

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F303464 (04/01/02)**

**&**

**CLAIM NO. F303465 (09/01/02)**

**MEGAN SMITH, EMPLOYEE**

**CLAIMANT**

**O'REILLY AUTOMOTIVE, INC., EMPLOYER**

**RESPONDENT**

**AMERICAN CASUALTY COMPANY OF  
READING, PENNSYLVANIA, CARRIER**

**RESPONDENT**

**OPINION FILED JULY 19, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 6, 2004, at Ash Flat, Sharp County, Arkansas.

Claimant represented by the HONORABLE DAVID L. ETHREDGE, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE CYNTHIA KOLB, 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 March 23, 2004, a pre-hearing conference was conducted in this claim from which a Pre-hearing Order of March 24, 2004, 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' 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 Megan Smith, the claimant, Rita Wood, Gary Smith, Chris Agnew, and Jerry Matheney, along with the November 19, 2003, deposition testimony of Jennifer Hilgert,

coupled with medical reports and other documents comprise the record in these claims.

### DISCUSSION

Megan Smith, the claimant, with a date of birth of September 22, 1964, is a high school graduate with some post secondary education. The claimant commenced her employment with respondent in March 2001, and last discharged employment duties on October 10, 2002.

The claimant acknowledged that at age sixteen she was involved in a motor vehicle accident and suffered an injury to her back. The claimant maintains that she recovered from the motor vehicle accident after a period of time, and denies that the same served as a source of continued back pain thereafter. The claimant explained that when she sought medical treatment for the injuries growing out of the present claims she relayed a history of the prior motor vehicle accident to the treating and examining physicians. The claimant denies that she experienced continuous complaints relative to her back, as reflected in the medical reports of the physicians seen subsequent to August 2002, but rather asserts that the same was a summary of the history relayed to the physicians.

Claimant asserts that a source of back problems prior to 1997 related to her menstrual period:

I've had back problems when – for years I've problems with my periods and I would have a lot of pressure and back pain from my periods. And I finally got a doctor that did a D & C. And then after the D & C I had a partial hysterectomy. I haven't had any problems after that. (T. 23)

Claimant's testimony reflects that between 1997 and April 2002 she was not seen by a doctor for back complaints. Further, the claimant's testimony reflects that following her 1997 hysterectomy

she did not take any medication for back complaints until her April 2002 injury. Finally, the claimant denies that there were any restrictions or limitations on her employment activities relative to her back between 1997 and April 2002.

The claimant worked as a manager of a Family Dollar Store prior to her employment with respondent. Testimony presented by the claimant's mother, Rita Wood, and the claimant's husband, Gary Smith, reflect that claimant was able to perform her job duties while employed at Family Dollar Store and that there were no restrictions on her physical activities. (T. 52)(T. 60). The testimony of the claimant reflects that as a manager for the Family Dollar Store she was aware that once an injury was reported she had to write it up. (T. 40)

The evidence in the record reflects that at the time the claimant commenced her employment with respondent in March 2001 it was as a delivery specialist. Christopher Scott Agnew, the manager of the Ash Flat store respondent, testified regarding claimant's job duties as a driver:

She took deliveries to garages, brought back returns from the garages, like cores or warranties or new returns. She would help out front with merchandising. Help Kelly out with that. Just odds and ends. (T. 62)

Claimant's testimony reflects, with respect to the specifics of her job duties as a delivery specialist:

That was whenever installers would call and order parts, I would deliver the parts to the installers.

\* \* \*

The part would be put out on a table in the back room and I would take it to the person that ordered

the part. Deliver it and come back (T. 7-8)

The claimant estimated that in the course of an average day she would make between twenty and twenty-five deliveries to installers/mechanics. The testimony in the record reflects that the claimant loaded the parts she delivered on her pickup truck and unloaded the part once she arrived at the customer's business.

The claimant asserts that in April 2002, she suffered an injury to her back within the course and scope of her employment with respondent, while delivering parts to a customer. The claimant's testimony reflects, regarding the April 2002 injury:

Picking parts up out of the back of the truck. And as I turning to walk around to go into the building I felt something in my back. And that's how I was injured is picking it up and basically turning at the same time. (T. 8)

In loading the truck, the testimony of the claimant reflects that she put the parts in the back of the truck by the cab. When removing the part from the truck at the customer's business, claimant's testimony reflects that she would reach over the side of the truck bed to retrieve the part. The claimant described the symptoms experienced following the April 2002 incident as a real bad pull and a burning sensation in her back. The claimant delivered the part to the customer following her injury, and thereafter returned to the store.

The claimant's testimony reflects that upon returning to the store she reported the April 2002 injury to her supervisor, Chris Agnew, the store manager. Upon reporting her injury to Mr. Agnew, claimant's testimony reflects:

Well he turned around and walked off and as he was walking off he told me I would have to pass a piss test. And I told him I didn't have a problem with

that. And he just kept on walking towards the front.  
(T. 9-10)

The testimony of the claimant reflects that a accident report was not completed by Mr. Agnew nor did she undergo a urine test as a result of the reporting. Claimant testified that no action was taken by Mr. Agnew once she reported the injury, and, as a consequence, she continued to discharge her employment duties.

Claimant asserts that while she continued to work following the April 2002 incident the pain in her back got progressively worse:

It just got worse. I thought maybe I just pulled my muscle. Pulled a muscle or something. And it just – it wasn't getting any better. It was getting worse.  
(T. 10)

The testimony in the record reflects that the claimant treated her complaints of back pain growing out of the April 2002 incident with over-the-counter medications and other measures; Icy Hot, Ben Gay, ice and heat. The claimant continued to work in the job position of a delivery specialist for a couple of months after the April 2002 injury. The claimant testified regarding the impact of the injury on her:

I got to where there was pain going down the right side of my leg. And it just – I had to move a lot slower and be careful about what I was picking up. And if I picked up something that was heavy then it would hurt and it would cause real bad pain in my lower back and my right side by my hip. (. 11)

In mid-July 2002 the claimant was offered and accepted the position of merchandising specialist in the Ash Flat O'Reilly store by the manager, Christopher Agnew. The claimant maintains that the position was made available as a result of the termination of the employee who

held the position.

The testimony of Mr. Chris Agnew reflects that the merchandiser position involved more lifting than the driver position. Mr. Agnew further testified regarding the merchandiser's position:

Well, she checks in freight every day. We have certain days of the week. Wednesdays are called oil day. We usually get one to two pounds of oil along with other freight – regular freight. Each tote is packed to up to sixty pounds. You get about twenty totes a day to unload a day and move around. Same with the oil. Oil is handled two or three times a day, just to get it checked in to the point where its finally going to be. (T. 64-65)

The testimony of the claimant reflects that between April 2002, and August 2002, her complaints of back pain attributable to the April 2002 injury grew progressively worse to the point that she sought medical treatment on August 26, 2002. The claimant testified regarding her delay in obtaining medical treatment:

Because I didn't think it was as bad as it was. I was hoping it would just go away. (T. 12)

On August 26, 2002, the claimant was seen by Dr. Austin T. Welsh, an Ash Flat family practice physician. The claimant maintains that she related a history of her April 2002 injury to Dr. Welsh at the time of the initial visit. The claimant maintains that she did inform her employer that she was receiving medical treatment from Dr. Welsh, however noted that since he was seen during her lunch break there was not a problem with her taking off and going to see the doctor. Dr. Welsh's office was located directly across the street from the store of respondent where the claimant worked. Dr. Welsh prescribed pain medication for the claimant and later

arranged for diagnostic studies relative to her low back complaint.

The testimony of the claimant reflects that though treating with Dr. Welsh in August 2002, she was able to continue discharging her employment duties. The claimant noted that Dr. Welsh did not place any limitations/restrictions on her work activities. Claimant's testimony reflects regarding her change in job duties from a delivery specialist to a merchandising specialist:

I would check in an order and do schematic changes out front, keep the front shelves stocked, do inventories, pre counts. (T. 13)

The evidence in the record reflects that at the end of July 2002, Donald Glenn Newton was hired for the position of store manager of the Ash Flat store of respondent. Mr. Newton's testimony reflects that at the time he became manager the claimant was already working as a merchandise specialist. Mr. Newton denies that he was made aware that the claimant had a back injury at work prior to becoming manager. Further, Mr. Newton's testimony reflects that from July 2002 until September 2002 the claimant did not report any work injury to him. Mr. Newton testified regarding the job duties of a merchandiser:

Basically, the – breaking down the freight, checking it in. We like on Wednesday we got oil days – putting it away. Delivery on a second. We had two driver's at the time and if we got those guys busy then she would have to – ride on the third. (T. 74)

The claimant's testimony reflects that at the time Mr. Newton became the manager of the Ash Flat store she made him aware of her back complaint:

Yes, he knew when he came in when he worked there – I told him I didn't want to make deliveries. I didn't have to until my back got better at that time.

(T. 18)

The claimant's testimony reflects that in September 2002 she suffered a second injury to her back within the course and scope of her employment with respondent, while making a delivery to Ivey's Automotive:

I picked – I did the same thing. I picked the parts up out of the back of the truck because they were by the cab and went to deliver them.

\* \* \*

They were heavy rotors and when I picked them up – they were small boxes, so they didn't look like they were heavy and when I picked them up that's when I hurt my back again. (T. 14)

The claimant maintains that she experienced a severe burning pain in her back as though someone had stuck a knife in her back when she lifted the rotors:

Well, I stood there for a little bit, until it wasn't burning. (T. 15)

After making the delivery into the garage, the claimant returned to the store where she reported the injury to the store manager, Don Newton. Regarding Mr. Newton's response to the reporting of the injury, the claimant's testimony reflects:

He told me that he wanted me to continue to make deliveries and to have the installers pull the parts out of the back of the truck. (T. 15-16)

The claimant testified that Mr. Newton did not complete any paperwork or accident report as a result of her reporting the September 2002 injury to him.

The claimant did not seek medical treatment relative to the September 2002 injury, noting that she was already being seen by Dr. Welsh for her back. The testimony of the claimant

reflects that Dr. Welsh prescribed pain medication for her and also ordered a CT scan, an MRI scan, and a referral to a neurologist in Mountain Home, in the treatment of her back injuries.

The testimony in the record reflects that the claimant continued to work for respondent subsequent to the September 2002 injury, while continuing to receive treatment under the care of Dr. Welsh. The claimant last discharged employment duties for respondent on October 10, 2002, at which time she was sent home by the store manager. The claimant's testimony reflects her understanding of the basis for being sent home on October 10, 2002:

Because Don told me that I would have to have a note for – with restrictions on it before I could come back to work. And so he told me I had to get it and when I got my note from the doctor with restrictions that I could come back to work.

\* \* \*

I don't know how to say this other than from what I was told he [Newton] was – one of the other employees had made a complaint to the district manger that he was playing favoritism. And that's all I know. There was – he just came up and started asking me if I could get restrictions because the employee complaining about having to make deliveries--.

\* \* \*

Yes. Tamara Runyan was the one that was complaining to Don and Don told me he wanted me to get a note with restrictions so that when she complained again he could show her the note. (T. 16-18)

During cross-examination, the claimant denied that the basis for the request for a note with restrictions was the fact that she had relayed to Mr. Newton that she could not make deliveries

because she couldn't drive because she was taking pain medications. Later the claimant acknowledged that she had told Mr. Newton that she couldn't make deliveries because she was on pain medication and that the same was against company policy. The claimant added, however, that at the time she told Mr. Newton about the pain medication she also related that it was for an injury to her back at work. (T. 32-33)

The claimant's testimony reflects that once she obtained the note from her treating physician with the restrictions as requested by the store manager, Mr. Newton, she presented it to him:

Well, when he first talked to me about getting a note with restrictions and asking me if I could get them, then he went off in the office or up front and then he came back and told me that they would have to put on Family Medical Leave because they didn't work with restrictions. And so when I went home on the 10<sup>th</sup> that day, I still went and got the restrictions because he said he had to have them. (T. 18-19)

The testimony of the claimant reflects that she later received a call from human resources of respondent regarding FMLA:

In Human Resources, one of the first persons that called me was a lady by the name of Mindy. She said she called me because Don told her I was upset and he wanted her to explain the policy to me. And I asked her then why I was filling out a Family Medical Leave when it was a work related injury?

\* \* \*

She told me – and asked me if I had told management and I told her yes. She just told me not to take it personal that it was up to the management's discretion whether they wanted to work with restrictions or not. (T. 21)

The claimant also presents testimony that she called Jennifer Hilgert, a benefits specialist in the human resource department of respondent, after receiving a certified letter regarding FMLA papers. The claimant completed the FMLA papers in order to preserve her job. The claimant testified that she assumed that she completed the FMLA papers as opposed to a workers' compensation claim because respondents did not want to pay workers' comp. (T. 22)

The testimony of Rita Wood, the claimant's mother, and Gary Smith, the claimant's husband, is corroborative of that of the claimant with respect to the claimant's ability to engage in unrestricted physical activity prior to April 2002. Further, the testimony of Mr. Gary Smith reflects that he accompanied the claimant to some of her appointments with Dr. Welsh and that the claimant did inform the doctor that she had injured herself at work. Additionally, Mr. Smith accompanied the claimant to her appointment with Dr. Bruce D. Robbins, a Mountain Home neurologist. Mr. Smith testified that the claimant informed Dr. Robbins of her work-related injury at the time of the visit. (T. 58).

Christopher Scott Agnew testified that he commenced his employment with respondent in August 1995. In April 2002 Mr. Agnew was the manager of respondent's store in Ash Flat. Mr. Agnew ceased being the manager of the Ash Flat store of respondent at the end of July 2002. Mr. Agnew's testimony reflects that the policy of respondent-employer regarding the handling of accidents or reports of injury was that Risk Management was to be called and the district manager was also to be called once such an injury and accident was reported. Further, the testimony of Mr. Agnew reflects that it was the responsibility of the manager of the store to complete any paperwork once an accident had been reported. (T. 65-66)

The testimony of Mr. Agnew reflects that in April 2002 the claimant discharged the job

duties of a delivery specialist or driver. Mr. Agnew further candidly testified regarding a discussion with the claimant in April 2002 wherein she relayed complaints of a back injury or back pain:

I went to the back to check on deliveries, make sure there was nobody standing around and they were all there. And she was holding her back and she said she had pulled something in her back. And I said are you going to be okay? And she said, yeah, I'll be okay. And I just left it at that. (T. 62)

Mr. Agnew maintains that the claimant did not request medical assistance nor did she request to fill out any workers' comp papers. Mr. Agnew did testify, however, that he assumed that the claimant had hurt her back while working at the time of the April 2002 conversation. (T. 63)

The testimony of Mr. Agnew reflects that the claimant continued to discharge her employment duties for respondent subsequent to the April 2002 conversation. Later, the claimant was offered the position of merchandising specialist. Mr. Agnew's testimony reflects that the merchandiser position involved more lifting than the driving position. Mr. Agnew's testimony reflects that the claimant was offered and accepted the merchandiser position the last week of July 2002. Additionally, Mr. Agnew testified that as manager he would not have offered the position to the claimant if she had back problems.

The testimony of Mr. Agnew reflects that with the exception of the April 2002 conversation with the claimant he did not hear anything else about the claimant having back problems during her employment with respondent until October 2002, the date she was sent home. Mr. Agnew denies that he was aware that the claimant was taking pain medication of any kind or that she was seeing a doctor because of back problems prior to October 2002. Mr.

Agnew's testimony reflects that he was aware that the claimant had been involved in a motor vehicle accident as a teenager, however, was not aware of any back problems that the claimant had as a result of same. (T. 68) Finally, the testimony of Mr. Agnew reflects that prior to April 2002 there was nothing about the claimant to reflect that she was having pain or any problems relative to her back.

Jeremy Matheney, the manager of the O'Reilly Auto Parts store in Walnut Ridge, Arkansas, testified that he was employed at the Ash Flat store from 1997 until June 2002 as an assistant manager. During the time that he and the claimant were both employed at the Ash Flat store Mr. Matheney's testimony reflects that he worked with her on a daily basis. The testimony in the record reflects that Mr. Matheney left the Ash Flat store of respondent prior to the time that the claimant's job position changed from that of a delivery specialist to a merchandiser. Mr. Matheney's testimony that the claimant never reported a work-related injury to him as assistant manager, relative to her back is consistent with the testimony of the claimant. Further, Mr. Matheney testified that he was never aware of the claimant injuring her back or that the claimant acted in a manner to reflect that she had sustained an injury to her back while he was employed at the Ash Flat store.

Donald Glenn Newton became the manager of the Ash Flat store of respondent in late July 2002. Mr. Newton's testimony reflects that from the time he became manager of the Ash Flat store in July 2002 until September 2002 the claimant never reported a work injury to him. The claimant already held the position of merchandiser at the time that Mr. Newton became manager of the Ash Flat store. Mr. Newton's testimony reflects that from July 2002 to September 2002, he would on occasions ask the claimant to make deliveries. When questioned

whether the claimant had advised him she could not make deliveries because of her back Mr.

Newton responded:

Not until the end of – the issue with the medication.

\* \* \*

Well, the best I remember, she – I saw her, she looked like she was in pain and I asked her what had happened and she said she had a car wreck when she was younger, a teenager. Somewhere along the line she had went to the doctor and got some medication and she couldn't drive with that medication. So that's when I talked with my DM about this and asked him. Then I asked her that she was to come back with a release saying she could do the job. (T. 75)

Mr. Newton maintains that he was not made aware by the claimant that the medication she was taking was because of a work-related injury. Corroborative of the testimony of the claimant, Mr. Newton testified that he informed the claimant that she needed to get a doctor's statement with her restrictions based upon his conversation with his general manager. Mr. Newton's testimony reflects regarding the claimant's response after the afore was related:

She didn't – she left, I believe it was that day. And I never really any reply on what was going on after that. (T. 76)

Mr. Newton denies that he told the claimant or any other employee that he was aware that the claimant's injury was work-related but that it was not going to be filed on the workers' comp. Further, Mr. Newton maintains that from the time he commenced working at the Ash Flat store until the last day that the claimant worked at the store she never reported to him having sustained a work-related injury or asked to file any workers' compensation papers.

Mr. Newton's testimony further reflects that he never received a letter from the claimant's doctor with restrictions on it. (T. 78) Mr. Newton acknowledged that he was aware that the claimant went on FMLA in October 2002. Additionally, Mr. Newton acknowledged that he spoke with Ms. Jennifer Hilgert, in human resources, regarding the claimant, however, he was uncertain if he called her or if he received a call from them. Mr. Newton maintains that he did not discuss with human resource personnel the restriction issue relative to the claimant. Mr. Newton maintains that he was not aware the claimant had been going to a doctor until near the end of September 2002 when the issue regarding medication and her ability to make deliveries came up.

During cross-examination Mr. Newton was questioned regarding when he first became aware that the claimant was taking medication:

- Q. Also it's your testimony that you're not aware that she was ever in pain until she mentioned she was taking pain medication to you, she couldn't keep working?
- A. No, I'd asked her when I saw her in pain one day. And I asked her what happened. And that's when I was told she had an accident when she was 16 years old.
- Q. So this – all of a sudden this pain reappears in her body at that time because of an accident she had when she was 16 years old?
- A. I didn't ever say anything – by the time I got there. I saw that, hadn't got the – before she told me about the medication.
- Q. Were you aware she was going to the doctor at times from say August up until the end of September about back pain?

A. Right before that the deal with the medication and that was it.

Q. Well, when was that?

A. It was September, somewhere in there.  
(T. 79)

The testimony of Mr. Newton reflects that he did have contact with the claimant after she had gone on FMLA and asked her to come back to work:

Yes, I believe it was a week before her – the actually FMLA had run out, I had visited her about coming back to work. We were needing help and never got a reply from her afterwards. (T. 77)

Mr. Newton acknowledged that at the time of the January 2003 conversation with the claimant requesting her to come back to work in order for her to do so she would be required to get a release from her doctor. Mr. Newton added that he was aware of the afore requirement because he had asked her to do that when she stepped out the first time, in October 2002. (T. 81)

The medical in the record reflects that on August 26, 2002, the claimant was seen by Dr. Austin T. Welsh, an Ash Flat family practice physician. A progress note relative to the August 26, 2002 visit by the claimant to Dr. Welsh reflects that the initial visit was one to get established with the doctor as a patient; that the claimant complained of low back pain daily for years which seemed to be getting worse when working, noting that she does a lot of lifting at work. (CX1, p. 2) The typed note of August 26, 2002, relative to the claimant's visit with Dr. Welsh reflects:

S: This is a 37 y/o female here with lower back pain that's been going on daily for years. Really since she was about 16 it started off as an kind of popping or gristle feeling in her lower back, which she could hear in her ears, but over the years she's been treated at Navy facilities and they did not do much

for her. She says since doing a lot of lifting at work and a lot of driving a truck she's noticed the pain getting worse and now it seems to shoot down her right leg at times. It's been getting particularly bad over the past several weeks. Also she has a problem with a 'funny feeling' in her heart it's like an extra beat or it skips a beat. This has been going on for 6 years. The last episode was yesterday it was a very hot day and she was sweating quite a bit. (CX1, p. 1)

The physical examination of the claimant during the August 26, 2002, visit with Dr. Welsh disclosed that her low back was "somewhat tender to the right of L6 and L7 over the posterior superior iliac crest". (CX1, p. 1) The August 26, 2002, report of Dr. Welsh further reflects, with respect to his assessment of the claimant's complaint:

Low back pain. I suspect this is secondary to a pinched nerve. I will obtain a CT scan of her lower back. I am also writing her for Zanaflex 4 mg to be taken ½-1 tab t.i.d. to q.i.d also I am writing her for Darvocet N100 to be taken t.i.d. for the next 10 days as needed. (CX1, p. 1)

The August 26, 2002 progress note of Dr. Welsh relative to the claimant reflects that a CT scan of claimant's lumbar spine was scheduled for August 30, 2002 and that a return visit for the claimant was scheduled for September 10, 2002. (CX1, p. 2) The August 30, 2002 radiology report regarding the CT of the lumbar spine without contrast disclosed mild narrowing of the disc at L3-L4, L4-L5 and L5-S1 levels, with the most pronounced level being at L4-L5. (CX1, p. 3).

A September 10, 2002 report of Dr. Welsh relative to his evaluation of the claimant on said date disclosed, with respect to the physical examination of her back, "diffusely tender around the sacroiliac area". The September 10, 2002 report further reflects:

Lower back pain. This is persisting despite

exercise, he said exercises help at the time, but when she gets up it just hurts all over again. I would like her try either physical therapy or to go to the pain clinic. The CT scan showed some narrowing of the disc space and I went into great lengths to explain to her why smoking contributes to this. (CX1, p. 5)

Following the September 10, 2002 visit, the claimant was next seen by Dr. Welsh on October 14, 2002.

By the time of the claimant's October 14, 2002, visit to Dr. Welsh, she had been sent home from work by respondent, as of October 10, 2002, with directions to obtain a doctor's note setting forth her restrictions. The October 14, 2002 progress note of Dr. Welsh reflects, in pertinent part:

38 y.o. female here p o.v. at Pain Clinic in Mtn. Home – Had injections s relief. Needs a letter for work stating can't drive. (CX1, p. 6)

Dr. Welsh's October 14, 2002 report relative to the claimant's visit on said date reflects, in pertinent part:

S: This is a 38-year-old female here who went to the pain clinic in Mountain Home and was given an injection and has had no relief. She has been sent over here today by her employer, which is O'Reilly Auto Parts, who insists she receive a note freeing her to perform all tasks required of her job. She says her back pain becomes excruciating when she has to list items out of a truck bed, which unfortunately is required for her job. She is quite upset about this turn of events and is especially upset that the anesthesiologist attention did not result in any relief. She called the pain clinic in Mountain Home today and they recommended she come and see me.

O: EXAMINATION: . . .BACK: There is a small pinpoint area where the injection occurred around L3. This area does not appear infected and there is only minimal erythema. There is quite a lot of paraspinous muscle pain on the right. . . .

A/P: Recurrent low back pain. I would like EMG testing performed on this woman. I will send her to the neurologist. I would also like to have physical therapy try to alleviate her pain. I understand she is quite frustrated by this. She is very upset that she will have to leave her work and I told her to take a few days off and to get these things settled. There is an issue with her an insurance company possibly not paying for the specialist. . . .

I will followup with Megan in one month.  
(T. 7)

On November 19, 2002, the claimant was evaluated by Dr. Bruce D. Robbins, a Mountain Home neurologist, pursuant to the referral of Dr. Welsh. The September 19, 2002 report of Dr. Robbins relative to the claimant, reflects, in pertinent part:

Megan is a 38-year-old right-handed white female seen in consultation from Dr. Welsh. Megan is having problems with lower back pain which goes down the back of the right leg. She did have a CAT scan of the back. The patient has not had an EMG needle examination of the right lower extremity and no MRI scan of the lower back. The patient reports she has had this problem since she was 16 years old. She did see military doctors years ago who told her she had a 'mushy' back and gave her back exercises. Actually, this did decrease the back problem. She has been lifting some heavy objects and has been having increased back problems. It is interfering with her ability to sleep. Her second neurological problem is headaches. The patient reports she has a vascular type headache on an every other day basis. She has not had any imaging studies of the brain. (CX1, p. 22)

Following his examination of the claimant during the November 19, 2002, visit, Dr. Robbins' impression of the claimant's complaint was that of back pain with sciatica on the right side in the S1 distribution and atypical headaches. In addition to the prescription for medication, Atenolol and providing her with some low back exercises, Dr. Robbins also scheduled the claimant for an MRI of the lumbar spine during the November 19, 2002 visit. The MRI of the claimant's lumbar spine was obtained on December 12, 2002 and disclosed the following impression:

MRI scan of the lumbosacral spine showing disk bulges at L3-4 and L4-5 with some narrowing of the central canal and minimal narrowing of the neuroforamina bilaterally at these levels. (CX1, p. 25)

Following her December 12, 2002, MRI of the lumbar spine under the direction of Dr. Robbins, claimant was next seen for medical treatment on December 16, 2002, by Dr. Welsh. The December 16, 2002, report of Dr. Welsh relative to the claimant, reflects, in pertinent part:

S: This is a 38-year-old female with recurrent back pain. This has been going on now for over four months. She saw Dr. Robbins who performed an MRI, which found the discs between L3-4 and L4-5 to be 'dead'. She says the pain hurts worse on the right and goes down her right leg. It is no longer popping, but the pain is quite severe. She has not found anything yet that takes care of all the pain. She has been on tramadol and Zanaflex and Elavil and she still needs some pain relief.

\* \* \*

A/P: This is chronic with DDD. She has not undergone physical therapy yet. I am going to start her on hydrocodone/APAP 7.5/325. She has been on Darvocet before and although they did not get rid of the pain completely this will help her somewhat. We also discussed seeing a neurosurgeon. She

realized she may need to go to that. (CX1, p. 10)

The claimant was next seen by Dr. Welsh on January 6, 2003:

S: This is a 38-year-old comes here with her husband. She has been having back pain off and on for the better part of a year. She says although she had back pain when she was a teenager and again when she was in the military in April, 2002, he noticed her back was popping and felt kind of gristly sort of feeling. She told her boss about this at O'Reilly Auto Parts and he did not report it and then later some time in September she was carrying rotors to Ivey's Garage and when she was taking these rotors out she noticed an acute exacerbation of her back pain. That pain has essentially not abated despite going to Mountain Home for injections of steroids and despite the ministrations of a neurologist who has prescribed her back exercises. She has had to quit work and she has "almost" quite smoking. She says she still has daily headaches and is very apprehensive about the future.

O: EXAMINATION: . . .BACK: Her low back is tender, particularly on the right at the SI joint. She is also tender around the right hip joint. There is full ROM about the hip. I cannot appreciate any crepitus. EXTREMITIES: DTR are diminished, but symmetric.

A/P: Low back pain. She is to continue with the workup with Dr. Robbins this week and if necessary I could have her see a physiatrist, however, she has some problems with insurance and she would like to wait a while on this. I have recommended that she pursue this as far as she can. (CX1, p. 12)

Subsequent to the January 6, 2003, visit to Dr. Welsh, the claimant was seen by Dr. Robbins on January 8, 2003. The January 8, 2003 report of Dr. Robbins, relative to the claimant, reflects, in pertinent part:

. . .She did have a MRI scan of the back and she does have some degenerative changes of the lower back but no major disc herniations. I don't believe she is going to need surgery of the back. Low back exercises are probably the best course of action. The patient would like to have a nerve conduction study and EMG needle examination of the right lower extremity to try to better document what is going on. We will certainly accommodate her with this. We will try to increase the Amitriptyline to try to get some better control of the headaches and the back problems. . . . (CX1, p. 26)

On January 16, 2003, the claimant returned to Dr. Welsh for followup care of her low back pain neuropathy, and headaches. The January 16, 2003, report of Dr. Welsh, relative to the claimant, reflects, in pertinent part:

. . .She's been seeing Dr. Robbins and he has found her to have a pinched nerve on the right, it's not severe, but her discs are bulging causing some lumbar stenosis. He's put her on 75 mg of amitriptyline and this helping tremendously. . . .

\* \* \*

A/P: Low back pain. She's to continue following up with Dr. Robbins. I have her now on MSM and Glucosamine and he has her on the amitriptyline and all these things seem to be helping somewhat.

Neuropathy. If this persists she may need to see a neurosurgeon, but Dr. Robbins at this point does not think she's a candidate. I encouraged her to swim and to do stretching exercises.

Headaches. These are probably secondary to the low back pain. The amitriptyline is helping with that as well. It's also helping with her insomnia. Overall Megan's doing better. . . . (CX1, p. 14)

The claimant was next seen by Dr. Welsh on February 17, 2003:

This is a 38-year-old female with low back pain. She has been to see Dr. Bruce Robbins the neurologist who tested her thoroughly and found her to have an L5 radiculopathy affecting the perineal nerve on the right. She says that when she gets up sometimes after sitting for a time her right leg seems to lock up, otherwise though he is doing better. . . .

\* \* \*

A/P: Radiculopathy with lumbar discopathy. I explained to her the mechanics of disc protrusion and I gave her a recommendation for low-back exercises including walking in the water as well as stretching exercises. I also strongly encouraged her to see the acupuncturist since it would alleviate her pain without narcotics and might prevent any back surgery. I wrote her today for hydrocodone 7.5/325. (CX1, p. 16)

An April 17, 2003, report of Dr. Welsh relative to a visit of the claimant on the same date, after noting her continuing complaints of low back pain and headaches and following the physical examination, concludes:

Lumbar disc disease with sacroiliitis. This is continuing and it's well-documented by tests run by the neurologist. I am refilling her hydrocodone for this.

Chronic daily headaches with trigger point tenderness at the right trapezius. She could benefit from a trigger point injection, but she would rather not do that now. She will take the pain medication.

..  
(CX1, p. 20)

There is a progress note reflecting that the claimant was seen at the Crossroad Clinic by Dr. Welsh on May 19, 2003, with her continuing complaint of low back pain. (CX1, p. 21)

There is evidence in the record to reflect that Dr. Welsh left the area, and in June 2003, claimant came under the care of medical providers at Family Care Medical Clinic, in Hardy, Arkansas, for her low back complaints. (CX1, p. 27-37) At the time she initiated treatment under the care of the medical providers at the Family Care Medical Clinic, the claimant relayed the history of two work-related injuries in the employment of respondent, April 2002 and September 2002, as the basis for the need for medical treatment. When seen by Dr. Julea Garner, at Family Care Medical Clinic on September 16, 2003, the claimant provided the following history:

Patient states that her back is about the same. States that if she is not doing activity she starts having back pain. States that if she does even housework such as vacuuming makes her hurt really bad. Patient notes that she is scheduled for the pain clinic this week in JBS. Patient states that she is now having pain and aching and tingling in the right leg at times. (CX1, p. 33)

On September 18, 2003, the claimant was evaluated by Dr. Calin A. Savu, a Jonesboro pain management specialist, pursuant to the referral of Dr. Garner for evaluation and treatment relative to her low back and right buttock and right hip pain. The report further reflects:

HISTORY OF PRESENT ILLNESS: Ms. Smith is a very pleasant 38-year-old woman with a history of low back and right buttock and thigh pain which started in April of 2002, as a result of lifting a heavy object and twisting at the same time. She experienced immediate and excruciating pain, which continued unabated for about six - eight months. As she started to recover, her limited and restricted duties expired when she was placed back to full duty position. Unfortunately a similar mechanism was involved in a second injury, which made things much worse. She was able to get back to work and she was finally laid off. The pain she described as a deep-seated aching, sharp, shooting

sensation from the bottom of the spine to the right side and radiating into the right buttock, posterior thigh, and occasionally down the leg. She also reports occasional weakness, which is described as easy tiredness. The pain is usually worsened by lifting, bending, straightening up, traveling and standing. It is relieved by rest. The pain's course ranges between a best of 3 and a worst of 10 and there is interference with her sleep. Past medications include nonsteroidials, muscle relaxants, narcotics and anti-depressants. She didn't undergo any recent chiropractic, behavior or physical therapy.

\* \* \*

#### PHYSICAL EXAMINATION:

MUSCOSKELETAL: Normal gait with good heel – and toe-walking. Lumbar spine examination reveals flattening lordosis and exquisite tenderness on palpation of the right paraspinal region overlying the lower facet and SI joints. Straight leg raising is negative. Gaenslen and Patrick signs are negative.

\* \* \*

DIAGNOSIS: Low back and right lower extremity of unclear etiology. The differential diagnosis ranges between a true radiculopathy with an atypical presentation versus axial pain with somatic referral into the right lower extremity. The patient appears to have underwent already an epidural steroid injection but that clearly was done without fluoroscopy guidance and she reported absolutely no improvement, even for a brief duration.

#### THERAPY PLAN:

1. A series of diagnostic injections will hopefully be helpful in identifying the true pain generator. Medial branch blocks, SI joint injection, and possible transforaminal epidural will be performed in that particular order.
2. In the meantime, the patient was instructed to

continue gentle activities to maintain her low back and lower extremity strength.  
(CX1, p. 39-40)

The claimant's testimony reflects that with the medical treatment furnished by Dr. Savu, she did appreciate some relief in her low back and lower extremity pain. The claimant maintains that she has been directed by Dr. Savu to reschedule an appointment for further injections once the beneficial results from the injections wore off. The claimant acknowledges that once a week she traveled from her residence to Little Rock in order to attend a Court Reporter's Association class and training, however the evidence in the record reflects that the drive was shared by the claimant's mother, Ms. Rita Wood. The claimant is now currently scheduled to commence employment as a court reporter on a temporary basis commencing May 13, 2004. The claimant asserts that she continues to experience residuals relative to the compensable injury suffered in the employment of respondent.

After thorough consideration of all the evidence in this record, to include the testimony of the witnesses, a review of the medical reports and other documents, and application of pertinent statutory provisions and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. At all times pertinent the relationship of employee-employer-carrier existed among the parties.
3. At all times pertinent the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$156.00/\$154.00, for temporary total disability/permanent partial disability.

4. In April 2002 the claimant sustained an injury to her back arising out of and in the course of her employment.

5. In September 2002, claimant suffered a recurrence of her compensable April 2002, low back injury in the employment of respondent.

6. The claimant was temporarily totally disabled for the period beginning October 11, 2002 and continuing through May 13, 2004.

7. The respondent shall pay all reasonable hospital and necessary medical expenses arising out of the injuries of April 2002 and September 2002.

8. The respondents have controverted these claims in their entirety.

### **CONCLUSIONS**

Claimant asserts that as a result of specific injuries suffered in the employment of respondent in April 2002 and again in September 2002, she is entitled to the payment of workers' compensation benefits, to include temporary total disability benefits and medical benefits. Respondents have denied the compensability of the claimant's claims. 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 work-related injuries having been sustained subsequent to the effective date of the afore provisions.

While the claimant acknowledged that she was involved in a motor vehicle accident at the age of sixteen wherein she suffered injuries and that she had complaints relative to her back prior to 1997, she maintains that as a result of the surgery had on said date she had not experienced limitations or restrictions relative to her low back since 1997. The claimant commenced her employment with respondent in March 2001. There is no evidence in the record to reflect that

claimant sought or obtained medical treatment relative to her low back between 1997 and March 2001. Further, the record is devoid of any medical evidence of claimant seeking or receiving medical treatment relative to her low back between her March 2001 employment with respondent and April 2002.

The claimant discharged the employment duties of a delivery specialist for respondent from March 2001 through mid-July 2002. In April 2002 while discharging employment duties for respondent and delivering a part in the course and scope of her employment with respondent the claimant after reaching over the side of the truck to retrieve a part experienced a severe onset of pain in her low back. The claimant completed her assigned job tasks of delivering the part following the April 2002 lifting injury, and returned to the store of respondent.

The credible evidence in the record reflects that claimant reported the April 2002 injury to her supervisor, the store manager, Christopher Scott Agnew. While there is a dispute between the claimant and Mr. Agnew regarding specifics of the April 2002 reporting, the evidence nonetheless reflects that Mr. Agnew observed the claimant rubbing her back, inquired of the claimant, and was informed by same that she had injured her back. Further, Mr. Agnew acknowledged that it was his assumption that the injury had occurred while the claimant was performing employment duties. The claimant's testimony reflects that she reported the injury to Mr. Agnew directly and after being informed that a urine test would be required, which she agreed to undergo, did not hear further from the reporting. Prior to the April 2002 complaint of pain to the claimant's low back, there is no evidence in the record to reflect that the claimant had registered complaints relative to her low back during her employment with respondent. Mr. Agnew acknowledged that it was the responsibility of the manager of the store, pursuant to the

policy of respondent-employer, to complete an incident report, notify risk management and the district manager when a work-related injury was reported. In the instant claim Mr. Agnew concedes that he did not complete an incident accident report relative to the claimant's April 2002 reported injury.

Subsequent to April 2002, the claimant continued to discharge employment duties for respondent as a delivery specialist until mid-July 2002 at which time she was offered the position of merchandise specialist by Mr. Agnew, which she accepted. As of the end of July 2002, Mr. Agnew ceased being the manager of the Ash Flat store of respondent and Mr. Donald Newton was hired for the position.

The credible evidence in the record reflects that following her April 2002 injury the claimant did not obtain medical treatment for same but rather utilized over-the-counter home remedies. Specifically, the claimant utilized Icy Hot, Ben Gay, an over-the-counter medications to address her complaints of low back pain and right hip and leg pain attributable to the April 2002 injury. The symptoms experience by the claimant subsequent to the April 2002 continued until she sought medical treatment relative to same on August 26, 2002, under the care of Dr. Austin Welsh. The claimant was continuing to discharge her employment duties throughout April, May, June, July and August 2002.

Once Mr. Newton became the store manager of the Ash Flat store of respondent at the end of July 2002 the claimant reported that she had suffered a prior back injury in the employment of respondent and if at all possible asked that she not be assigned the occasional duties of backup driver as a delivery specialist. At the time Mr. Newton commenced his employment as store manager at the Ash Flat store the claimant was performing the job duties of

a merchandise specialist, which on occasion would entail serving as a backup delivery specialist. The credible evidence in the record reflects that the claimant was capable of performing her job duties as a merchandise specialist through October 2002.

In September 2002 the claimant was requested to deliver a part to Ivey's Automotive. Upon arriving at the site of the delivery, the claimant reached over the side of her vehicle to pick up the part, a rotor, and experienced a severe increase in the pain in her low back such that she was unable to move a period of time until she regained her breath. After making the delivery, the claimant returned to respondent and continued to discharge her employment duties. Upon returning to the store of respondent the claimant reported her injury to the store manager, Mr. Donald Newton. An accident report was not completed by Mr. Newton as a result of the reporting by the claimant, but rather the claimant was admonished to have the installers/customers remove the parts from the vehicle when she delivered same.

The claimant was already receiving medical treatment under the care of Dr. Welsh at the time of the September 2002 incident and continued receiving treatment under the care of same. The evidence in the record reflects that an employee of respondent alleged favoritism on the part of the store manager because the claimant was not being asked to deliver parts. As a consequence of the afore, the claimant was requested to obtain a note from her physician which could be used to demonstrate why she was not being asked to deliver parts.

The claimant was taking medication as prescribed by Dr. Welsh relative to the April 2002 injury pursuant to the August 26, 2002, initial visit. The injury suffered by the claimant in September 2002, while delivering parts to Ivey's Automotive occurred between the claimant's initial visit of August 26, 2002 to Dr. Welsh and her scheduled follow-up visit with same of

September 10, 2002. The evidence in the record reflects that the claimant was sent home by respondent on October 10, 2002 because she was unable to drive a truck delivering parts, as a backup driver, in her employment with respondent.

The evidence in the record reflects that on or about October 16, 2002, the claimant's manager, Donald Newton, contacted Jennifer Hilgert, a benefits specialist in the Human Resource Department of respondent to request that an application for FMLA be forwarded to the claimant, who had been off work since October 11, 2002. (RX1) On October 10, 2002, when claimant was sent home from work by Mr. Newton, she was informed that she would not be allowed to work so long as she had restrictions on her employment activity, to include the taking of medication to address her symptoms such that she was unable to drive. Following her September 10, 2002 visit to Dr. Welsh, the claimant was next seen by same on October 14, 2002. In his October 14, 2002, report Dr. Welsh noted that the claimant had been sent over and directed to obtain a release freeing her to perform all the requirements of her job duties. The same was not forthcoming.

There is no medical evidence in the record reflecting that the claimant received treatment relative to her low back in close proximity to her employment with respondent on March 2001 or between March 2001 and April 2002. Once the claimant initiated treatment under the care of Dr. Welsh on August 26, 2002, as a result of the injury suffered in April 2002, she consistently required and obtained medical treatment relative to her low back.

Arkansas Code Annotated §11-9-102(4)(A) defines compensable injury to mean an accidental injury causing internal or external physical harm to the body arising out of and in the course of employment which requires medical services or results in disability or death. An injury

is accidental only if it is caused by a specific incident and is identifiable by time and place of occurrence. In the instant matter the claimant asserts injuries having been sustained in April 2002 and September 2002.

Regarding the April 2002 injury, the claimant identified the point in April when she suffered the injury relative to her low back while lifting and turning as she retrieved a part from the back of the truck to be delivered to an installer or customer. Christopher Agnew testified that in April 2002 he went to the back of the store and saw the claimant rubbing her back and upon inquiry was informed that she had injured her back while pulling on something. The testimony of the claimant's husband, Gary Smith, reflects that claimant undertook the use of home remedies and over-the-counter treatment modalities to address her low back complaint attributable to the April 2002 accident from April 2002 until she was seen by a doctor in August 2002.

At the time Donald Newton became the store manager of the Ash Flat store in late July 2002 the claimant held the position of merchandiser and also discharged the duties of a backup delivery specialist or driver. The claimant specifically requested that if at all possible, she wanted to avoid being asked to deliver parts because she was recovering from a back injury having been sustained in the employment of respondent. The credible evidence in the record reflects that for a period of time the request was complied with by Mr. Newton. In September 2002, however, the claimant was asked to deliver a part to Ivey's Automotive, and in so doing, suffered an exacerbation or recurrence of her April 2002 injury. Prior to the time of the September 2002 incident the claimant had been deliberate in her lifting activities at work as well as at home in an effort to avoid exacerbating the low back symptoms. In Edens v. Superior

Marble & Glass, 346 Ark. 487, 58 S.W.3d 369, the Arkansas Supreme Court concluded that a strict construction of Arkansas Code Annotated §11-9-102(4)(A)(i) does not require, as a prerequisite to compensability, that the claimant identify the precise time and numerical date upon which an accidental injury occurred, but rather noted that the statute only requires that the claimant prove that the occurrence of the injury is capable of being identifiable.

In order for the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence she must establish: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective medical findings, is defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mickle v. Engineered Speciality 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 suffered a specific injury in April 2002 and a recurrence of the injury in September 2002.

It is undisputed that at the age of sixteen the claimant was involved in a motor vehicle accident. Further, the claimant acknowledged that in relating her medical history to Dr. Welsh during the August 26, 2002 initial visit, she discussed the injury to her back growing out of the motor vehicle accident. Further, the claimant acknowledged that she received medical treatment for back complaints at military facilities while growing up. Nonetheless, while claimant experienced back complaints with her menstrual periods, in 1997 she underwent surgery, and

thereafter did not require or obtain medical treatment relative to her back until August 2002. The medical records of both Dr. Welsh and Dr. Robbins, the Mountain Home neurologist, to whom she was referred reflect that claimant's employment with respondent and symptoms relative to her low back attributable to her employment activity. As previously noted, the manager of the Ash Flat store at the time of the claimant's April 2002 injury acknowledged that the claimant reported an injury to her back in April.

The detailed testimony of Mr. Newton, the manager of the Ash Flat Store commencing in July 2002, reflects his observation of the claimant's pain and an injury of the claimant. The more credible evidence in the record reflects that the claimant reported the September 2002 injury to Mr. Newton upon returning to the store. The claimant was permitted to continue discharging employment duties for respondent until a co-worker registered a complaint with the district manager of favoritism on the part of the manager with respect to the claimant.

A review of the medical in the record discloses that the claimant underwent a battery of diagnostic studies, to include a CT scan, a MRI scan of her lumbar spine, and EMG nerve conduction studies. The diagnostic studies disclosed the presence of degenerative disc disease relative to the claimant's lumbar spine. Further, at the time the claimant was seen by a pain specialist, Dr. Calin Savu, his physical examination of the claimant disclosed the presence of objective findings in the form of the flattening of the lordosis and exquisite tenderness upon palpation of the right paraspinal region overlying the facet and SI joint.

A preexisting 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's Medical Center v. Brown, 53 Ark. App. 30, 917

S.W.2d 550 (1996). 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).

In the instant claim, since initiating treatment under the care of Dr. Welsh on August 26, 2002, the claimant has consistently received medical treatment attributable to the April 2002 compensable injury and September 2002 recurrence of the injury. In furtherance of the afore, the claimant has undergone diagnostic studies, been prescribed prescription medication, to include Hydrocodone, and has undergone injections under the care of an anesthesiologist and a pain specialist. 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 in April 2002, and that she suffered a recurrence of the injury in September 2002. Further, the evidence preponderates that respondents were provided notice of the claimant's injury at the time of occurrence of same both in April 2002 and in September 2002. Medical treatment rendered to the claimant relative to her April 2002 and September 2002 injuries has been reasonable, necessary and causally related to the compensable injury. Respondents are liable for the cost of said treatment.

The claimant was taken off work by respondent on October 10, 2002, and not permitted to return so long as she received active medical treatment relative to her compensable injury to include prescription medication which prohibited her from discharging the aspect of her employment duties which required the operation of a vehicle to deliver parts. Temporary total disability for unscheduled injuries is that period within the healing period in which the claimant suffers a total incapacity to earn wages. Arkansas Highway & Transportation Department v.

Breshears, 272 Ark. 244, 613 S.W.2d 329 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve the condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 528 (1982).

While the evidence reflects that the claimant continues in her healing period and continues to receive active medical treatment relative to her compensable injury and recurrence of April 2002 and September 2002, respectively, as of May 13, 2004, she is scheduled to commence employment as a court reporter. The evidence preponderates that the claimant is entitled to the payment of temporary total disability benefits from October 11, 2002 and continuing through May 13, 2004, as a result of her compensable injury of April 2002 and recurrence of September 2002. Respondents have controverted this claim in its entirety.

#### **AWARD**

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$156.00 for the period commencing October 11, 2002, and continuing through May 13, 2004, as a result of the claimant's compensable injury of April 2002 and recurrence of September 2002. Said sums accrued shall be paid in a lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, and nursing, and other apparatus expenses, including medical related travel, growing out of the claimant's compensable injury of April 2002 and recurrence of September 2002, to include medical related travel.

Maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable David L. Ethredge, pursuant to Arkansas Code Annotated §11-9-715, as amended by Act 1281 of 2001. This award shall bear interest at the legal rate pursuant to Arkansas Code Annotated §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