant maintains that Mr. Wrinkles came down as ask her if she was okay. Claimant's testimony reflects, regarding her response to the injury:

I told him no. Uh, he said go ahead go the bathroom because or, you know, whatever I need to do and check it out, and he was - - or cry. And. uh, he would get someone else to help him move the rest of them.  
(JX. 2, p35)

Claimant estimated that the weight of the falling pipe that struck her was approximately one hundred thirty pounds. After going to the restroom to check on her injury, claimant returned to the line. Claimant testified that she had another conversation with Mr. Wrinkles after coming out of the bathroom:

Uh, he asked me why was I limping and I said because it hurt. And, uh, at that point and time, he had moved up to the mill part. And, uh, Ron Brown, I believe, was there and asked me what had happened, and I told him that we had dropped the tube and it had landed on my ankle. (JX. 2, p36)

The testimony in the record reflects that claimant completed her work shift on March 28, 2002, following the accident. Claimant's testimony further reflects that it was her impression that a holiday occurred the following day, which was a Friday, and a consequence of same she was off work until the following Monday. The incident having occurred on Thursday, March 28, 2002. The calender reflects that Friday, March 29, 2002, was Good Friday.

Claimant's testimony reflects that when next there was an inquiry by Mr. Wrinkles regarding her well being following the March 28, 2002, accident, the same was on the following Monday and

she responded that she was still sore and hurting. Claimant recalls another incident where she was about to get off work and Mr. Wrinkles and Jeff Hollingsead, the quality control supervisor on the night shift, were present when Mr. Wrinkles asked her about her leg. Claimant asserts that she responded that it was still bruised and sore and hurting. Claimant acknowledged that she worked her regular shift, except for the holiday that occurred after the March 28, 2002, incident until April 15, 2002. Claimant maintains that her symptoms grew progressively worse. After claimant realized there would not be an improvement in the complaints she contacted respondent and sought authorization to obtain medical treatment for her complaint attributable to the March 28, 2002, accident.

Claimant is a residence of Kennett, Missouri. Respondent-employer is located in Blytheville, Arkansas. Claimant's current family physician, Dr. John Williams, is also located in Blytheville, Arkansas.

There is not a dispute regarding the occurrence of an event on March 28, 2002, while the claimant was lifting a pipe with her supervisor, Tommy Wrinkles. Mr. Wrinkles, who has been an employee of respondent since April 1992, and a supervisor in quality control since June 1993, testified that as supervisor he is responsible the quality control department, with inspector that inspect the products that being run. With respect to the claimant's job duties, Mr. Wrinkles' testimony reflects:

Her job was lab assistant. She worked in quality control she was lab assistant at one point; a milltronics operator, which is a machine which we samples out with; and a mill inspector, actually inspecting the tubing products being run. (T.10)

Mr. Wrinkles noted that there was lifting involved in the discharged of the duties of a mill inspector. Regarding the weights lifted as a routine part of the claimant's job duties as a mill inspector in

quality control, Mr. Wrinkles testified:

It depends. The majority of the lifting is there 36-inch samples we cut. On occasion, we may run into problems with the product, where we need to get a sample out of the bundle. May lift up to a hundred, a little over a hundred pounds on the pipe, with two people lifting on the ends. (T. 11)

Mr. Wrinkles testimony reflects that he has been in the plant with the claimant for approximately three to four years, during which time claimant was able to perform her job very well. Additionally, Mr. Wrinkles noted that claimant was a consistence employee with respect to being at work and putting in a days work without complaint .Mr. Wrinkles corroborated claimant's testimony regarding having sustained a strain to her back while lifting a sample on the milltronics, prior to March 28, 2002. Mr. Wrinkles is uncertain whether the claimant missed any time from work as a result of the pre-March 28, 2002 incident.

Regarding the March 28, 2002, incident, the testimony of Ms. Wrinkles, reflects:

Okay, sir. We were running the product on the mill, and can't remember exactly what size, but they were probably 20 - - they were 20 or 24 foot long in length. Product would have weighed in the neighborhood of a hundred to a hundred and thirty pounds for the piece of pipe that we were trying to pick up. We had a problem with steel defects on the product, so we needed to get a sample of this. So we were removing a piece from the bundle. We have a bundle of so many pieces, may have been 25, may have been 30, 36. We were removing the top corner piece out of the bundle, and the second piece that was directly under that fell off and hit Beth in the leg. (T. 12-13)

Mr. Wrinkles testified that the bundle of pipe being lifted was approximately his waist height and that he was on one end and that claimant was on the other end, and that when the pipe fell it hit the

claimant on her leg or in the shin. At another point, in describing the mechanics and his and claimant's action with respect to the incident, Mr. Wrinkles testified:

When it fell, with the pipe we were holding, nothing happened. We both held onto the pipe, maintained control of it. The other pipe fell and hit the ground. And, like I say, the end struck Beth's leg or left shin. (T14)

At another point, Mr. Wrinkles testified that while he could not say that he saw the claimant jump out of the way when the pipe fell, the two of them still controlled the pipe they were holding and he did remember seeing the claimant bring her left leg back. (T.37) Following the incident Mr. Wrinkles testified:

Okay. My observation of Beth, I talked to Beth to see if she was all right. She said it had hit her leg. She had on tight-fitting cuffed jeans, so she couldn't lift the leg up. So she went to the ladies' restroom and checked her leg out and look at it. And I asked her after she got out, and she said it was going to be bruised. (T.14)

While Mr. Wrinkles testified that after the incident he did not see the claimant limping nor was he able to tell that she was in pain. At another point on questioning by claimant's attorney, Mr. Wrinkles acknowledged that he and the claimant were aware that the claimant's leg was bruised as a result of the pipe hitting it and that it was hurting. (T. 15). Claimant completed her work shift on March 28, 2002. Mr. Wrinkles' testimony reflects, with respect to his inquiry regarding the claimants well being:

I didn't notice anything, but we did talk about it at least on two other occasions: The next morning I asked her how it was, and she said it was bruised. And then I remember, following the weekend, on Monday morning I asked her how it was and, again, it was

bruised. (T. 15 )

Mr. Wrinkles acknowledged that as a supervisor in the employment of respondent it was his responsibility to make a determination whether to do an injury reports when an employee report having sustained a work-related injury. Further, Mr. Wrinkles acknowledged that he did not do an injury report regarding the March 28, 2002, incident involving the claimant because it was a bruised leg.

On or about April 13, 2002, Mr. Wrinkles suffered a heart attack and was out of the work place for a period of six to seven weeks. The testimony of Mr. Wrinkles reflects that on April 15, 2002, while in the hospital, he received a telephone call from Danny Harris, the lost control manager for respondent-employer, and was notified that the claimant had asserted a work-related injury to her back as a result of the March 28, 2002, incident. Mr. Wrinkles, while confirming the incident of March 28, 2002, involving the claimant, denies that there was an injury to the claimant's back in the incident. The evidence in the record reflects that on April 15, 2002, claimant contacted supervisor personnel of respondent-employer and requested medical benefits relative to a work-related injury to her back as a result of the March 28, 2002, incident. With respect to her decision to seek medical treatment on April 15, 2002, claimant's testimony reflects:

It had just, rather than going away, as I had hoped it would, it just kept on getting worse and worse, and it got to the point where I just simply couldn't stand it any longer. That entire weekend before I went to the doctor is when my legs started jumping, involuntarily jumping. And that is when, the next day I knew, you know I had been up and been up and in pain, and that is when I called and asked about a doctor's appointment. (T.52)

Claimant's testimony reflects that she initially called Jason Beck and requested authorization

to go to the doctor. Claimant was informed by Mr. Beck that there was no record of any accident at all and that he could not give her authorization to go to any doctor. Following her conversation with Mr. Beck, claimant e-mailed Danny Harris and relayed that she had suffered an on-the-job injury and sought authorization for medical treatment relative to same. Again, authorization for said treatment was denied.

As a consequence of the above, claimant sought medical treatment under the care of her family physician, Dr. John Williams. As previously noted, the medical reports of Dr. Williams reflect that claimant relayed a history of a March 28, 2002, work-related injury as the basis for her need for medical treatment during her April 2002, telephone call scheduling the appointment. Further, claimant again relayed a history of the March 28, 2002, injury to Dr. Williams as the time of her April 16, 2002, initial visit for medical treatment relative to her back complaint.

After receiving initial medical treatment under the care of John Dr. Williams on April 16, 2002, relative to complaints regarding her back attributable to the March 28, 2002, work-related incident. Claimant has remained under the care and treatment of Dr. Williams and other medical providers since. Dr. Williams conducted a physical examination, performed diagnostic studies, and prescribed medication for the claimant's low back complaint. Dr. Williams also imposed work restrictions relative to the claimant following the April 16, 2002, initial visit.

The medical in the record reflects that on June 26, 2002, claimant was seen by Dr. John Corckarell, a physician at Campbell Clinic, in Memphis, Tennessee. Dr. Corckarell authored work restrictions relative to the claimant's employment activity to include a ten pounds weight limit, no stooping, no bending, no climbing and no crawling. (JX..3) Claimant testified that she only saw Dr Corckarell on two occasions and that as a result of the last visit she received the June 26, 2002, work

restrictions release. (JX. 2, p50-52).

Claimant was ultimately referred by Dr. Williams to Dr. Thomas Hart, a Little Rock pain specialist, for complaint attributable to the March 28, 2002, incident. Claimant was initially seen by Dr. Hart on June 28, 2002, and remained under the care and treatment of same through July 11, 2003. While under Dr. Hart care and treatment claimant underwent additional diagnostic studies, (to include a discogram), epidural steroid injections, percutaneous discectomy at L4-5, facet joint injections, and radiofrequency denervation. Finally, on June 9, 2003, claimant underwent an evaluation under the care of Dr. Manuel F. Carro, at the Semmes Murphy Clinic and was assessed at having reached maximum medical improvement with an anatomical impairment of 8% to the body as a whole based upon the 5<sup>th</sup> Edition AMC Guide To Permanent Impairment. (JX. 1, Exhibit #1). During the course of his September 25, 2003, deposition, Dr. Carro noted that based upon the 4<sup>th</sup> Edition AMA Guide Permanent Impairment the extent of the claimant's impairment is 5% to the body as a whole.

Claimant asserts entitlement to temporary total, medical, and indemnity benefits to correspond with the anatomical impairment as a result of the March 28, 2002, injury in the employment of respondent. Respondents controvert the claim in its entirety.

In addition to the testimony of Mr. Tommy Wrinkles, respondent also puts forth the testimony of Mr. Jeff Hollingsead, the quality control supervisor on the evening shift during the claimant's employment with respondent, and Mr. Danny Harris, the loss control manager for respondent-employer. While it is noted that respondent is a self-insured employer for both its workers' compensation obligations and group health insurance, in the instant claim, the claimant's medical expenses have been paid by the health care aspect or coverage of respondent-employer.

From all of the evidence, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 28, 20 02, the relationship of employee -employer existed between the parties
3. On March 28, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$325.00/\$251.00, for TTD/PPD benefits.
4. On March 28, 20 02, the claimant sustained an injury to her back arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period beginning April 15, 2002, and continuing thorough June 9, 2003.
6. The claimant's healing period ended June 9, 2003.
7. The claimant has a permanent physical impairment in the amount of 5% to the body as a whole.
8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of March 28, 2002.
9. The respondent has controverted this claim in its entirety.

### **CONCLUSIONS**

The present claim is one governed by the provisions of 796 of 1993, in that the claimant asserts having sustained a work-related injury subsequent to the effective date of the afore provision. In the instant claim, the evidence preponderates that on March 28, 2002, while discharging employment duties an incident occurred while the claimant and her supervisor were lifting a length

of pipe weighing 130 pounds.

The credible evidence in the records reflects that even while another length pipe fell as the claimant and her supervisor were lifting one length of pipe, maintained control of the piece of pipe being lifted. Further, the falling piece of pipe struck the claimant on her left lower extremity. Claimant credible testified that as she lifted the pipe she was to the side and that the falling piece struck her along her hip, leg, and ankle on the left side. Claimant's supervisor, while conceding that the pipe struck the claimant of her left shine, acknowledged that he observed the claimant left leg move in an effort to avoid being struck.

The evidence in the records reflects that prior to March 28, 2002, claimant had suffered two injuries involving strains to her low back, one in January 2002, wherein she did not seek or obtain medical treatment, and one in early March 2002, wherein claimant did receive some medical treatment, however did not lose time from work. The claimant was seen by Dr. John Williams on March 12, 2002, and received medical treatment for several complaints, to include a lumbar strain. There is no evidence to reflect that claimant continued to experience residuals from either the January 2002, or early March 2002, lumber complaints at the time of the March 28, 2002, incident. The credible evidence reflects that the claimant had successfully perform her employment duties in the employment of respondent as an inspector in the quality control division consistently and without complaint prior to March 28, 2002.

Subsequent to March 28, 2002, the credible evidence reflects that claimant experience complaints relative to her low back, attributable to incident involving the lifting of the 130 pound pipe in combination with her movements and efforts to avoid being struck by the falling pipe as well as maintaining control of the pipe being lifted. Claimant's complaints relative to the March 28, 2002,

incident relative to her low back and low extremity progressively worsen until the point in time she sought authorization for medical treatment on April 15, 2002. Respondent was aware of the March 28, 2002, incident in that the claimant's supervisor was present and a participant in the lifting incident wherein claimant suffered the injury. Claimant has been unable to work since April 15, 2003, as a result of residuals of her compensable injury and medical restrictions placed upon her employment activities by treating and/or examining physicians.

To prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant has to establish by a preponderance of the evidence: a injury arising out of and in the course of employment; that the injury caused internal or external to the body which required medical services or resulted in disability or death; medical evidence support by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002). Mikel v Engineered Specialty Plastic, 56 Ark. App. 126, 938 S. W. 2d 876 (1997).

In the instant claim, the claimant has sustained her burden of proof by a preponderance of the evidence that she in fact suffered an injury to her back as a result of a specific incident on March 28, 2002, arising out of and in the course of her employment with respondent. Further, the evidence preponderates that the injury resulted in internal and external harm to the body and required medical services and resulted in disability to the claimant. Clearly, as reflected in the medical evidence, claimant sought medical treatment on April 15, 2002, when she notified respondent of her need for medical treatment relative to the March 28, 2002 incident. Claimant did not report for work on April 15, 2002, because she was unable to do so. Claimant was seen by her treating physician, Dr. John

Williams, on April 16, 2002, and relayed a history of March 28, 2002, incident as the basis for her need for medical treatment. Claimant remained off work pursuant to the directions of her treatment physician subsequent to April 15, 2002. Although released to restricted job duties by Dr. Williams, the restrictions imposed on the claimant's employment activities were such that respondent did not have work available for the claimant.

The evidence further reflects that claimant underwent diagnostic studies while under the care and treatment of Dr. Williams and other medical providers for complaints attributable to low back pain, and pain in her lower extremity, attributable to the March 28, 2002, incident. Claimant was referred by Dr. Williams to Dr. Thomas Hart, a Little Rock pain management specialist, for treatment relative to her complaints growing out of the March 28, 2002, incident. Among the diagnostic studies performed by Dr. Hart, relative to the claimant, was an August 22, 2002, discogram as well as a CT scan by Dr. Michael Gregory, which identified internal disk disarrangement at L4-5 level. (JX3)

The results of the discogram is an objective finding satisfying the requirement of Ark. Code Ann. §11-9-102(16). Smith v. County Market/Southeast Foods, 73 App. 33, 44 S.W. 3d 737 (2001). Finally, the evidence preponderates that the injury to the claimant's low back of March 28, 2002, was caused by a specific incident and is identifiable time and place of occurrence. Respondent has controverted the claimant's entitlement to workers benefits relative to her low back as a result of the March 28, 2002, compensable injury.

It is undisputed that on April 15, 2002, respondent, through supervisory personnel, was notified by the claimant that she required medical treatment relative to her low back as a result of

a work-related injury which occurred on March 28, 2002. Respondent initially, through its representative, Jason Beck, denied the compensability of the claim asserting that there was not an incident report generated as a result of the March 28, 2002, incident. While it is not disputed that a report was not generated, the occurrence of the incident is clearly established through the testimony of the claimant and that of her supervisor, Tommy Wrinkles. Claimant was denied authorization to obtain medical treatment relative to a work-related injury by supervisory personnel of respondents on April 15, 2002. Nonetheless, the claimant did in fact obtain medical treatment under the care of her family physician, Dr. John Williams, and that in relaying her need for medical treatment provided a history of a work related injury to March 28, 2002. A review of the medical in the record reflects that same history has been relayed by the claimant to each of her medical providers, to include examining and treating physicians.

Respondent maintains that as a self-insured employer for both its health care obligations and workers' compensation, any claim for medical treatment asserted as a result of a work related injury and filed on the health care provider would not be paid by the provider but instead kick out of the system. Respondent also provide testimony asserting that the same would hold true for any claim for workers' compensation benefits which was filed on the group health care provider enter as a work-related injury. Nonetheless, the evidence clearly reflects that respondent paid medical benefits relative to the claimant's treatment regarding her low back complaints to medical providers despite that the history relayed by the claimant to the providers indicating that the need for treatment was the product of a work-related injury. During the course of his testimony Mr. Danny Harris, the loss control manager, acknowledged that when claimant e-mailed him on April 15, 2002, regarding a need for medical treatment and seeking authorization of treatment, the e-mail reflected that the

basis for the need to treatment was the product of a work-related injury.

In the instant claim, the evidence reflects claimant received medical treatment under the care of Dr. John Williams, relative to the compensable low back injury of March 28, 2002, on April 16, 2002. Further, treatment rendered to the claimant by Dr. Williams was reasonable, necessary, and casually related to the compensable injury. Claimant was referred by Dr. Williams to Dr. Thomas Hart, a Little Rock pain management specialist, on June 28, 2002. Prior to the referral of the claimant by Dr. Williams to Dr. Hart, respondent had an opportunity to refer the claimant to physicians within its net work based upon the claimant's April 15, 2002, request. Respondents failed to do so and denied the compensability of the claim. Medical treatment rendered to the claimant under the care of Dr. Hart, to include diagnostic studies, medication, epidural injections, the discogram, the percutaneous discectomy, as well as facet joint injections, were reasonable, necessary, a casually related to the claimant's March 28, 2002, compensable injury. (JX 3 ).

While the percutaneous diskecomy performed by Dr. Hart on September 19, 2002, at L4-5 was successful and without complection, claimant continued to have complaints of pain in the low back area and down the lower extremity. Further diagnostic studies performed by Dr. Hart disclose that the claimant has arthritic changes, osteoarthritis, and osteopenic changes to the facets which Dr. Hart noted could cause the claimant back pain complaints. In an further effort to address claimant's continued complaints of pain, Dr. Hart performed facet joint injections. (JX 3)

While it is not disputed that any arthritic changes identified in the claimant's spine pre-dated the March 28, 2002, compensable injury, the evidence in the record reflects that claimant did not have the complaints of pain in her lumbar spine to the extent that she currently has prior to the March 28, 2002, event. Further, claimant had suffered an incident in January 2002, in the form of a back

strain and the same had resolved prior to March 2002, not requiring either medical treatment or time from work. Additionally, the early March 2002, low back strains suffered by the claimant in the discharge of employment duties for respondent did not require time off from work and was treated by her family physician with pain pills and muscle relaxants. Claimant's credible testimony reflects that the same had resolved by the time of the March 28, 2002, injury to her low back.

The evidence clearly reflects that on March 28, 2002, claimant suffered a specific incident injury to her low back which resulted in either hyper extension or hyper flexion in the lumbar area. Subsequent to the March 28, 2002, incident, claimant has been symptomatic with respect to her low back to include the previously asymptomatic osteoarthritis condition. A pre-existing disease does not disqualify a claim if the employment aggravated, accelerated, or combine with the disease are infirmity to produce the disability for which compensation is sought. St. Vincent Infirmity Medical Center v. Brown. 3 Ark. App. 30, 917 SW2d 550(1996); Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 64 (1990). The employer takes the employee as he finds him, and employment circumstances that aggravates a pre-existing condition are compensable. Arkansas Power & Light Company, v Scroggins, 230 Ark. 936, 328 SW2d 97 (1959).

Ark. Code Ann. §11-9-508(a) mandates that the employer promptly provide for an injury employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. What constitutes reasonable necessary medical is a fact question. In the instant claim, the evidence preponderates that medical treatment rendered to the claimant under the care of Dr. John Williams, Dr. Thomas Hart, and Dr. Crockarell, and pursuant to the directions of the afore physicians, was reasonably necessary relative to the claimant's compensable injury. The fact that claimant continues to experience symptoms and complaint attributable to the March 28,

2002, compensable injury after undergoing treatment under the afore physicians does not negate the reasonableness or the relatedness of treatment relative to the claimant's compensable injury. Indeed, the claimant was seen on June 9, 2003, by Dr. Manuel Carro at the request of respondent, and based upon his review of the pertinent medical records relative to the claimant, Dr. Carro concluded that claimant would benefit from a chronic pain medicine management program to assist with pain relief. The evidence preponderates that medical treatment rendered to the claimant was reasonable necessary and causally related to her compensable injury. Respondent has controverted claimant's entitlement to said medical treatment.

Claimant regularly performed job duties prior to March 28, 2002, in the employment of respondent. The evidence discloses that claimant successfully performed her job duties without complaints and with consistency prior to March 28, 2002. Subsequent to April 15, 2002, claimant was placed on medical restrictions relative to employment activities as a result of the March 28, 2002, compensable injury to her low back. Claimant remained under the care of her treating physician subsequent to April 15, 2002, and received active medical treatment for her injury to her low back or March 28, 2002, to include physical therapy, and surgery. On those occasions when claimant was released to restricted duties, respondent was not in position to provide work within the medical restrictions imposed upon the claimant by her treating and/or examining physicians. The hearing period is that period for healing of an injury which continues until the claimant is as far restored as the permanent character of the injury would permit. If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 SW 2d 457 (1994).

In the instant claim claimant was evaluated by Dr. Manuel Carro on June 9, 2003. Following his examination of the claimant coupled with a review of prior medical records, Dr. Carro concluded that the claimant had reached maximum medical improvement as of the date of the evaluation. The evidence discloses that claimant was seen by Dr. Carro only on one occasion, June 9, 2003. Subsequent to the June 9, 2003, evaluation by Dr. Carro, claimant was seen by her authorized treating physician, Dr. Thomas Hart, on July 11, 2003. While a review of Dr. Hart's report relative to the afore visit discloses a history of his contact with the claimant, and medical treatment provided relative to same, there is no evidence to reflect that active medical treatment was provided to the claimant during the visit. The evidence in the record preponderates that claimant reached maximum medical healing as a result of the March 28, 2002, compensable injury on June 9, 2003.

Temporary total disability is that period within the healing period in which the claimant suffers a total incapacity to earn wages. Arkansas State Highway & Transportation Department v Breshears, 272 Ark. 244,613 SW 2d 329 (1981); Georgia Pacific Corp. v. Carter, 62 Ark. App. 162, 969 SW2d 677 (1998). The evidence preponderates that the claimant was within her healing period subsequent to April 15, 2002, as a result of the March 28, 2002, compensable injury, and totally incapacitated from engaging in gainful employment until she reached the end of her healing period on June 9, 2002. While claimant was released to limited duty by treating and/or examining physicians during the afore time period, restrictions on the claimant's employment activities could not be met by respondent-employer. The evidence discloses that claimant's job duties entailed bending, lifting, and standing. Specific restrictions on the claimant's employment activities prohibited the afore activities. Claimant credibly testified that she could not perform employment duties in the employment of respondent or any other employer because of residuals of her March 28,

2002, compensable injury during the time period April 15, 2002 and as of the date of the hearing in this claim, November 21, 2003. Nevertheless, the evidence discloses that claimant reached maximum medical improvement as of June 9, 2003. Further, the evidence discloses that the claimant was within her healing period and totally incapacitated for engaging in gainful employment during the time period April 15, 2002 through June 9, 2003. Claimant has sustained her burden of proof by a preponderance of the credible evidence that she was temporary total disable as a result of her compensable injury of March 28, 2002 commencing April 15, 2002, and continuing through June 9, 2003. Respondents have controverted the claimant entitlement to temporary total disability benefits during the afore time period.

The evidence further reflects that as a result of the claimant's compensable injury of March 28, 2002, to include the injury to her L4-5 disc and percutaneous discectomy in the treatment of same, claimant has suffered a permanent physical impairment in the about of 5% to the body as a whole based on the American Medical Association Guide to Permanent Impairment, 4<sup>th</sup> Edition. The testimony of Dr. Manuel Carro discloses that the residual impairment suffered by the claimant is a product of both the injury and surgical procedure. (JX 1). Respondent has controverted claimant's entitlement to permanent indemnity benefits.

#### **AWARD**

Respondent is hereby ordered and directed to pay to the claimant temporary total disability benefits at a weekly compensation benefit rate of \$335.00, for the period covering April 15, 2002 and continuing through June 9, 2003, as a result of the claimant's compensable injury of March 28, 2002. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay indemnity benefits to the claimant at the

weekly compensation benefit rate of \$251.00, to correspond with the claimant's anatomical impairment of 5% to the body as a whole as a result of the claimant's March 28, 2002, compensable injury. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of March 28, 2002. Respondents may claim credit for sums heretofore paid toward the discharge of the aforementioned obligation pursuant to Ark. Code Ann. 11-9-411.

Maximum attorney fees are herein awarded to the claimant's attorney, the Honorable Todd Williams, on the controverted portion of this Award, pursuant to Ark. Code Ann. §11-9-715, as amended by Act 1281 of 2001.

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**