

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F412410**

<b>ETHEL BROOKS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CROWLEYS' RIDGE DEV. COUNCIL, EMPLOYER</b>	<b>RESPONDENT</b>
<b>COMMERCE &amp; INDUSTRY INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 17, 2005**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 22, 2005, at Forrest City, St. Francis County, Arkansas.

Claimant represented by the HONORABLE ROBERT J. DONOVAN, Attorney at Law, Marianna, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, 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 8, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Ethel Brook, the claimant; Letricia Brooks; Evelyn Scott; Anita C. Jones; and Sandra Stegall, coupled with medical reports and other documents comprise the

record in this claim. One of the witnesses of the respondents, Ms. Ann Owen, had recently suffered a death in her family and was not available to testify during the scheduled hearing in this claim. The parties were provided an opportunity to obtain the testimony of the witness by deposition. Following the hearing, respondents in a July 25, 2005, correspondence relayed that they were prepared to go forward on the hearing record and would not be introducing any further testimony.

### DISCUSSION

\_\_\_\_\_ Ms. Ethel B. Brook, the claimant, with a date of birth of July 3, 1936, after completing the 10<sup>th</sup> grade later obtained her GED, and 42 hours of post secondary education in early childhood education. Claimant commenced her employment with respondents on November 1, 1997. Claimant was employed by another entity, East Central Arkansas Economic Cooperation Development, that went out of business. The afore was funded by the same agency as respondent, who took over the program.

Claimant noted that while respondent is a different entity, it performs that same type work. Claimant has been performing the same type work for thirty-five (35) years. Claimant note that she started out as home visit, then teacher's assistant, head teacher, and that she is now a teacher. Claimant became a teacher three (3) years earlier, teaching three to five years of age children. Claimant's testimony reflects, with respect to the day to day operation in the teaching of her age group of students:

With that age group we have like group time. We have a daily schedule that we go by. We have group time, we have breakfast. We have a time to brush their teeth, use the bathroom. And we have also learning center time when they are involved in like ten different learning centers like art, music, library. (T. 14).

Claimant worked out of the Wynne facility, where there are four classrooms, with each class averaging twenty (20) students. The testimony reflects that there is a teacher and an assistant assigned to each classroom.

The testimony of the claimant reflects that in addition to her teaching duties, other responsibilities at the facility included cleaning and taking care of the building, and carrying garbage out of the room. On Friday administrative duties are performed which include preparing the paperwork to go to Jonesboro. Claimant lives in Marianna, Arkansas. All of the other employees at the facility live in Wynne.

Regarding the events of Friday, November 12, 2004, which as the basis for the present claim, the testimony of the claimant reflects:

Well, that was probably an unusual day because I usually get off work at 4:00. This happened like about 5:00. I was there cleaning, and Ms. [Anita] Jones, she left.

She's my assistant.

She said she had to go and pay a bill, and it was a quarter until 5:00. I told her I was going to go ahead and finish up at what I was working at. And when I go through with everything I was going to do, I went to take the garbage out the back. (T. 15-16).

Claimant noted that employees were preparing for the assessment team to come from Jonesboro that was scheduled for Monday, November 15, 2004.

Claimant note that as far as completing the work on that particular Friday, some of the other employees left the Head Start Center and returned. Claimant explained that since she lived in Marianna, she was not in a position where she could leave, take care of some errands and return to the center, so she continued to work. Claimant testified:

I was taking the garbage out. I had go through with everything else, and that's what the last thing was I was going to do because I had finished all of my cleaning and everything.

It was in a garbage - - well, it was a plastic garbage container.

I was taking it out the back and I lifted it by the handle, up under there so I won't spill it, and it's easy to carry that way.

Yes, sir. Well, I call it the back. I was going to the garbage bin where we put it at. It was raining, and so I slipped and I fell backwards with the garbage. And finally I got up. (T. 18).

In describing the mechanics of her fall, claimant's testimony reflects:

I landed on my back, and when I did get up I had to roll over to get up. I got up and I tried to take it on to the bin. I was - - I wasn't hurting as bad, then, so I said, "I believe I can make it home," so I went on and put the garbage container back in the room right at the door.(T. 18-19).

Claimant testified that there were no witnesses to her fall, observing:

When I got to the - - when I passed by classroom and got to Ms. Scott's classroom I could see two people in there. I asked them where was Ms. Scott. They said she was gone to . . . (T. 19)

Ms. Evelyn Scott is the head teacher and supervisor. Claimant's testimony reflects that after inquiring about Ms. Scott's location, she did not find or see her from that time forward on the day of the accident. Claimant explained that the reason for her inquiry about Ms. Scott was that she wanted to tell her that she had fallen.

After being unable to locate Ms. Scott, claimant's testimony reflects:

I went on and I sat in the car and tried to come to myself, and by that time Ms. Jones drove up beside me.

Ms. Anita Jones, she drove up beside me. I rolled my window down and I was trying to tell her that I fell. I said I was going to try to

make it home. She was on her cell phone. She never did get off of her cell phone, but when I thought she heard me, I threw my hand up, and I said, "I'm going to try to go on home." She just threw up her hand like this. She never stopped talking on the phone. I backed out and went on home. When I got home I couldn't hardly get out of the car. That's where I was sitting when my daughter-in-law got there. (T. 20-21).

Claimant explained that her daughter-in-law, Ms. Letricia Brooks, helped her get out of her car.

Claimant's testimony reflects regarding her daughter-in-law:

I told her what happened. I tried to tell her what had happened.

She helped me get in the house, then she gave me some kind of pill and I sat there on the bed for awhile and tried to lay down, but off and on all I was up.(T. 21).

The following day, Saturday, November 13, 2004, claimant testified that she got up and went to the doctor, Dr. Balke, in Marianna. Claimant maintains that she informed Dr. Balke that she had fallen at work while carrying out some garbage. Claimant asserts after an examination by Dr. Balke she was referred to Baptist Hospital in Forrest City on the same day. Claimant noted that Dr. Balke provided prescriptions for medication and x-rays were obtained at the hospital. Claimant was not admitted during the hospital visit.

Claimant's testimony reflects that on Sunday, November 14, 2004, her physical activity level was severely limited due to residuals of her fall. Claimant testified that she tried to go to work on Monday, November 15, 2004:

Yes, sir, I got up and my daughter-in-law tried to help me get ready to go to work, but by the time I got the wind to get out of car, I started hurting real bad all over again, so I went in, tried to get in there, and I told Ms. Scott that I didn't know whether I could make it or not.

I told her that I fell out there. And she said, "Well, I didn't know nothing about it." I said, "Well, I did. I fell." I said, "I went to the

doctor. I was going to try to make it today, but I can't make it" because I just went to hurting all over again by the time I got there. So she said, "Well, you can't leave now because we don't have nobody to put in your place." (T. 23-24).

Claimant explained that the reason she made every effort to be at work on Monday, November 15, 2004, was because of the scheduled visit of the team from Jonesboro. Claimant testified that she was furnished the telephone number of Ms Robertson by Ms. Scott who agreed to come in in her place. Upon Ms. Robertson's arrival, claimant returned home.

Claimant's testimony reflects that she returned to Dr. Balke and to Baptist Hospital where she had a MRI scan performed. Claimant testified that she was referred by Dr. Balke to a neurologist in Jonesboro, Dr. Cauli. Claimant has been seen by Dr. Cauli on four different occasions, with the last being June 13, 2005.

The testimony of the claimant reflects that she tried to return to work for respondents on two (2) days in December 2004, 16<sup>th</sup> and 17<sup>th</sup>. Claimant testified that she may have been paid by respondents for some annual leave and some sick leave, when she was not in fact at work. Claimant does, however, concede the accuracy of the payroll records of respondents. Claimant explained that she pushed herself to go back to work on December 16 and 17, 2004, because she wanted to see the children. Regarding her efforts at returning to work in January 2005, claimant's testimony reflects:

Yes, I tried to go back in January, but I was hurting so, and I guess - - well, I felt bad about having to catch hold of things and try to balance myself and try to work and get around, and at that price I was hurting. I tried and I saw I couldn't and I had to come back off again. (T. 27).

Claimant also attempt to return to work in February 2005.

Claimant testimony reflects that during the January/February 2005, period she went to see a chiropractor. Claimant testified:

[Dr.] Thrash, yes, sir. Anyway, I went to see him. I told Ms. Scott about it, and she said, "Have you ever tried a chiropractor?" And I said, "No." Well, I was thinking then it was so long between the time Dr. Balke getting to appointment with the neurologist, I said I'd go there on my own. So I went there and it seemed like to me that he helped a lot, but I didn't complete the treatment because I knew the doctor bills were piling up, and you know, I didn't want to have to be responsible to pay them, and I probably couldn't pay all of those. (T. 27-28).

The testimony of the claimant reflects that while she did file a form with her group health insurance carrier, she indicated that the basis for the claim was a work-related injury.

The testimony of the claimant reflects that she has not worked during the summer since she has been at the Wynne facility. School was out on May 25, 2005. Claimant testified that normally during the summer months she receives unemployment benefits. Additionally, claimant's testimony reflects that during the summer she usually has a part-time job of taking care of an older lady, however due to residuals of her injury she is not able to do so this year. Claimant is receiving \$253.00 weekly unemployment benefits. Claimant was scheduled to return to work on July 20, 2005, for a meeting, and enrollment July 21-22, 2005.

The testimony of the claimant reflects that on those occasions when she returned to work following her injury, she mostly performed paperwork and light duties of reading a story to the children. Claimant testified that she return to work on a regular basis on February 1, 2005.

Regarding her job activities/duties after February 1, 2005, claimant testified:

I was still doing light duty work and like paperwork and read the story with children, sit there and eat at the table with them. I didn't fo any cleaning or anything like that, any strenuous work. (T. 30).

Claimant's testimony reflects that she underwent physical therapy in Forrest City relative to her injury. Claimant now sees Dr. Balke on an as needed basis for complaints associated with her November 12, 2004, injury. Claimant acknowledged that Dr. Balke is her family physician as well. Claimant testified that she is scheduled to return to the neurologist in September 2005, three following her last visit. In terms of the problems that she is currently experiencing which she attributes to the November 12, 2004, injury, claimant's testimony reflects:

Well, I have problems standing any time or walking any length of space, and I have trouble like stooping down or like when I get ready to go in my drawers, or anything, I've got to get me a smaller chair and sit there to go in my drawers. Those are the types of things that I just can't do like I used to do.

Well, it causes me to hurt after I do it.

Okay, most of the time I just give - - my back feels like it's weak. (T. 31-32).

Claimant observed that after she stands for a period of time, her legs will go numb. In describing the impact of the injury on her regular activities, claimant's testimony reflects:

Well, you know, I just can't go around like shopping like I used to go, go different places, and riding a long ways bothers me. Like going to Little Rock to my daughter's, I haven't been there since I got hurt. Even going to Wynne I can feel the difference from riding a lot, so I don't do that now. Usually in the summer time I stay gone all summer going different places visiting, but I won't be able to do it this summer. (T. 33).

Claimant acknowledged that she did not telephone Ms. Scott Friday night to report the injury. Claimant explained that she did not have long distance on her telephone, and she "was hurting so I didn't even think about calling her." (T. 35). Likewise, claimant acknowledged that she made no effort to contact management personnel of respondent before going to the doctor on

Saturday, November 13, 2004.

Ms. Letricia Brooks, the daughter-in-law of the claimant, testified that she lives around the corner from the claimant on North Border Street, in Marianna, and often check in on her.

Regarding the Friday before she accompanied the claimant to the doctor on Saturday morning,

Ms. Letricia Brooks' testimony reflects:

Well, normally I call her on a day to day basis to keep in touch, and on November 12, that Friday evening, I called after 5:00 p.m. and I didn't get no answer at her home, and so I just kept trying until I decided to take it upon myself to go and see why she wasn't at home. When I got there her car was in her driveway and she was still in it. So I got out of my vehicle and went to the car to find out what her problem was, you know, as to why she wasn't responding to the call. She said she had been out in the driveway for quite sometime because she was hurting real bad, and so that's when I questioned her to ask her what was wrong. She explained to me what happened.

I proceeded to help her get her articles and her keys and everything and helped her inside the house. She kept, to me, acting and complaining that she was feeling real bad and hurting from this fall, so I led her to her bedroom and she had like - - I asked her what could I do to assist her, did she want me to call the doctor, or was she feeling bad enough to be taken to the emergency room or whatever. She said, "I just want to lay down." I got like a Doan's pill, or whatever, because she kept complaining about her back. I got a glass of water from the kitchen and I gave her that. She also had like a old heating pad and she kept complaining for quite some time, and she kept complaining, so I tried that. I stayed, as I said, to a certain period of time. And I finally told her I was going to go home, but if she needed me to just let me know. So I checked on her that night and I kept checking on her through the night, and then on the next day I called her that morning and I asked her how was she feeling, and she said no better. She wanted to go to the doctor's office, so I asked her what doctor. She said she wanted to see Dr. - - I think her name is Susan Balke. So she went there. She was seen by her. (T. 42-43)

Ms. Brooks accompanied the claimant to the doctor, and observed that claimant held her side as she walked and complained of pain in her back area.

In terms of describing her accident, Ms. Brooks testified that the claimant relayed:

She just said to me that she had had some things left over to do at work that evening, and one of her co-workers had to leave and she was closing down the building and she had already ended the day by the end of her cleaning, or whatever, in her room area, or whatever, and she had taken the trash out. On the way to take the trash out she had slipped and fallen. That's what she said. (T. 43-44).

Ms. Brooks estimated that it was between 5:30 or 6:00 p.m. when she went around to the claimant's house to check on her and found her sitting in her car in the driveway. Ms. Brooks testified regarding her observation of the claimant at the time of the encounter:

That's what caused me to ask the questions as to why she was acting the way she was because she got ready to get out of the car and she was acting like she was dizzy and about to fall. That's what made me question what was wrong. (T. 44).

Ms. Brooks further testified that the claimant's clothing was wet, although she did not recall them being muddy.

Ms. Evelyn Lauren Scott, a teacher at Wynne Head Start, testified that she had know the claimant for seven or eight years, however had come to know her even closer since she has worked for respondent in Wynne. Ms. Scott is the claimant's supervisor. Ms. Scott testified that at approximately 2:00 p.m. on Friday, November 12, 2004, she had a 45-minute meeting with the claimant and Ms. Anita Jones, the assistant in the claimant 's class room, regarding two incidents that happened with the children in the classroom that had gotten hurt. Ms. Scott noted that both the claimant and Ms. Jones get off work at 4:00 p.m. Following the meeting, Ms. Scott testified that the two women went back to the classroom and started getting prepared for Monday's assessment.

Ms. Scott maintains that she worked until 6:00 p.m. on Friday, November 12, 2004, and that she remained at the facility from 2:00 p.m. until 6:00 p.m., however concedes that she left

and went outside around 4:00 p.m. and was talking to her supervisor and a family social worker who was outside. Ms. Scott maintains that she was outside of the building about twenty (20) minutes before going back inside to finish up in the classroom. Ms. Scott denies that she left her classroom for anything major after 4:30 p.m. once she returned from her meeting outside.

Ms. Scott's classroom is next door to that of the claimant. Ms. Scott's classroom is not en route to the dumpster from the claimant's classroom. Ms. Scott noted however that the claimant would pass her classroom en route to her car.

Ms. Scott's testimony reflects, regarding the process for filing a workers' compensation claim at respondent-employer:

You have to talk to your supervisor and report it within twenty-four hours, and as soon as they report it you have to get the papers out and help fill them out, ask the questions to the employee and fill them out, and then call Ms. Owen and inform her about the accident. (T. 49).

Ms. Scott identified Ms. Owen as the internal company resource officer. Ms. Scott noted that every year during orientation information is relayed regarding the procedure for reporting work-related injuries to the employees. Ms. Scott denies that she was contacted by the claimant within twenty-four (24) hours of November 12, 2004, to report an injury. Ms. Scott's testimony reflects that once an employee reports an injury and turns it in as a workers' compensation claim, she directs them to medical provider, a specific doctor in Wynne.

Ms. Scott testified that the first time she was aware of the claimant's injury was the morning of Monday, November 15, 2004, when it was reported to her by the claimant. Ms. Scott asserts that later during the day of November 15, 2004, she conducted an internal investigation of the claimant's claim.

Ms. Scott testified that the claimant returned to work for a couple days in December 2004. Ms. Scott's testimony also reflects that the claimant returned to work for a period of time in January 2005, and then continuously from February 1, 2005, until the end of the school year.

During cross examination, Ms. Scott testified that following her 2:00 p.m. meeting with the claimant, which lasted until approximately 2:45 p.m., she later saw the claimant teach children in her classroom. Ms. Scott maintains that she did not see the claimant after 4:00 p.m. on November 12, 2004, because claimant gets off work at that time. Ms. Scott acknowledged that the teachers take care of cleaning the classrooms, and that it is within the claimant's responsibilities to carry out the garbage.

Ms. Scott acknowledged that the staff was preparing on Friday, November 12, 2004, for an assessment team to come in from Jonesboro on Monday, November 15, 2004. Regarding the claimant, Ms. Scott's testimony reflects:

I don't remember seeing Ms. Brooks after 4:00. I remember her leaving the building. She usually don't stay over late.

No, sir, I do not know of her staying over past 4:00, but I know she did - - they were getting ready for the team on Monday. (T. 55).

Ms. Scott testified regarding seeing the claimant leave the building at her usual time, 4:00 p.m. on November 12, 2004:

Yes, sir, I was outside with my supervisor and a family service worker and she was leaving. As she walked out to the car - - she was in the car talking to Ms. Jones. Ms. Jones was on the other side. They were both sitting there talking. Ms. Jones could have been on the phone, I'm not sure, but I know Ms. Jones was in her car and Ms. Brooks was parked beside her. They always park right beside each other. (T. 55-56).

Ms. Scott testified that the claimant did not look over to her direction when she saw her leaving.

Ms. Scott's testimony reflects that some of the employees stay over pass 4:00 p.m. When questioned regarding some of the Wynne employee taking a break during their normal quitting time and then returning to work, Ms. Scott testified:

Ms. Jones took a break and she left and came back before 4:00 because she had to pay a bill.

No, Ms. Baker was the only one that left also. She came back later on, but the other staff was still there. (T. 57).

Ms. Anita Sue Jones, an assistant teacher with the Crowley's Ridge Development Council Wynne Head Start, testified that she has been so employed for almost four years. Ms. Jones had been the assistant teacher in the classroom of the claimant for approximately one year. Ms. Jones testified that her normal hours of work are from 8:00 a.m. to 4:00 p.m.

Ms. Jones testified that on Friday, November 12, 2004, she did not leave the school at 4:00 p.m. Ms. Jones explained:

I was there until about 4:30, approximately. I was working on afternoon mail trying to get - - and getting our classroom ready for assessment on Monday. (T. 58).

Ms. Jones' testimony reflects that at 4:30 p.m.:

I had to leave. My ex had called and asked me had I took care of the electricity bill, and I told him no, and he reminded me about what time it was and that I needed to have it paid by 5:00, so I had left to go pay my electric bill. (T. 58-59).

Ms. Jones testified that prior to the time that she left at 4:30 p.m. she had been with the claimant in the classroom. Ms. Jones maintains that the only person she told that she was leaving to pay a bill was her area manager, Alice Crutcher. Ms. Jones' testimony reflects that individuals present when she left included Ms. Sandra Stegall, Ms. Pauline Pettigrew, and Ms. Harris, in addition to

Ms. Crutcher. Ms. Jones acknowledged that there may have been other individuals still present.

Upon returning from paying the electric bill, Ms. Jones testified:

When I came back from paying the electric bill I had parked in the parking lot to call in my receipt number, and Ms. Brooks was sitting in her car and she was getting ready to leave. I was on the phone calling in the code for my electric so they wouldn't turn my electricity off. Ms. Brook had tried to get my attention but I had the window up and was trying to get my stuff done. When I finally got around to rolling my window down, she had her window down, and she told me that she had cleaned up best in the room that she could and that she was leaving to go home. (T. 60).

Ms. Jones denies that the claimant at any time told her that she had fallen and hurt herself. Ms. testified that Ms. Scott was still present when she left. Ms. Jones recited the procedure for reporting work-related accidents as "no matter what the circumstances are, you are to immediately report it to Ms. Scott because she is head teacher, supervisor". (T. 61).

The testimony of Ms. Jones reflects that she, along with any other employee that had knowledge of, was asked to write a statement of the events of November 12, 2004, by the area Manager, Ms. Crutcher. Ms. Jones' testimony reflects, regarding her conversation with the claimant about the written statement:

Okay. Ms. Brooks had asked me about the statement, and I did tell her that I had written out the statement. She asked me what I had put on the statement. I told her that I had written that we were here together, that I had left to go pay the bill, and that naturally when I came back you were sitting in your vehicle. She asked me did I put on there that I heard her say that she had fell, and I said, "No, ma'am." I said, "If you remember, I had my phone, I was on the phone and had the window up and that when I had rolled the window down that's when you told me you were just going to - - that you had done what you could in the room and you were going home." That's the only conversation at that point in time that we had had concerning my statement. (T. 62-63).

Ms. Jones confirmed that her written statement reflects that on the evening of November 12,

2004, the claimant was leaving “around 4:40 or 4:45”. Ms. Jones maintains that it was after 4:00 p.m. when the claimant left the premises of respondent. Ms. Jones noted that normally the claimant leaves at 4:00 p.m. , and would not normally stay around for an additional 40 to 45 minutes, however November 12, 2004, was unusual in that the facility was being readied for an assessment team on Monday, November 15, 2004. Ms. Jones also confirmed that some of the other employees did as she did, left and returned to continue working.

Ms. Jones acknowledged that of the employees of respondent at the Wynne facility, only the claimant did not live in Cross County. Further, Ms. Jones confirmed that once she arrived back in the parking lot of respondent from paying her utility bill she was concentrating on relaying her receipt number to the utility company via the telephone with her window rolled up, and not attentive to any communication with the claimant, who was sitting in her own vehicle. Ms. Jones also confirm that it was raining, “like a misting rain”. Ms. Jones testified, relative to the claimant, when she first pulled into the parking lot:

I could see her trying to get my attention and say something, yes, sir. (T. 66).

Ms. Jones acknowledged that she did not know what the claimant was saying at the time she was trying to get her attention while she was on the telephone. Ms. Jones testified that she had never her the claimant complain of back prior to the Monday, November 15, 2004, that she told her of the accident of November 12, 2004.

Ms. Sandra Annette Stegall, a certified teacher assistant in Head Start, testified that she has been employed by respondent for five years. Ms. Stegall is the teacher assistant in the classroom of Ms. Fanny Baker. Ms. Stegall’s testimony reflects that in addition to working with

her at respondent, claimant is a friend of the family. Ms. Stegall testified that she was at work on November 12, 2004, and that she saw the claimant when she emptied the trash. Ms. Stegall testimony reflects:

Well, we was outside with the children and Ms. Brooks took her trash out. She took the trash out and she come back through the gate and she went back on the inside. (T. 69).

Ms. Stegall denies that she saw the claimant fall, or trip during the time that she observed her disposing of the trash. Ms. Stegall estimated that it was probably around 3:30 p.m. when she saw the claimant empty the trash. Ms. Stegall further testified that claimant left work at her usual time, 4:00 p.m., on Friday, November 12, 2004, shortly after emptying the trash. Ms. Stegall's testimony reflects that the claimant did not appear to have any physical problems when she left work.

Ms. Stegall testified that when she left at 4:05 p.m., on November 12, 2004, claimant stuck her head in Ms. Scott's classroom. Ms. Stegall noted that at the time Ms. Scott was not in the classroom. Ms. Stegall's testimony reflects that she and Ms. Pettigrew were in Ms. Scott's classroom at the time, and that the claimant did not say anything. Ms. Stegall asserts that it was not raining on November 12, 2004.

Ms. Stegall testified that she worked late the evening of November 12, 2004, until 5:30 or 6:00, and that Ms. Scott was still on the premises. Ms. Stegall submitted a November 22, 2004, written statement to respondents of her observations relative to the claimant's November 12, 2004, accident. Ms. Stegall acknowledged that she made no mention of time frame in her written statement.

The medical in the record reflects that the claimant was seen by Dr. Susan Balke, D.O.,

on Saturday, November 13, 2004, with a chief complaint of low back pain. Claimant provided a history of a fall at work on the prior day while taking the trash out. Dr. Balke's office note relative to the November 13, 2004, visit of the claimant disclosed findings of "spasm & tenderness" in the paralumbar to the SI area. Claimant was prescribed medication and directed to the emergency room for x-rays by Dr. Balke as a result of the examination. (CX. #1, p.13).

Claimant was seen at the emergency room of Baptist Memorial Hospital in Forrest City pursuant to the direction of Dr. Balke relative to her November 12, 2004, accident where x-rays were obtained. (RX. #2, p. 3). November 15, 2004, CT of the claimant's lumbar spine disclosed an abnormal findings. (CX. #1, p. 1). On November 18, 2004, pursuant to the request of Dr. Balke, claimant underwent a whole body bone scan at Baptist Memorial Hospital in Forrest City. The report relative to the bone scan reflects:

**FINDINGS:**

Whole body bone scan demonstrates mildly increased uptake in the region of L4 and L5, corresponding to the abnormality on MRI performed this date. The findings are suggestive of a post traumatic or degenerative etiology, although a metastatic lesion is not entirely excluded. There are no other areas of increased uptake which suggest other metastatic legions.

**Impression:**

1. Mildly increased uptake in the lower lumbar spine which is most suggestive of a degenerative or post traumatic etiology, although a metastatic lesion is not entirely excluded. Follow-up bone scan in 2 to 3 months is recommended.

\* \* \*

L4-L5: A small disc bulge is also noted at this level, paracentral to the left which produces anterior dural sac compression. There is no significant neuro foraminal compromise identified

L5-S1: No significant neuro foraminal or central canal compromise

is present at this level.

IMPRESSION:

1. Indeterminate area of low T1 and T2 signal in the L4 vertebral body with adjacent bone marrow edema. The lesion is indeterminate but may be related to trauma either recent or remote. A metastatic lesion is felt less likely, but is not excluded. Follow-up MRI of the lumbar spine and nuclear medicine bone scan is recommended in 2 to 3 months. Please see above for discussion.
2. Mild disc bulging as described. (CX. #1, p. 2-3).

The medical in the record reflects that claimant treated consistently with Dr. Balke from November 13, 2004, for complaints attributable to the November 12, 2004, fall at work. Medical treatment rendered to the claimant by Dr. Balke included medication, physical therapy, and directions to remain off work, as well as diagnostic studies and a neurological referral. (CX. #1, p. 13-25).

On February 8, 2005, claimant was evaluated by Dr. Mario Cauli, a Jonesboro neurologist, pursuant to a referral by Dr. Balke. The February 2, 2005, report of Dr. Cauli reflects, relative to the claimant:

As you know, she is a 68-year-old woman whose chief complaint is lower back pain. She fell in November 2004 while at work carrying a garbage can. She slipped and fell and since then she has been complaining of low back pain radiating into both legs, right greater than left, associated with some numbness. She obtained partial relief of her symptoms with a muscle relaxant and physical therapy. Nevertheless, she complains she still is functionally disabled.(CX. #1, p. 7).

Dr. Cauli's assessment of the claimant's complaint, following his examination, was low back pain without neuroradiological evidence of radiculopathy and paresthesia. Dr. Cauli recommended additional diagnostic studies, to include Nerver Conduction Study/EMG of both lower extremities. (CX. #1, p. 8).

Claimant was seen in follow-up by Dr. Cauli on March 11, 2005. Dr. Cauli noted the results of the claimant's Nerve Conduction Study/EMG of both lower extremities, severe sensory polyneuropathy. (CX. #1, p. 9-10). The last medical in the record relative to a visit by the claimant to Dr. Cauli is an office note visit of April 11, 2005. Dr. Cauli's assessment of the claimant's complaint during the April 11, 2005, visit was low back pain and idiopathic polyneuropathy which was responsive to small dose of amitriptyline. (CX. #1, p. 11-12).

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

#### **FINDINGS**

1. The Arkansas Workers Compensation Commission has jurisdiction of this claim.
2. On November 12, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On November 12, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$367.00/\$275.00, for temporary total/permanent partial disability.
4. On November 12, 2004, the claimant sustained an injury arising out of and in the course of her employment.
5. The Claimant was temporarily totally disabled for the periods beginning November 16, 2004, through December 15, 2004; December 18, 2004, through January 2, 2005; and January 13, 2005 continuing through January 30, 2005.
6. The respondent shall pay all reasonable hospital and medical expenses arising out

of the injury of November 12, 2004.

7. The respondents have controverted this claim in its entirety.

### CONCLUSIONS

Claimant asserts that while within the course and scope of her employment with respondents on November 12, 2004, she suffered an injury which required medical treatment and rendered her totally incapacitated from engaging in gainful employment for a period of time. Claimant seeks corresponding temporary total disability and medical benefits as a result of the injury. Respondents deny that the claimant suffered an injury on November 12, 2004, and have controverted the payment of workers' compensation benefits in this claim.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. 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: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102 (4) (A) (i). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastic*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). In the instant claim, the claimant has established by a preponderance of the

evidence the requirements for establishing the compensability of her claim.

There is no evidence in the record to reflect that the claimant sought or required regular medical treatment relative to low back or lower extremities prior to November 12, 2004. The testimony of Ms. Anita Jones reflects that claimant did not register complaints regarding her back or lower extremities prior to November 15, 2004.

The credible evidence reflects that while claimant, who lived in Marianna, normally got off or left work at 4:00 p.m., on Friday, November 12, 2004, she did not leave work until between 4:45 or 5:00 p.m. Claimant remained over to prepare her classroom for a pending November 15, 2004, visit of Jonesboro assessment team. One of the claimant's job responsibilities was cleaning the classroom, to include removal of trash. Claimant suffered her injuries on November 12, 2004, when she slipped and fell while carrying the trash out. The evidence reflects that it did indeed rain on November 12, 2004.

Each of the witnesses to testify that the claimant left work on November 12, 2004, at her usual time was clearly mistaken or in error. While Ms. Sandra Stegall asserted that she saw the claimant take the trash out to the dumpster at approximately 3:30 p.m. while she was watching the children, she acknowledged that the children were not taken out when it was raining. As reflected above, the evidence preponderates that the claimant did not leave work at her usual time on November 12, 2004. Further, the evidence preponderates that it did rain on November 12, 2004.

The claimant credibly testified that following her accident, she did carry the garbage out, and that upon leaving the building, looked in the classroom of Ms. Evelyn Scott, her supervisor, to report the accident, however Ms. Scott was not in the room. Ms. Scott's testimony reflects

that the time the claimant left on November 12, 2004, she was not in her classroom. Further, Ms. Scott acknowledge seeing the claimant and Ms. Jones in their respective vehicles, with Ms. Jones being on the telephone. Ms. Scott concedes that the claimant did not look in her direction, as to acknowledge her presence. The evidence preponderates that from Ms. Scott's vantage point, the claimant did not see her as she was leaving the building.

Ms. Jones had left the premises of respondents on November 12, 2004, and returned after completing an errand at the time she encountered the claimant on the parking lot of respondents. Claimant was sitting in her vehicle when Ms. Jones parked next to her. Ms. Jones was on the telephone with her window rolled up, when the claimant lowered her window and told her about her accident, and that she had done as much work as she could. By the time Ms. Jones completed her transaction and lowered her vehicle window she only heard the last portion of the claimant's statement.

Ms. Letricia Brooks, the claimant's daughter-in-law, who resides within in shot distance of the claimant commenced telephoning the claimant at the time she felt that claimant should have been home from work, based on the claimant leaving work at her usual time of 4:00 p.m. After being unable to reach the claimant following repeated telephone calls, Ms. Letricia Brooks drove around to the claimant's residence where she found her sitting in her vehicle in the driveway. Claimant relayed to her daughter-in-law the occurrence of the slip and fall at work as well as her residual difficulties and pain. Ms. Letricia Brooks assisted the claimant out of the car and into her residence. Ms. Brooks observed that the claimant's clothing was wet from having fallen at work.

The credible evidence reflects that claimant was experience severe pain and discomfort

relative to the injuries suffer in her fall at work. Claimant was seen the following day by her primary care physician, Dr. Susan Balke, the following day, November 13, 2004, where she relayed the history of her slip and fall at work the prior day. Dr. Balke's examination of the claimant on November 13, 2004, disclosed objective finding of the injury to include muscle spasms in the claimant's lumbar spine, and for which she was provide muscle relaxants. In addition to the muscle spasms, diagnostic studies performed at the direction of Dr. Balke disclosed objective finding of injury.

Supervisory personnel of respondents were notified of the claimant's November 12, 2004, compensable injury on Monday, November 15, 2004. The credible evidence in the record reflects that claimant made a good faith effort to notify appropriated supervisor personnel of respondents of her injury prior to leaving the premises of same on November 12, 2004, when she looked into the room of Ms. Scott and inquired if she was present, and when she relayed same to Ms. Jones. The fact that Ms. Scott was still on the premises, and unbeknown the claimant observing her as she walked to her vehicle is of no fault of the claimant. Likewise, claimant was unaware the Ms. Jones had not heard the entirety of her conversation as she spoke to her from her vehicle.

The medical treatment rendered to the claimant prior to November 15, 2004, was of an emergency nature, pursuant Ark. Code Ann. § 11-9-514. There is no evidence to reflect that the respondent directed the claimant to its designate medical provider once notified of the work-related nature of her injury by the claimant on November 15, 2004. Ark. Code Ann. § 11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30

S.W.3d 764 (2000). The evidence preponderates that medical treatment rendered to the claimant on November 13, 2004, under the care of and at the direction of Dr. Susan Balke, is reasonable, necessary and related to the compensable injury suffered by the claimant on November 12, 2004. Respondents have controverted this claim in its entirety.

The medical in the record reflects that while claimant reported for work on Monday, November 15, 2004, she was physically unable to remain and discharge employment duties. Claimant was permitted to leave after securing a replacement. Respondent was undergoing an assessment of its program by a team from Jonesboro. Claimant remained under activity medical treatment relative to the injury growing out of the November 12, 2004, accident, commencing November 15, 2004. The record reflects documentation evidencing those period that the claimant was off work pursuant to the directions of the treating physician relative to her compensable injury.

A claimant is entitled to temporary total disability benefits during his healing period if she shows by a preponderance of the evidence that she had a total incapacity to earn wages. *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The healing period is defined as that period for haling of an injury resulting from an accident. Ark. Code Ann. § 11-9-102 (12) . In the instant claim the evidence preponderates that the claimant was within her healing period and totally incapacitated from earning wages from November 15, 2004, through December 15, 2004, and December 18, 2004, through January 2, 2005, and January 13, 2005 continuing through January 30, 2005. Respondents have controverted this claim in its entirety.

#### **AWARD**

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$367.00, for the periods November 15, 2004, through December 15, 2004; December 18, 2004, through January 2, 2005, and January 13, 2005, continuing through January 30, 2005, as a result of the compensable injury November 12, 2004. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses growing out of the claimant's compensable injury of November 12, 2004, to include medial related mileage.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. § 11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, Administrative Law Judge**