

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409832

CAROLE AYTEKIN

CLAIMANT

A Z FACTORY CLOSE OUTS

RESPONDENT

FIRST COMP INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 13, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by GUNNER DELAY, Attorney, Fort Smith, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on January 18, 2005, in Fort Smith, Arkansas. The deposition of Bobby Pixley was taken on January 3, 2005, and has been admitted as Claimant's Exhibit No. 1.

A pre-hearing order was entered in this case on November 10, 2004. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the claimant withdrew her request for temporary total disability benefits and attorney's fees. The respondents made no objection. Therefore, these issues are withdrawn and will not be considered at the present time. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates from February 13, 2004 through April 24, 2004, the relationship of employee-employer-carrier existed between the parties.

2. The appropriate weekly compensation rates are \$164.00 for total disability and \$154.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to her low back as the result of a specific employment related accident.
2. The claimant's entitlement to the payment of medical expenses incurred for treatment of her low back.
3. The effect of Ark. Code Ann. §11-9-701 on all benefits accruing prior to September 28, 2004.

In regard to these issues, the claimant contends:

"The claimant contends that she sustained a compensable injury to her low back sometime in March 2004."

In regard to these issues, the respondents contend:

"The respondents contend that the claimant reported no injury during her employment with the respondent/employer. The claimant was hired February 13, 2004 and terminated on April 24, 2004, after three days of "no call, no show."

DISCUSSION

I. COMPENSABILITY

The central issue in this case is whether the claimant sustained a "compensable injury" to her lower back, as the result of any specific employment related incident or accident. The burden rests upon the claimant to prove all of the statutory elements for a "compensable injury" to this portion of her body.

The first of these elements are contained in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove by medical evidence the actual

existence of a physical injury to her low back that is supported by "objective findings".

The medical record shows that the claimant was first evaluated and treated for back complaints, purportedly on April 5, 2004. Although the index for this exhibit indicates that this was by Dr. Wendell Ross, it appears that this evaluation was actually by Dr. George Tompkins. The office note generated by this visit gives only a diagnosis of "acute" low back pain with some sacral involvement. Unfortunately, this note was handwritten and the handwriting is far from legible. It is impossible to determine the term that was used in regard to the claimant's sacral complaints. Treatment was provided the claimant with oral medication, in the form of anti-inflammatories and analgesics.

On April 7, 2004, the claimant was again seen by Dr. George Tompkins. Again, the handwritten records are difficult to decipher. It appears that the diagnosis was "left sacroiliac" something with radiculitis. The claimant was released to return to work at light duty. Her conservative treatment regimen was somewhat modified. The claimant was also directed to return for follow up.

The claimant was next seen on April 9, 2004. At that time, the claimant was noted to have mild spasms of the paraspinal muscles on the left over the lower thoracic, lumbar, and sacroiliac areas. Her "assessment" or diagnosis was again somewhat illegible with the only decipherable words being "acute lumbar". The claimant's physical restrictions were continued and she was directed to return for follow up on April 12, 2004.

On the April 12, 2004 visit, the claimant's physical examination was noted as showing some decipherable abnormality that involved her lumbar and left and right sacroiliac areas. She was noted to have positive straight leg raising on the left at 80 degrees and decreased range of motion. Her deep tendon reflexes were noted to be

2/4. At this time, a diagnosis of "acute lumbar somatic dysfunction" and "sciatica" was made. The claimant was directed to continue her current conservative treatment modalities. She was allowed to continue working, but with restrictions. She was also directed to return for follow up in five days.

On April 16, 2004, she was diagnosed as experiencing low back pain due to lumbar sacral strain. The claimant's conservative treatment was continued and she was directed to return for follow up in two weeks. Restrictions on her potential employment activities were continued, but were lessened.

The claimant was next seen on May 25, 2004. On physical examination, she was noted to be unable to extend her left leg to 0 degrees without pain behind her thigh. No low back pain was noted on straight leg raising bilaterally. Her reflexes were noted to continue to be 2/4 and equal. Illegible findings were made concerning the claimant's lumbar left and right sacral areas and left piriformis muscle. A diagnosis was made of dysfunction and "acute sacral somatic dysfunction" and acute piriformis syndrome on the left. Her conservative treatment was continued and she was directed to return for follow up on the following Friday. In an off work slip, signed by Dr. Tompkins and also dated May 25, 2004, he noted the type of the claimant's difficulties as "muscle spasm in back". As a result of this condition, he restricted the claimant from engaging in any employment until May 26, 2004.

The claimant was seen by Dr. Tompkins on May 27, 2004. On that date, Dr. Tompkins noted that the claimant's face was red and that she was sweating and shaking. On testing, her blood pressure was elevated. Dr. Tompkins attributed these complaints to an allergic reaction to the steroid medication she had been previously given for her back and lower extremity complaints on May 25, 2004, and he discontinued this medication.

The claimant was seen for the first time by Dr. R. Wendell Ross on August 26, 2004. At that time, Dr. Ross noted that the claimant was having difficulty walking, which was due to weakness and severe pain in her left leg. He noted that the claimant exhibited positive straight leg raising on the left, but 2+ and equal deep tendon reflexes. He also noted that the claimant exhibited a loss of great toe strength in her left foot. It was his opinion that the claimant presented classic symptoms of an L5-S1 herniated disc. As a result, he referred the claimant for a lumbar MRI. The claimant was to return, following the MRI.

On September 1, 2004, the claimant returned to Dr. Ross, but had been unable to obtain the MRI study. Again, Dr. Ross stated:

" I feel confident that this lady has a disc".

He again reiterated his opinion that a lumbar MRI was medically appropriate and necessary.

The lumbar MRI, which had been repeatedly recommended by Dr. Ross, was ultimately performed on December 15, 2004. Although this study noted degenerative disc disease, at L4-5 and L5-S1, it was also interpreted as revealing:

"Multi level disc herniations. The most pronounced one was at the L5-S1 level to the left paracentral region. Other disc herniations are noted at L4-5, L1-2, and possibly the left neural foramina at L3-4 level. "

I find the foregoing medical evidence is sufficient to objectively prove the presence of a physical injury to the claimant's low back or lumbar spine, in the form of multi-level disc herniations and particularly a moderate sized left sided focal disc herniation at L5-S1. This latter objective abnormality would conform to the claimant's symptoms noted by Dr. Ross and substantiates his diagnosis. Thus, the claimant has satisfied the requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove by the greater weight of the credible evidence that this medically established and objectively documented physical injury, involving her low back or lumbar spine, satisfies the definitional elements for a "compensable injury" that are found in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional elements are:

- (1) That the injury arose out of and occurred in the course of the employment;
- (2) That the injury was caused by a specific incident;
- (3) That the injury is identifiable by time and place of occurrence;
- (4) That the injury resulted in internal or external physical harm to the claimant's body;
- (5) That the injury required medical services or resulted in disability.

In order to satisfy the first three of these definitional elements, the claimant must prove a causal relationship between her lower back or lumbar injury and a specific identifiable employment related incident. However, it is not absolutely necessary that the claimant prove the existence of this causal relationship by expert medical evidence. Such a causal relationship may be proven by showing that her injury is logically attributable to the specific employment related incident, occurred within a reasonable period of time following this incident, and that there is no other reasonable cause for the injury. It is also unnecessary that the claimant prove the existence of this causal relationship to an absolute or mathematical certainty. She need only show that such a causal relationship is likely or probable (as opposed to merely possible).

The claimant testified that she first experienced difficulties with her back on a particular day during the last part of February or the first part of March of 2004. She stated that these complaints began suddenly when she was at work and while she

was performing her assigned employment duties, specifically lifting a box or case of chain. She described continuous difficulties with her back and left lower extremity following this incident.

The claimant further testified that, immediately following the onset of her complaints, she informed her supervisor, Bobby Pixley, of the incident and injury to her back. She stated that Mr. Pixley then sent her home to rest her back .

She stated that, although her back and left leg continued to bother her, she returned to work the following day. When Mr. Pixley was advised of her continuing complaints, he gave her lighter duty work to perform. She stated that she never requested the respondent to send her to a physician and that the respondent never offered to send her to a physician.

She testified that, at the request of her family, she ultimately sought medical treatment for her continuing difficulties from Dr. Tompkins. The expense of these medical services were apparently borne by her brother. After consulting Dr. Tompkins, the claimant continued to work for the respondent in a limited or light duty capacity and provided the respondent with the various notes given to her by Dr. Tompkins.

According to the claimant's testimony, this arrangement continued until Mr. Pixley was succeeded by a Jason Edgar, as her supervisor. The claimant stated that Mr. Edgar ended her light duty employment position and returned her to full duty. She stated that when she attempted to perform the heavier activities, she would be unable to continue due to increased difficulties with her lower back and left leg. Finally, she stated that when she was unable to perform these activities Mr. Edgar would get mad at her.

From the claimant's testimony, it appears that the real or perceived problems between the claimant and Mr. Edgar culminated on April 24, 2004. The claimant

stated that on that date, she came into the respondent employer's place of business to pick up her check. When she came in, Mr. Edgar told her that he wanted to speak with her. The claimant testified that she waited around for him for a period of time. When Mr. Edgar did not appear within that time, she left. It was her testimony that she assumed that her employment had been terminated and never returned to the respondent. Instead, she sought and obtained lighter duty employment elsewhere, first through TEC and then at the Cracker Barrel (her present employer).

The claimant's testimony concerning the onset and continuation of her lower back and left leg complaints coincides with the testimony of her mother, Joy Chamberlain. Ms. Chamberlain also testified that she personally had conversation with Hazel Pierce and James White about the claimant's injury and complaints and that both were already aware of the injury and complaints prior to these conversations.

The claimant's testimony is also fundamentally corroborated by that of Bobby Pixley, her immediate supervisor. Mr. Pixley testified that the claimant reported an employment related back injury to him while she was unloading boxes of 3 ton chain hoists. According to his testimony, she related that her back began burning and stinging when she attempted to unload these hoists, and that her difficulties continued as the day went on. At that point, he told her to go ahead and take off the remainder of the day, which she did. He also testified that he relayed this information to Ms. Pierce.

However, the claimant's testimony and the testimony of Mr. Pixley differ as to when these events took place. Mr. Pixley testified that the day following the initial conversation with the claimant, the claimant returned and presented him with a doctor's slip that restricted her to light duty work. He stated that when he received this slip, he gave the slip to Hazel Pierce, who was the person he believed to be in charge of such matters. Mr. Pixley also testified that he thinks that he quit his

employment with the respondent in February of 2004, and that the conversation with the claimant concerning her injury and the turning in of the slip from the doctor occurred prior to his quitting. He also testified that the claimant worked under his supervision in a light duty capacity for a period of months and that during this time he allowed the claimant to go home on several occasions because of increased difficulties with her back. There is an indication in the record that Mr. Pixley actually terminated his employment with the respondent on March 14, 2004.

Hazel Jones Pierce, who was the respondent's "bookkeeper" and apparently to some degree a type of office manager, denied that Mr. Pixley ever gave her a doctor's statement on the claimant or ever reported to her that the claimant had advised him of an employment related back injury. Ms. Pierce also denied that the claimant ever reported an "on the job" injury to her. Ms. Pierce did acknowledge that the claimant had provided her with numerous doctors notes or records, which were either "more than 6" or "about half a dozen". She further stated that she was well aware that the claimant had experienced an injury to her lower back and was having difficulties with this portion of her anatomy prior to the claimant's leaving on April 24, 2004. She also stated that she was well aware that the claimant was to perform only restricted or light duty employment activities. Finally, she testified that she was not curious as to how the claimant had injured her back and never inquired into this matter.

Jason Edgar testified that he became the claimant's supervisor around the end of March or the first of April of 2004. He stated that when he began this employment he was informed by Ms. Pierce that the claimant had back difficulties and was to be kept on weight duty. He stated that he followed these directions and the claimant was maintained on light or limited duty during the entire period of time that he was her supervisor and that he had even admonished the claimant when she attempted to do any type of employment that violated her physical restrictions.

Finally, he testified that he never inquired of the claimant or any one else, as to how she had gotten hurt. He indicated that he was not curious about this and was simply "too busy" to care.

Finally, James White, the owner of the respondent, testified that he too knew that the claimant was experiencing difficulties with her back and was on light duty. However, he stated that he did not know that this was due to a job related injury and that the claimant had never informed him of such an injury. However, apparently, he too was not sufficiently interested to inquire of the claimant as to how her difficulties had arisen.

There was no evidence presented of any prior injuries or episodes of difficulties with the claimant's low back or lumbar spine. The only indication of any prior difficulties with the claimant's left lower extremity, appears to be psychosomatic hysterical paralysis of both of her legs following a single vehicle accident. The medical evidence dealing with these complaints show no basis of any physical etiology.

The first evidence of any actual physical injury to the claimant's low back or lumbar spine is found in the April 5, 2004. Records of Dr. Tompkins. Dr. Tompkins recorded a history of left low back pain and pain in the claimant's left leg following a lifting incident at "A to Z Pallets", one month prior to the visit. On that same date, Dr. Tompkins authored a notation indicating that the claimant had experienced a "back injury", was under medical treatment and was restricted from lifting in excess of 5 pounds. This is apparently one of the documents provided to the respondent. In a subsequent report by Dr. R. Wendell Ross, dated August 26, 2004, Dr. Ross records a history of lower back and left lower extremity difficulties following an accident and injury that occurred while lifting at A to Z tool sales several months prior to the visit.

The resolution of this case is made more difficult by the fact that many of the witnesses are relatively unsophisticated and do not have a well developed perception of time and dates. However, all of the evidence presented shows that at some point during her employment with this respondent, the claimant began experiencing substantial difficulties with her low back or lumbar spine, including radicular symptoms into her left lower extremity. These difficulties were sufficiently severe to limit her physical activities, including her employment activities, and to cause her to at least periodically miss some time from work. The evidence shows that the claimant has consistently attributed these difficulties to a specific work related lifting incident. The majority of the evidence further shows that the claimant has consistently indicated that this injury occurred during the latter part of February or the first part of March of 2004.

After consideration of all the evidence presented, it is my opinion that the claimant was a credible witness and that her testimony at the hearing accurately reflected the events surrounding the onset of her lower back and left leg symptoms. This conclusion is based upon my observation of the claimant at the hearing. It is also based upon the fact that the evidence shows the claimant to be highly motivated and has made an extraordinary effort to maintain regular gainful employment, even in light of her rather significant physical difficulties. It is further based upon the fact that the history of the onset of her difficulties has remained consistent, throughout, and that this history is supported by the other credible evidence presented.

Clearly, the employment related incident described by the claimant, as occurring contemporaneously with the onset of her lower back difficulties, could reasonably and logically produce the medically diagnosed and objectively documented injury to her lumbar spine. Further, this injury manifested itself within a reasonable period of time with this incident (i.e. contemporaneously). Finally, there is no evidence

of any other trauma that would reasonably cause the medically established and objectively documented physical injury to the claimant's lumbar spine. Under the well established rule announced in Hall v. Pittman Construction Company, 253 Ark. 104, 357 S.W. 2nd 263(1962), the foregoing facts are sufficient to show the existence of a causal relationship between the medically established and objectively documented physical injury to her lumbar spine and the described specific employment related incident. Thus, the claimant has proven the first two definitional elements for the "compensable injury" set out in Ark. Code Ann. §11-9-102(4)(A)(i), i.e. that this injury arose out of and was in the course of her employment and was caused by a specific incident..

Although the evidence presented does not establish the exact date and time of this described incident, I find that it is sufficient to adequately identify the date and time of the incident to satisfy the third definitional element of Ark. Code Ann. §11-9-102(4)(A)(i). The claimant's description of the place of the accidental injury is clear and her description of the time of the accidental injury is sufficiently restricted to constitute a "reasonably definite time", Marcoe v. Bell International, 48 Ark. App 33, 888 S.W. 2nd 663 (1994), W. Shanhouse & Sons v. Sims, 224 Ark. 86, 272 S.W. 2nd 68 (1954), Murich-Jarvis Company, Inc. v. Townsend, 209 Ark. 956, 193 S.W. 2nd 310(1946).

The objectively documented physical defects on the lumbar MRI study are clearly sufficient to prove that the claimant's employment related injury produced internal physical harm to this part of her body. Thus, the claimant has satisfied the fourth definitional element of Ark. Code Ann. §11-9-102(4)(A)(i).

Finally, the very nature of the claimant's compensable injury and the magnitude of her resulting physical complaints also clearly proves that medical services were reasonably required. Thus, the claimant has satisfied the fifth and final definitional

element of Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, the claimant has proven by the greater weight of the credible evidence that she sustained a "compensable injury" to her low back or lumbar spine, as that term is defined by the Act. She would be entitled to any and all appropriate benefits provided by the Act for such a "compensable injury".

II. NOTICE

At this point, it becomes necessary to address the respondents' contention that Ark. Code Ann. §11-9-701 prevents the claimant from receiving benefits for her compensable lumbar injury, until September 28, 2004,.

Ark. Code Ann. §11-9-701(a)(1) provides:

"Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to the receipt of the employee's report of injury. "

However, in order for this bar to apply, Ark. Code Ann. §11-9-701(a)(2) requires:

"All reporting procedures specified by the employer must be reasonable and shall afford each employee reasonable notice of the reporting requirements."

The evidence presented shows the respondent had a rather informal reporting " procedure" to say the least. There was no requirement that an injured employee complete any particular form, approved by the Commission or otherwise. Instead, the injured employee was, at most, supposed to verbally report the occurrence of an employment related injury to either their supervisor or variety of clerical or office personnel. Presumably, they could also verbally report injuries to the owner. At that point, someone at the respondent would apparently decide whether or not to accept liability for the claimed injury. If it was determined that the injury was job related

and that the injury was not "serious", then benefits would be directly paid by the respondent employer. Only if the injury did appear "serious", would the respondent employer file the appropriate paperwork with its carrier.

In the current record, there is absolutely no evidence that the claimant was actually provided any information on the method and manner to report an employment related injury. It would appear from the testimony of Mr. Pixley and the respondent's witness that little or no action was taken to inform anyone of the "reporting procedures specified by the employer". Thus, it would appear that the pre-requisite of §11-9-701(a)(2) was not met.

However, the greater weight of the credible weight of the credible evidence shows that the claimant did, in fact, comply with the respondents' rather informal "reporting procedure". This evidence shows that she did report her employment related injury to her supervisor (Bobby Pixley) on or before her first medical treatment on April 5, 2005.

The claimant testified that she advised Mr. Pixley of the accident and injury on the date that it occurred, and I find this testimony to be credible. Mr. Pixley testified that he notified Ms. Pierce of the claimant's employment related injury, shortly thereafter. I find his testimony, in this regard, to also be credible. Ms. Pierce testified that she received various doctor notes on the claimant, apparently including the note of April 5, 2004. These notes clearly indicate that the claimant had experienced a "back injury". Ms. Pierce's testimony that no specific inquiry was made in regard to the cause of this injury would only appear reasonable, if the cause had already been made known to her (as reflected by the testimony of the claimant and Mr. Pixley). This conclusion is further supported by the testimony of Ms. Chamberlain, the claimant's mother, that when she contacted Ms. Pierce, Ms. Pierce was already aware of the claimant's employment related back injury. Ms. Chamberlain

further testified that when Dr. Ross recommended the MRI study, she, personally, contacted Mr. White and he also told her that the injury had already been reported and that he thought it was being taken care of. In this regard, I find Ms. Chamberlain's testimony to be credible. I would note that Ms. Chamberlain's testimony, concerning Mr. White's knowledge of the claimant's employment related injury, is corroborated by Dr. Wendell Ross' report of September 1, 2004. In this report, Dr. Ross indicates that he, too, had contacted Mr. White for approval of the MRI study, but had been informed by Mr. White that he was denying that the accident happened and that his company was unwilling to accept liability for the expense of this study under workers' compensation.

Ark. Code Ann. §11-9-707(2) provides for a presumption that appropriate notice of injury was given. Although the respondents have failed to prove that they adequately notified the claimant of the "required" reporting procedure, the evidence shows that the claimant actually complied with this procedure. Thus, the claimant is not barred from receiving any benefits of Ark. Code Ann. §11-9-701(a).

III. BENEFITS

The final issue to be addressed concerns the claimant's entitlement to appropriate benefits under the Act for her compensable low back or lumbar injury. The only benefit in dispute, at the present time, is the claimant's entitlement to medical services.

In order to be entitled to the payment of expenses incurred for medical services, the claimant must show that the medical services were "reasonably necessary" for her compensable injury. Medical services are considered to be "reasonably necessary" when they are necessitated by or connected with a compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

In the present case, I find that all of the medical services provided the claimant for her low back difficulties by and at the direction of Dr. George Tompkins and Dr. R. Wendell Ross represent "reasonably necessary medical services" for the claimant's compensable low back or lumbar injury. This includes the medical services provided the claimant by and at the direction of Dr. Tompkins for her allergic reaction to medications given her to treat her compensable low back or lumbar injury. Such an allergic reaction would represent a "compensable consequence" of the claimant's compensable injury.

All of the medical services provided to the claimant for her lower back and left lower extremity difficulties by and at the direction of Dr. Tompkins and Dr. Ross were clearly necessitated by or connected with the claimant's compensable injury. These services were also of such a type and nature as are commonly deemed medically appropriate by the general medical community for the purpose of evaluating the nature and extent of injuries such as that experienced by the claimant and for the actual conservative treatment of injuries such as that experienced by the claimant.

Based upon the fact that both Dr. Tompkins and Dr. Ross are general or family practitioners and in light of the nature and extent of the claimant's compensable injury. It is my further opinion that an evaluation of the claimant by a neurosurgical expert would clearly be reasonable and medically appropriate. Such an evaluation is obviously necessary to determine if further medical treatment is appropriate and, if so, the nature and extent of such treatment.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$164.00 for total disability and \$154.00 for permanent partial disability.
4. During the latter part of February or the first part of April of 2004, the claimant sustained a "compensable injury" to her lumbar spine. Specifically, the claimant has proven by the greater weight of the credible evidence that during this period she sustained a physical injury to her lower back or lumbar spine that is established by medical evidence and supported by objective findings, that arose out of and occurred in the course of her employment, that was caused by a specific incident that is identifiable by time and place of occurrence, that caused internal physical harm to her body, and that required medical services.
5. The medical services provided to the claimant for her compensable lower back or lumbar injury by and at the direction of Dr. George Tompkins and Dr. R. Wendell Ross represent "reasonably necessary medical services". Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.
6. An evaluation of the claimant by a neurosurgical specialists, to order to determine the exact nature and extent of her injury, her need for continuing medical treatment, and the nature and extent of such treatment, also constitutes reasonably necessary medical services for the claimant's compensable low back or lumbar injury. Liability for these expenses also rests upon the respondents herein subject to the medical fee schedule established by this Commission.
7. The claimant is not barred from receiving any benefits for her

compensable injury by the provisions of Ark. Code Ann. §11-9-701(a)(1). Specifically, the greater weight of the credible evidence shows that the claimant was never given reasonable notice of the respondents' reporting procedure, that the claimant, did, in fact, comply with the respondents' reporting procedures, and that the respondents had actual knowledge of the claimant's compensable injury on or before the date benefits first began to accrue.

8. The respondents have denied the occurrence of any compensable injury to the claimant's low back or lumbar spine and have controverted this claim in its entirety.
9. Although the claimant's attorney has provided the claimant with valuable legal services, no benefits directly payable to the claimant are herein awarded. Therefore, at the present time, no controverted attorney's fee can be awarded to the claimant's attorney.

ORDER

The respondents are liable for the expense of the medical services provided to the claimant for her compensable lower back or lumbar injury by and the direction of Dr. George Tompkins and Dr. R. Wendell Ross. This includes expenses incurred as the result of expenses rendered the claimant by Dr. Tompkins for an allergic reaction to medication provided the claimant for her compensable injury. The respondents are also liable for the expense of, at the least, an evaluation by a neurosurgical specialist. The parties are encouraged to agree upon the appropriate provider. However, if no agreement can be reached, this Commission will select an appropriate provider. The respondents liability in regard to these medical expenses is limited by the medical fee schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a

lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge