

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F305040**

**SARAH C. LAWRENCE,  
EMPLOYEE**

**CLAIMANT**

**NATIONAL PARK MEDICAL CENTER,  
EMPLOYER**

**RESPONDENT**

**AMERICAN HOME ASSURANCE CO.,  
AIG CLAIM SERVICES, INC.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED NOVEMBER 9, 2004**

Hearing conducted August 19, 2004, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. Donald C. Pullen, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant and

Ms. Melissa Ross Criner, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over compensability of a neck injury asserted by the claimant.

The claimant contended that she suffered a compensable injury to her neck February 3, 2003, by specific incident, for which she should be awarded benefits, including reasonably necessary medical and related expenses; temporary total disability benefits from February 5, 2003, until she returned to work July 20, 2003; and benefits for anatomical impairment based upon a rating of 12% to the body as a whole. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant did not sustain a compensable injury; alternatively, that the alleged injury occurred by gradual onset, but was neither the result of rapid

repetitive motion at work nor the major cause of any disability or need for treatment the claimant may have experienced; and that the claimant's problems were pre-existing and not work related.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, including February 3, 2003; the claimant's average weekly wage on that date was \$660.00; and that the claimant's group health insurance carrier, AETNA Insurance, has alleged that they have paid \$25,726.16 in medical expenses related to the claimant's treatment.

3. The preponderance of the evidence shows that the claimant suffered a compensable injury to her cervical spine arising out of and in the course of her employment February 3, 2003, for which she should be awarded benefits, including reasonably necessary medical and related expenses she has incurred.

4. As a result of her compensable injury, the claimant remained in a healing period and was totally incapacitated to earn wages from February 5, 2003, until July 20, 2003, for which she is entitled to temporary total disability benefits.

5. The claimant's compensable injury of February 3, 2003, is the major cause of her anatomical impairment of 12% to the body as a whole, as assessed by Dr. Michael Young, for which the claimant is entitled to benefits.

6. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

### DISCUSSION

The claimant was employed as a radiologic technologist by the respondent employer initially in 1991 at the time of her neck injury in 2003. She had been working since 1995 for this employer. At the time of this incident, she was working the 11:00 p.m. to 7:00 a.m. shift assisting with treatment of patients in the emergency room, doing portable x-rays and related paperwork, which included pulling file folders.

On February 3, 2003, she and a co-worker, Don Deaton, had gone to the file room to pull folders. She testified that the folder she was going for was on the top shelf, so that she had to raise her hand up to reach it and that it was a fairly big folder. When she tried to pull it out without pulling all the other file folders with it, it got stuck. She said she had to pull harder and she felt a pop and a big twinge at the lower part of the back of her neck. As the night continued, the pain got worse and started going down her arm to her left hand and then down her back to the tip of her scapula on the left.

When she sought medical treatment, she came under the care of Dr. Michael Young, an orthopedic surgeon, who reviewed her MRI and found that she had a significant herniated nucleus pulposus to the left at C4-5 and right at C5-6 with central C6-7 severe stenosis. On March 12, 2003, Dr. Young performed surgery, an anterior cervical discectomy and fusion of C4-C7 with instrumentation. On July 15, 2003, he wrote that the claimant was doing pretty well and would be allowed to return to work without doing heavy lifting as of July 20, 2003. On January 8, 2004,

(incorrectly dated 2003), Dr. Young responded to claimant's counsel that the claimant's herniated disc in her neck was due to the cumulative wear and tear of work as an x-ray tech. Later, on February 9, 2004, in response to a letter from claimant's counsel, Dr. Young wrote that on further review of his notes it did appear that the claimant was doing reasonably well until a specific incident on 1/30/03 while at work where she was pulling folders for the day and that this did appear to be the incident where her pain originated. He stated that her on-the-job injury was the major cause of her need for additional medical treatment including the eventual surgery. Elsewhere, he rated her impairment at 12% to the body as a whole, specifically referring to her fusion surgery.

The claimant had earlier symptoms that may have some possible relationship to her current pathology. For example, in 1993, while moving a large patient, she had a pop in her neck, was off work for a month, and underwent physical therapy. Then, in 1997, she pulled a muscle in her neck and shoulder while pulling a patient up in bed in order to take his chest x-ray. In approximately 1999, she had a bone spur in her heel that Dr. Young treated. She also testified that possibly in the year 2000, she had pain in both arms for which she consulted Dr. Young and an EMG was performed.

Claimant testified that after physical therapy in 1993, her condition did not bother her. She stated that in 1997 she went to the doctor and had some medication but that the condition resolved without therapy and she missed no time from work. Indeed, the record indicates that the claimant has had a steady record of work in her department with little interference from her prior problems, even though the current medical record made reference to a history of difficulties that the claimant may have remarked about. Nevertheless, there is no written medical record concerning the claimant's prior condition or ailments that might relate her current pathology to her previous

problems. Additionally, while there are some careless references to the date of the incident at work, the entire record does not suggest that the claimant had more than one incident of injury to her neck in addition to that of February 3, 2003. Moreover, the medical record including the notes from Dr. Young indicate that the major cause of the claimant's anatomical impairment was her on-the-job injury.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge