

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106148

BARBARA WILLIAMS, EMPLOYEE

CLAIMANT

**WAL-MART STORES, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED SEPTEMBER 28, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD on July 9, 2004, at Forrest City, St. Francis County, Arkansas.

Claimant represented by the HONORABLE BILL STANLEY, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE PAUL GEHRING, 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.

A March 23, 2004 pre-hearing conference was conducted in this claim. As a result of the pre-hearing conference, a Pre-hearing Order was filed reflecting 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 Pre-hearing Order is herein designated a part of the record as the Commission's Exhibit No. 1.

The testimony of Barbara Williams, the claimant, and Pat Luker, coupled with the deposition testimony of the claimant, Judy Marrs, Lillie Nelson, and Earnest Earl Williams, along with medical reports and other documents comprise the record in this claim.

DISCUSSION

Barbara Williams, the claimant, with a date of birth of 1952, has an 11th grade education. The claimant commenced her employment with respondent on March 20, 1995, and last discharged employment duties for same on August 28, 2002.

The claimant performed the job duties of a bakery associate in her employment, working the 6:00 a.m. to 3:00 p.m. shift. Claimant asserts that on May 8, 2001, and August 28, 2002, she suffered injuries to her back in the discharge of her employment duties which required medical treatment and incapacitated her from engaging in gainful employment, as of August 29, 2002.

While the claimant initially denied that she had suffered complaints relative to her low back or received medical treatment regarding her low back prior to May 2001, she later acknowledged that such was not the case. Likewise, the claimant initially denied that she had ever been involved in a motor vehicle accident or incurred injuries in such an accident. The medical in the record reflects a March 29, 1993, clinic note of Dr. James Meredith wherein the claimant relayed that she was hurting all over, had headaches, and had been in a motor vehicle accident two days prior to the visit. Dr. Meredith diagnosed the claimant's complaints during the visit as cervical, thoracic, and lumbar strains. (RX 1, p. 1-2).

Further the medical reflects that claimant was ultimately referred by Dr. Meredith to Dr. Ramone P. Lopez, a Forrest City orthopedic physician, for complaints associated with the March 1993 motor vehicle accident. In his April 6, 1993, report Dr. Lopez's impression of the claimant's complaint was that of a cervical and lumbar strains from which he felt she would make a complete recovery. (RX 1, p. 3)

On April 20, 1993, the claimant underwent a CT scan of her lumbar spine, which disclosed a congenitally small spinal canal and diffuse disc bulge at L4-5. (RX 1, p. 4) On May 3, 1993, the claimant was evaluated at Mid-South Neurological Clinic by Dr. James Rodney Feild, a Memphis neurosurgeon, pursuant to a referral of Dr. Meredith for low back pain growing out of the March 1993 motor vehicle accident. Dr. Feild's impression of the claimant's complaint following his evaluation of May 3, 2003, was that of lumbar strain. (RX 1, p. 5) A May 21, 2003, entry, in the records of Dr. Feild relative to the claimant noted that she had returned with an MRI which was normal. (RX 1, p. 6)

A May 21, 2003, lumbar spine MRI study, which was referenced by Dr. Feild in the May 23, 2003, clinic note entry, reflects that while there was mild early water loss of the disc at L2-3, L3-4 and L4-5, the peripheral margins remain intact with no herniations, protrusions, or impingements. (RX 1, p. 7) In a May 24, 1993, report to Dr. Meredith, Dr. Feild noted that while the claimant had degenerative disc disease he did not observe anything that required surgery, and released her from his care effective May 24, 2003, with a prescription for Ansaid and Darvocet. (RX 1, p. 8)

The medical in the record reflects that the last time the claimant sought medical treatment relative to her low back prior to May 2001, was on August 6, 1993, when she was seen by Dr. Meredith for complaint which was diagnosed as degenerative disc disease and for which she received prescriptions of Ansaid and Vicodin with directions to remain off work through August 15, 1993. (RX1, p. 9) While the claimant was seen on February 22, 1994, with complaints of back pain and pain in her lower abdomen, the same was diagnosed as a urinary tract infection. (RX1, p. 10)

As noted above, the claimant commenced her employment with respondent on May 30, 1995. The evidence in the record reflects that the claimant successfully discharged her employment duties through May 2001. In describing her job duties in the employment of respondent, the claimant's testimony reflects:

. . .In the bakery and I also put out products on the floor in the bakery.

* * *

Putting up boxes, taking down boxes. Going in the freezer and coming out and carrying it to the floor. That was my job for eight years. (T. 10-11)

The evidence in the record reflects that the claimant was physically capable of discharging her employment duties from the day she commenced her employment with respondent through May 8, 2001.

Claimant asserts that at approximately 8:00 a.m. on May 8, 2001, she suffered an injury to her back while discharging employment duties for respondent. In describing the mechanics of the accident, the claimant's testimony is at times convoluted and conflicting. In her July 25, 2003, deposition, when questioned about how the accident occurred the claimant testified:

Going to the – unloading the freezer, carrying it to the floor. And, I hurt my back as I was opening the freezer door, taking the stuff out, putting it in the cart, carrying it to the floor.

* * *

I was, I was at the freezer.

* * *

Fixing to go to, you know, shove the door.

* * *

I injured my back as I was opening the freezer door. I had never got the chance to make it in there, I hurt before I got in there. When I got in there, I started putting stuff in cart, carrying, carrying it to the floor. That's what was, that was my job. (JX1, p. 18)

During the hearing claimant testified regarding the May 8, 2001 accident:

Boxes fell on me and I hit my back on the freezer door, and it slid out from under me and I was doing my job.

* * *

When the box fell I fell back to the freezer. The freezer slipped out from under me and that throwed me to be in the shape I am now, which is totally out. (T. 11)

The claimant received initial medical treatment for the May 8, 2001, complaints under the care of Dr. Sudhir Kumar on May 11, 2001. The clinic note of Dr. Kumar reflects, relative to the claimant's history:

Came in with complaint of sudden onset of low back pain. Tried to close a heavy door. Hurting a lot x 4 days. Pain radiating down rt leg at times. . . . (CX1, p. 1)

The claimant was referred by Dr. Kumar to Dr. Morris W. Ray, a Memphis neurosurgeon, at Semmes Murphey Clinic. The May 21, 2001, office note of Dr. Ray, relative to the claimant reflects the following history:

. . .She states this [pain in the low back and right lower extremity] came on two weeks ago. She was at Wal-Mart working when she was pushing on a freezer door and felt something pop in her back. She's been in severe pain and unable to work since that time. (CX 1, p. 6)

Claimant was seen by respondent's designated medical provider, Dr. James Meredith, on May 24, 2001:

Barbara is an employee of Wal-Mart. She was pulling on a freezer door on 05/08/01 and hurt her lower back. (CX1, p. 11)

The claimant testified regarding the mechanics of the freezer door:

It's slide, right. Just like you going to slide something across the floor, that's the way, the way that freezer do, is slide. And, when I, I slide that door, my foot slipped and that made me almost fell the second time. And, when I did that, it stretched me out, and when it did that, that popped something in my back, I didn't know what it was. And, then I told Pat again, she did nothing. (JX1, p. 40)

The claimant's testimony reflects that co-workers around or in the area at the time of the May 8, 2001 injury included Lillie Nelson and Beatrice Farrell. Claimant maintains that while Ms. Farrell was present and witnessed the accident, Ms. Nelson was not in the freezer area, and, as such did not witness the accident. The claimant's testimony reflects further that Ms. Farrell summoned Ms. Nelson after the accident, and Ms. Nelson in fact came to the area where the injury had occurred.

On April 27, 2004, the deposition testimony of Ms. Lillie Nelson was obtained by the parties. Ms. Nelson was employed by respondent for a period of eight and a half years before retiring in November 2002. In the course of her employment with respondent Ms. Nelson worked in the bakery department of same making donuts, breads, and cakes. Ms. Nelson testified that prior to the time that the claimant related that she had hurt her back in May 2001, she did not recall that the claimant complained about her back. Ms. Nelson noted that after the claimant returned to work in the bakery department following the May 2001 accident, claimant continued to complain of pain in her back. Ms. Nelson's testimony reflects that the claimant suffered two events involving the freezer door and complaints of pain to her back, May 2001 and August 2002. Further, Ms. Nelson testified that she was present in a meeting with the claimant

and other co-workers in the bakery department when the claimant reported the injury of her back to the bakery manager, Ms. Pat Luker. (JX4)

The claimant's testimony reflects that on May 8, 2001, following her initial injury, which was witnessed by Ms. Beatrice Farrell, she reported the injury to her supervisor, Ms. Pat Luker, who did not respond to the reporting. At the conclusion of the shift the claimant and Ms. Farrell reported the injury to the personnel manager, Ms. Jo Devasier. The claimant maintains that after reporting the injury to Ms. Devasier, a call was made for Ms. Luker to come to the office, however, she never responded. Thereafter, the claimant went home. The claimant's testimony reflects:

She never did show up. So, I went on home. The next day I came I told Jo, I said, Jo, I hurt my back. Jo said, Pat is not here today. Pat was off. She said, you've got to wait til Pat calls because Pat's got the, you and Pat got to sit down and work up the paper. I said, well, when is Pat – she said, Pat is off today. So, when I did fill the papers out -- (T. 21)

The claimant attributes the afore to the fact that the paperwork was not completed until May 10, 2001.

The evidence in the record reflects a workers' compensation telerecording call-in worksheet regarding the claimant's May 8, 2001, reporting of the injury, which reflects that the employer was notified on May 10, 2001. Further, the document reflects that the accident occurred as the claimant was pulling on the freezer door resulting in an injury to the lower back. The document further reflects witnesses to the accident as Lillie Nelson and Beatrice Farrell (CX2).

The claimant's testimony reflects that she sought medical treatment relative to the May 8,

2001, back injury under the care of Dr. Kumar, her family doctor. The medical reflects that the claimant was seen by Dr. Kumar on May 11, 2001. Claimant asserts that treatment rendered to her by Dr. Kumar included a referral to Dr. Morris Ray, a Memphis neurosurgeon, who in turn referred her back to Dr. Kumar. Further, the claimant asserts that she was prescribed physical therapy by Dr. Kumar, which was had at Baptist Hospital in Forrest City. The claimant asserts that Dr. Kumar and Dr. Ray were unable to treat her because the injury was work related and she was directed to be seen by respondent's designated medical provider, Dr. James T. Meredith. An actual review of the medical reflects that treatment was in fact rendered to the claimant by both Drs. Kumar and Ray. The confusing testimony provided by the claimant in this regard is again attributable to her poor historical skills.

The claimant acknowledged that she was seen by Dr. Meredith on at least two occasions and was directed to follow the treatment regiment as recommended by Dr. Kumar and Dr. Ray. Finally, the claimant asserts that she was released to return to work by Dr. Meredith initially to light duty and later to her regular duties. At one point the testimony of the claimant reflects that she was off work for a period of three weeks. Later the claimant testified that she was placed on light duty for a period of three weeks by Dr. Meredith during which time she worked as a greeter before being released to return to her regular job in the bakery.

The May 24, 2001, office note of Dr. Meredith reflects that forms were completed for respondent-employer relative to the claimant "to keep her off work for at least 7-more days" which was through May 31, 2001. (CX. 1, p. 12). During a May 31, 2001, visit, Dr. Meredith indicated that claimant could not do any job, and recommended that claimant return to Dr. Ray, the neurosurgeon. (CX 1, p. 12).

The testimony of the claimant reflects that even though she returned to her regular employment duties, she continued to experience complaints of pain relative to her lower back attributable to the May 2001 accident. Claimant maintains that on August 28, 2002, while discharging employment duties she suffered another injury to her low back involving the freezer door. The claimant's testimony reflects that respondent refused to pay medical benefits relative to her claim, and, as a consequence, she returned to her family physician, Dr. James Alexander, Jr.

During her July 25, 2003, deposition the claimant denied that either she or respondent terminated the employment relationship but rather asserted that Dr. Alexander did so when he authored an off work slip placing her on total disabled. (JX1, p. 44-45). However, during the course of the hearing before the Commission claimant testified:

I didn't know I was terminated. I worked a whole two weeks before I was terminated. They made me work a whole two weeks before I was terminated. They did not tell – everybody at Wal-Mart, in Wal-Mart know I was terminated. They did not let me know. So, when I – the end of that Friday they called me into the office and Pat Luker and I forgets his name now, and they terminated me. Ken King was there. He did not say nothing. And I didn't know what they terminated me for. They made me work the whole two weeks and then they're going to tell me I was fired.
(T. 27)

The testimony of Ms. Patricia Ann Luker reflects that she commenced her employment with respondent on July 23, 1994. While Ms. Luker acknowledged that she worked in the bakery department of respondent in May 2001, she is uncertain if she was the manager of the bakery department at the time or the assistant manager. Ms. Luker acknowledged it was her responsibility to hear complaints of employees as the assistant manager of the bakery department

when the manager was not available. Regarding training received as a supervisor, Ms. Luker testified:

No. We go through management training but it's more, required more, you know, handling the public, you know. Not so much as associates.

Ms. Luker maintains that the claimant continuously complained about her back hurting during her menstrual cycle, however denies that claimant reported having sustained an injury to her back at work. Further, Ms. Luker asserts that the claimant refused to lift heavy loads on Thursdays and to make donuts when requested.

When questioned specifically regarding the claimant reporting a back injury as a result of stocking the freezer in May 2001, Ms. Luker's testimony reflects:

If she had said something to me about it, if I was manager in there at that point, I can't remember it, but if she did, I can promise you that she has every right in the world and I would have took her to personnel to write up, you know, that she had been hurt and, you know, even – of course I can't remember it, you know. But, I do know this much. Being the assistant, I've never seen Wal-Mart refuse anybody going to the doctor, the whole time I've been there, the whole ten years I've been there. And even if – if she says that I refused her to go, you know, well, you know, Wal-Mart didn't refuse her. I was just one person. That wouldn't have stopped her from going on. So, there's nobody else but this doctor, but I never refused anybody going to the doctor, never. (T. 64)

Ms. Luker acknowledged her signature on a January 31, 2001, performance appraisal of the claimant as a supervisor. Further, Ms. Luker acknowledged that she did not cite the claimant as being insubordinate or refusing to perform assigned job duties [making donuts or unloading supplies] in the performance appraisal.

The medical evidence reflects that the claimant was seen on May 11, 2001, by Dr. Sudhir

Kumar for complaints relative to her low back associated with the freezer door in her employment with respondent, which had occurred several days earlier. Dr. Kumar's impression of the claimant's complaint was that of low back sprain. (CX1, p. 1) When seen in follow-up on May 14, 2001, Dr Kumar recommended an MRI of the claimant's lumbar spine, and prescribed Vicoprofen. (CX1, p. 2) The MRI was obtained on May 16, 2001 which reflects:

Diffuse bulge at L4-5 level with hypertrophic changes of the facet joints and ligamentum flavum causing moderate to severe spinal stenosis and narrowing of both neuroforamina. Diffuse bulge at L3-L4 level causing mild spinal stenosis and small bulge at L2-3 level as well. (CX1, p. 3-4)

The claimant was referred by Dr. Kumar to Dr. Morris W. Ray, a Memphis neurosurgeon, relative to her low back complaints and seen by same on May 21, 2001. After obtaining a history of the claimant's injury and reviewing prior pertinent medical, to include the MRI, Dr. Ray conducted an examination of the claimant. The May 21, 2001 report of Dr. Ray, reflects, with respect to claimant:

She brings with her a MRI. She has either an acute disc rupture or a chronic disc rupture with a bulge and probable acute tear at L4-5 paracentral and to the left. This gives her moderately severe spinal stenosis at L4 on the left. (CX1, p. 7)

Dr. Ray's impression of the claimant's complaint was that of HNP L4 left with spinal stenosis. The May 21, 2001, report of Dr. Ray further reflects recommendations relative to treatment of the claimant's complaint to include medication, physical therapy, and the possibility of surgery in the event that she did not respond to the conservative treatment. (CX1, p. 7) A May 22, 2001 report of Dr. Ray, relative to the claimant, reflects, in pertinent part:

. . .She has rather marked mechanical findings and her MRI is abnormal, but she wanted to try further conservative treatment and

I think this is reasonable. I've outlined it as per the attached note and was going to plan on seeing her back in one week to see how she is doing. (CX1, p. 8)

The claimant did in fact undergo physical therapy at Baptist Hospital in Forrest City. (CX1, p. 9-10)

The medical in the record reflects a May 24, 2001, report of Dr. James T. Meredith, Jr., respondent's designated medical provider, relative to the claimant. The May 24, 2001 report of Dr. Meredith reflects that the claimant had been off work for three weeks. After relaying a history of claimant's injury and treatment received under the care of Dr. Kumar and Dr. Ray, the May 24, 2001 office record of Dr. Meredith reflects:

. . .She has, according to the MRI, a diffuse bulging of the disc at L4-5 which causes moderate to severe spinal stenosis and narrowing of both neuroforamina. She also has bulging at L3-4 which causes mild stenosis and a small bulge at L2-3. Apparently she was told after she saw Dr. Ray that she needed to return to her Wal-Mart Company doctor and she has now been sent to see me.

She is having difficulty walking and fairly severe pain. She is seeing the therapist at the hospital but she says today is her last day of that unless we extend it.

* * *

Back: No particular tenderness of the lower back, positive straight leg raising, worse on the left but also present on the right. Reflexes diminished but equal. No sensory deficits noted. She has difficulty heel and toe walking.

* * *

Plan: I think she should continue her current meds and also continue the physical therapy. I filled out the forms for Wal-Mart and told them to keep her off work for at least 7-more days, this is through 05-31-01. She has an appointment on that day here for followup at 9:40. We are going to ask the therapist to continue her

PT at the hospital and we will go from there. We also will talk to the people at Wal-Mart regarding further neurological followup if indicated. (CX1, p. 11-12)

The claimant was seen in follow-up by Dr. Meredith on May 31, 2001, and noted to have continuing severe pain in her low back radiating down both legs with numbness. Dr. Meredith also observed the claimant walking and noted that he was afraid she was developing a foot drop on the right. The May 31, 2001 clinic note concludes:

Plan: I feel like she needs to go back to neurosurgeon, she is obviously in pretty severe pain, I do not see how she could work at any job. Prescription given for Percocet #30, one or two every 4h prn pain, no refill. I am going to confer with the Wal-Mart Worker's Comp people and see about sending her to a neurosurgeon. (CX1, p. 12)

The medical in the record reflects that the claimant was next seen by Dr. Meredith on June 7, 2001. The June 7, 2001 clinic note reflects, in pertinent part:

Barbara is in for followup of her back problem. She was unable to go see the neurosurgeon we wanted to refer her to because she did not have a ride. She admits that she is getting better. I told her if she was not going to followup and go see the neurosurgeon for possible further treatment there was nothing else I had to offer her and she could go back to work.

I filled out the forms for her job, a copy of which are in the chart. I think she should stay essentially at sedentary activity for the next three weeks or so. Hopefully after that she will be able to go back to normal activity. (CX1, p. 14)

Following the June 7, 2001 visit to Dr. Meredith wherein the claimant was released with restrictions effective June 8, 2001, there is no evidence she again received medical treatment until 2002. (CX1, p. 15)

The testimony in the record reflects that the claimant continued to complain relative to

her low back once she resumed her regular employment duties of respondent. The claimant asserts that on August 28, 2002, she again suffered an injury to her low back while attempting to open the freezer door at work. Again, the testimony of the claimant reflects that the injury was reported to supervisory personnel of respondent, however no action was taken by her supervisors, to include the completion of an accident report.

On August 29, 2002, the claimant was seen by Dr. James G. Alexander, her family physician for complaints of back and leg pain and a ruptured disc. The claimant has continued under the care of Dr. Alexander since August 29, 2002. (CX1, p. 17-32) On September 4, 2002, the claimant underwent an MRI of her lumbar spine pursuant to the direction of Dr. Alexander which yielded the impression of focal disc herniations involving L2-3, L3-4, and L4-5, to the right of the midline. (CX1, p. 16)

The claimant's testimony reflects that respondents have refused to pay workers' compensation benefits relative to her low back injury such as she is unable to receive medical treatment. Further, the claimant noted that the insurance carrier of her husband's employer has refused to pay for medical treatment associated with her low back complaint. The claimant has continued to receive treatment under the care of Dr. Alexander, her family physician, for complaints which are not related to her work-related injury. The claimant maintains the treatment associated with her low back must be born by her, and, as a consequence, she has not undergone surgery or further treatment relative to same. The claimant asserts that she is unable to engage in any gainful employment as a result of the injuries of May 2001 and August 2002.

After a thorough consideration of all the evidence in this record, to include the testimony of the witnesses, review of the medical reports and application of the appropriate statute

provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 8, 2001 and August 28, 2002 the relationship of employee-employer existed between the parties.
3. At all times pertinent the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$141.00, for temporary total disability/permanent partial disability.
4. On May 8, 2001 the claimant sustained an injury arising out of and in the course of her employment. On August 28, 2002, claimant suffered a recurrence of the May 8, 2001, compensable injury.
5. The claimant was temporarily totally disabled for the period beginning August 29, 2002 and continuing through the end of her healing period, a date yet to be determined.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of May 8, 2001, and recurrence of August 28, 2002.
7. The respondent has controverted these claims in their entirety.

CONCLUSIONS

The claimant maintains that she suffered an injury to her back within the course and scope of her employment on May 8, 2001 and a re-injury on August 28, 2002, for which she is entitled to temporary total and medical benefits. Respondent denies that the claimant suffered a compensable injury within the course and scope of her employment with same. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts having sustained an injury having been sustained subsequent to the effective date of the afore provision.

The claimant was employed by the respondent from March 25, 1995 through August 28, 2002. While it is undisputed that claimant suffered injuries to her cervical, thoracic, and lumbar spine in a March 1993, motor vehicle accident, for which she received medical treatment, the evidence further reflects that she last received medical treatment associated with same on August 6, 1993. There is no evidence in the record to reflect that the claimant received medical treatment regarding low back complaints between August 1993 and May 2001.

The credible evidence in the record reflects that the claimant was capable of performing her assigned job duties in her employment with respondent through May 2001. Further, the more credible testimony in the record reflects that claimant did not complain relative to her low back while discharging employment duties prior to May 2001, nor did she experience any restrictions or limitations regarding her low back in the discharge of her employment duties prior to May 2001. Contrary to the assertion that the claimant's supervisor, Patricia Luker, there is no independent documentation of claimant complaining regarding her low back, or refusing to perform assigned job duties prior to May 2001.

A clear review of the testimony of the claimant discloses that she is a poor historian, which is at times to her detriment. Depositions of the claimant were obtained on July 25, 2003, and April 27, 2004. A review of the testimony provided by the claimant reflects that on numerous occasions she was cautioned to listen to the question asked and to respond appropriately. The claimant was also given the same admonition during the hearing in this claim before the Commission. However, when the testimony of Ms. Lillie Nelson, a co-workers of the claimant, is considered along with the medical record and other documents, the evidence preponderates that the claimant did in fact suffer an injury within the course and scope of her

employment on May 8, 2001, and a recurrence of same on August 28, 2002.

On May 8, 2001, the claimant suffered an injury to her low back while performing her job duties as a bakery associate in the bakery department of respondent. The claimant was in the process of retrieving products from the freezer at the time she suffered the injury. Following the occurrence of the injury, the claimant summoned a co-worker, Beatrice Farrell, who thereafter called another co-worker, Lillie Nelson, who was also summoned to the area of the claimant's accidental injury. The evidence in the record reflects that the claimant's supervisor was notified of the injury on the same date of the occurrence, however failed to document the same. Thereafter claimant reported the injury to the personnel manager at the conclusion of her shift. Finally, an accident report was completed on May 10, 2001, and claimant directed to obtain medical treatment from respondent's designated medical provider.

Claimant was in fact seen by her family physician, Dr. Sudhir Kumar, on May 11, 2001. The medical in the record reflects that the claimant has been consistent in attributing her low back complaint to her work activity involving the freezer door of respondent.

The claimant underwent an MRI of her lumbar spine relative to the March 1993 motor vehicle accident, which, while disclosing a congenitally small spinal canal and diffuse disc bulge at L4-5, was found to be a normal MRI. Subsequent to the May 8, 2001, injury the claimant underwent an MRI of her lumbar spine which was diagnosed as either an acute disc rupture or chronic disc rupture with bulge and probable acute tear at the L4-5 paracentral to the left. As previously noted, there is no credible evidence in the record to reflect that the claimant registered complaints relative to her low back subsequent to August 1993 or required medical treatment regarding same between August 1993 and May 2001.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4)(A)(i), Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant claim, the claimant has sustained her burden of proof that she did in fact suffer a compensable injury on May 8, 2001 to her low back in the employment of respondent. The claimant sought and obtained medical treatment under the care of her family physician, Dr. Kumar on May 11, 2001. Further, claimant has been consistent with respect to the history she has related to medical providers regarding the May 2001 injury. Dr. James T. Meredith, respondent's designated medical provider, after viewing the MRI, concurred in the diagnosis and treatment regiment of the claimant's family physician and the neurosurgeon to whom she had been referred. Indeed, Dr. Meredith directed the claimant to follow through on the treatment as outlined by Dr. Ray and Dr. Kumar. When the claimant failed to improve as a result of the treatment Dr. Meredith recommended that the claimant return to the neurosurgeon, Dr. Ray for the treatment as recommended. The claimant failed to follow through on the treatment with Dr. Ray after realizing that some improvement in her symptoms.

Once the claimant returned to her employment duties with respondent in June, 2001, she continued to experience complaints relative to her low back. The afore is corroborated by the

testimony of Ms. Lillie Nelson, a co-worker of the claimant as well as the testimony of the claimant's husband and sister-in-law.

On August 28, 2002, while discharging employment duties of respondent the claimant suffered a recurrence of her back injury while again attempting to close the door of the freezer. The credible evidence in the record reflects that the August 2002 incident was reported to appropriate supervisory personnel of respondent. The claimant later sought treatment under the care of her family physician, Dr. James Alexander, on August 29, 2002. There is evidence in the record to reflect that the claimant had continued to experience complaints relative to her low back since the May 8, 2001 injury, and that following the incident in August 2002 she was unable to continue discharging employment duties. The treatment rendered to the claimant under the care of Dr. Alexander included medication and additional diagnostic studies.

A recurrence is not a new injury, but it is simply a period of incapacitation resulting from the previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 932 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of the prior injury. Wellborn v. Pierce Brothers Construction Company, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

During the claimant's July 25, 2003 deposition she indicated plans to undergo surgery relative to her low back in January 2004. The respondent has controverted the compensability of the claimant's May 8, 2001 injury and any recurrence of same to include the August 28, 2002 event. The claimant has been unable to secure medical treatment relative to her low back directly. The claimant has been unable to work or engage in gainful employment because of residuals of the May 8, 2001 injury and recurrence of August 28, 2002. The claimant has

remained within her healing period and totally incapacitate from engaging in gainful employment since August 29, 2002, as a result of the May 8, 2001 compensable injury and August 28, 2002 recurrence. Respondents have controverted this claim in its entirety.

AWARD

Respondent is hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$141.00 for the period commencing August 29, 2002, and continuing through the end of her healing period, a date yet to be determined, as a result of the May 8, 2001 compensable injury and August 28, 2002 recurrence. Said sums accrued shall be paid in a lump without discount.

Respondent is further ordered and directed to pay all reasonably related medical, hospital, nursing, and other apparatus expenses, to include medical related travel growing out of the claimant's compensable injury of May 8, 2001, and recurrence of August 28, 2002.

Maximum attorney's fees are herein awarded to claimant's attorney, the Honorable Bill Stanley, on the controverted portion of this award, pursuant to Arkansas Code Annotated §11-9-715, and, in accordance with the provision in place prior to July 1, 2001, with respect to attorney's fees and indemnity and medical benefits.

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.

ANDREW L. BLOOD
Administrative Law Judge