

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409659

BEVERLY COX	CLAIMANT
HEALTH MANAGEMENT	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 6, 2005

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

Claimant represented by JAMES FIFYAW, Attorney, Fort Smith, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 20, 2005, in Fort Smith, Arkansas. The deposition of the claimant was taken on March 14, 2005. This deposition has been admitted as Respondents' Exhibit No. 2. The deposition of Channa Miller, was taken on October 7, 2005. This deposition has been admitted as Claimant's Exhibit No. 2. A pre-hearing order was entered in this case on April 13, 2005. 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 announced that she was only seeking temporary total disability benefits through March 7, 2005. A copy of the pre-hearing order with this amendment or clarification 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 August 9, 2004, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$453.00 for total disability and \$340.00 for permanent partial disability.
3. The claim has been 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 compensable injuries to her neck and back, as the result of a specific incident on August 9, 2004.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from August 21, 2004 through March 7, 2005, and permanent disability benefits for both permanent physical impairment and wage loss (functional disability).
3. Appropriate attorney's fee.

In regard to these issues, the claimant contends:

- (a) Claimant contend that the injury to her neck and back were incurred in the course of her employment.
- (b) Claimant contends that as a result of her compensable injury she has suffered and is suffering temporary total disability. At the end of her healing period, the claimant anticipates she will have suffered a degree of permanent partial disability.
- (c) That the workers' compensation insurance carrier has refused to pay any further benefits in

connection with this claim.

In regard to these issues, the respondents contend that the claimant did not sustain a compensable injury on August 9, 2004.

DISCUSSION

I. COMPENSABILITY

The first issue to be addressed in this case is whether the claimant sustained "compensable injuries" to her neck and back, as the result of a specific employment related incident on August 9, 2004. The burden rests upon the claimant to prove all of the facts necessary to establish the "compensability" of these alleged employment related injuries.

Ark. Code Ann. §11-9-102(4)(D) requires the claimant to prove by medical evidence the actual existence of physical injuries involving her neck and back. She must further prove that the existence of these injuries are supported by objective findings, was defined by §11-9-102(16)(A)(i). After consideration of the medical evidence presented, I find that the claimant has met this burden in regard to a physical injury to her back, but has failed to meet this burden in regard to a physical injury to her neck.

The medical reports and records of Dr. R. Wendell Ross, clearly "establish" the actual existence of a physical injury to the claimant's lumbar spine. The reports and records of Dr. Michael Standefer also "establish" the actual existence of a physical injury involving the claimant's lumbar spine. Clearly, Dr. Ross and Dr. Standefer are both competent physicians. Although Dr. Ross is a family practitioner, Dr. Standefer is a neurosurgeon with

particular expertise in the area of medicine associated with back injuries and complaints. Their expert medical opinions on the actual existence of a physical injury to this portion of the claimant's body are credible and convincing.

Further, the greater weight of the evidence shows that the actual existence of the diagnosed physical injuries to the claimant's lumbar spine is supported by "objective findings" or findings beyond the claimant's voluntary control. Most importantly, the purely "objective" radiographic studies, in the form of an MRI and x-rays are interpreted as showing the presence of physical damage to this portion of the claimant's anatomy. The MRI studies have been interpreted as showing disc protrusions or herniations of two separate intervertebral discs in the claimant's lumbar spine. Plain x-rays also shows narrowing or stenosis of the claimant's spinal canal in the lumbar area. Finally, in his report of January 11, 2005, Dr. Ross noted the visible observation of muscle spasms in the paraspinous muscles of the claimant's lumbar spine.

However, there has been no medical evidence presented to "establish" the actual existence of any physical injury involving the claimant's neck or cervical spine. Neither Dr. Ross, Dr. Standefer, or any other physician have diagnosed the presence of any type of physical injury to this portion of the claimant's body. There is also absolutely no evidence of any "objective findings" to support the existence of a physical injury to this portion of the claimant's body.

Thus, the claimant has satisfied the statutory requirements of

Ark. Code Ann. §11-9-102(4)(D) in regard to her lumbar difficulties, but has failed to satisfy these requirements in regard to her alleged cervical or neck difficulties. Her failure to “establish” by the medical evidence, which is supported by “objective findings,” the actual existence of a physical injury involving her neck or cervical spine prevents a finding of a “compensable injury” to this portion of her body.

In regard to the claimant’s lumbar difficulties, she must next prove that the medically established and objectively documented physical injuries or defects to her lumbar spine lumbar spine further satisfy the definitional requirements for a “compensable injury” that are contained in Ark. Code Ann. §11-9-102(4)(A)((i). These definitional requirements are:

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

In order to satisfy the first three of these requirements, the claimant must prove the existence of a causal relationship between her medically established and objectively documented physical injuries to her lumbar spine and a particular identifiable employment related accident or event. After consideration of the

evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence the existence of a causal relationship between her medically established and objectively documented physical injuries to her lumbar spine and an identifiable specific employment related incident on August 9, 2004. The existence of this causal relationship is sufficient to satisfy the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

In her testimony the claimant described the occurrence of a specific employment related incident or accident on August 9, 2004, wherein she was the lifting a patient. Her testimony also shows the existence of an extremely close temporal relationship between this specific employment related incident and the onset of the current episode of difficulties with her lower back or lumbar spine. The claimant's testimony, in regard to these matters, is corroborated by that of Channa Miller, a co-employee.

I find the testimony of the claimant and Ms. Miller to be credible. Ms. Miller does not appear to have any ties to the claimant or interest in this claim. The description of the injury and onset of difficulties described by the claimant not only coincides with Ms. Miller's, but is also consistent with her initial and immediate reporting of the accident and injury to the respondents and the histories she subsequently related to her various physicians. The evidence is sufficient to prove the actual occurrence of the employment related incident and the existence of a reasonably close temporal relationship between this

incident and the onset of the claimant's current difficulties with her low back or lumbar spine, which would be indicative of the occurrence of a physical injury to this portion of her body.

Clearly, the claimant had previously experienced difficulties with her lower back or lumbar spine, including radicular lower extremity complaints. A prior MRI study, which was performed on May 21, 2004, revealed the presence of mild degenerative disc disease at L4-5 and L5-S1, mild disc bulging at L1-2 and L2-3, and a small focal right posteriorlateral disc herniation at L2-3. However, the claimant's testimony shows that this previous episode of difficulties significantly improved or essentially resolved prior the incident to her accident on August 9, 2004. Her testimony in this regard is substantiated by the fact that she returned to her regular and rather strenuous employment for the respondent and performed such duties satisfactorily until the subsequent incident on August 9, 2004. There is also no evidence that she sought any further medical treatment for her prior low back and radicular difficulties between May of 2004 and the occurrence of the subsequent employment related incident on August 9, 2004.

Dr. Standefer, in his initial report, indicated that he saw no "significant" change between the initial MRI study on May 21, 2004 and the subsequent study on August 9, 2004. However, the actual radiology reports for these two studies clearly indicate otherwise. In his interpretation of these tests, Dr. Ischmial Ihmeidan, a radiologist, opined that the MRI study of August 9,

2004 showed a new small right paracentral posteriolateral disc herniation at L1-2, which was not present on the initial MRI of May 21, 2004. He further indicated that the right posteriolateral disc herniation at L2-3, which was shown on the May 21, 2004 study, was shown to have become more extensive on the August 9, 2004 MRI. Clearly, the changes noted by Dr. Ihmeidan substantiate the claimant's testimony concerning a new onset of symptoms on August 9, 2004 and support the occurrence of a "new" injury to the L1-2 intervertebral disc and "aggravation" of the pre-existing damage of the L2-3 intervertebral disc on that date.

The actual mechanics of the August 9, 2004 incident described by the claimant and Ms. Miller would have produced sufficient trauma or stress to the claimant's lumbar spine that could have reasonably and logically caused the recent or acute physical damage to the claimant's lumbar discs that was shown in the MRI study of August 9, 2004. The onset of the symptoms described by the claimant, as occurring on August 9, 2004, would be consistent with the actual physical injury shown by the MRI study. Thus, the injury manifested itself within a reasonable period of time following the described employment related incident. The evidence shows no other insult or trauma to this portion of the claimant's body that would reasonably explain the onset of the claimant's lumbar symptoms and the "new" damage to her L1-2 and L2-3 discs that was objectively demonstrated by the August 9, 2004 MRI.

Following the longstanding rule announced in Hall v. Pittman Construction Company, 235 Ark. 104, 357 S.W. 2nd 263 (1962), the

foregoing facts are sufficient to support a finding of the existence of a causal relationship between the described employment related incident of August 9, 2004, and the medically established and objectively documented physical injury or damage to the claimant's lumbar spine, specifically the damage to the intervertebral discs at the L1-2 and L2-3 level. Thus, the claimant has proven that this injury arose out of and occurred in the course other employment with the respondent, was caused by a specific incident, and is identifiable by time and place of occurrence. This satisfies the first through requirements of Ark. Code Ann. §11-9-402(4)(A)(i).

The claimant has further proven by the greater weight of the credible evidence that the employment related injury of August 9, 2004 resulted in internal physical harm to her body. The existence of this internal physical harm is shown by the claimant's credible testimony, which establishes the presence of pain and other physical difficulties. More importantly, this internal physical harm is also clearly shown by the MRI study of August 9, 2004 which objectively demonstrates the presence of physical damage. This satisfies the fourth definitional requirement for a "compensable injury" under Ark. Code Ann. §11-9-102(4)(A)(i).

The actual nature and extent of the claimant's compensable injury, as shown by the evidence presented, is sufficient to show that this physical injury would reasonably require some form of medical services and would reasonably result in some degree of disability. Thus, the claimant has satisfied the fifth and final

requirement for a “compensable injury” under Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, I find that the claimant has proven by the greater weight of the credible evidence all of the facts necessary to establish the occurrence of a “compensable injury” to her lower back or lumbar spine on August 9, 2004, in the form of discal injuries at L1-2 and L2-3. Specifically, she has proven by the greater weight of the credible medical evidence, the actual existence of a physical injury to her lower back or lumbar spine, which is supported by the observation of physical findings that are beyond the claimant’s voluntary control. She has further proven by the greater weight of the credible evidence that this physical injury arose out of and occurred in the course of her employment with the respondent, was caused by specific incident, is identifiable by time and place of occurrence, caused internal physical harm to her body, and required medical services or resulted in disability.

II. BENEFITS

Next, it becomes necessary to determine the nature and extent of benefits to which the claimant has proven herself entitled for her compensable low back or lumbar injury of August 9, 2004. The burden remains upon the claimant to prove by the greater weight of the credible evidence her entitlement to the benefits she now seeks.

Obviously, Ark. Code Ann. §11-9-508 entitles the claimant to “reasonably necessary medical services” for her compensable lumbar

injury. However, the claimant must still prove that the services she has actually received represent such “reasonably necessary medical services” for the compensable injury. To meet this burden, the claimant must show that the medical services provided were necessitated by or connected with her compensable injury and had a reasonable expectation of accomplishing the purpose or goal for which they were intended.

The medical evidence presented clearly shows that the medical services provided to the claimant by and at the direction of Dr. Wendell Ross and Dr. Michael J. Standefer for the claimant’s lumbar difficulties beginning August 9, 2004, were necessitated by or connected with the compensable injury she sustained to her lumbar spine on that date. All of the medical services provided by or at the direction of these physicians was intended to either adequately diagnose the nature and extent of the claimant’s difficulties or to reduce and hopefully alleviate the symptoms and difficulties which the claimant was experiencing as a result of the compensable injury. The services provided by these physicians were of a type and duration commonly recognized by the general medical community in this area as being appropriate to accomplish these intended purposes.

Therefore, I find that the medical services provided to the claimant for her lumbar difficulties on and after August 9, 2004, by and at the direction of Dr. Ross and Dr. Standefer represent “reasonably necessary medical services” under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents

are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

Temporary total disability benefits are payable for any portion of the healing period from the effects of a compensable injury, wherein the claimant has also been rendered totally disabled from performing regular gainful employment as a result of such an injury. Thus, in order to be entitled to the temporary total disability benefits that she now seeks, the claimant must prove that she continued within her healing period from the effects of her compensable lumbar injury during the period of August 21, 2004, through March 7, 2005. She must also prove that she continued to be rendered totally disabled from performing all forms of regular gainful employment for which she would otherwise be qualified during this same interval.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the credible medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in the resolution or stabilization of the actual physical damage produced by the compensable injury. Once the underlying physical damage produced by the compensable injury has resolved or at least stabilized at a level or nothing further in the way of time or medical treatment offers a reasonable expectation of improvement, then the healing period has ended.

In the present case, the medical evidence presented shows that the claimant was under continuous active medical treatment

(primarily, by Dr. Ross) through March 2, 2005. Although the claimant testified that she was released to return to regular duty on March 7, 2005, the records of Dr. Knox show that she was actually released to return to full duty on March 2, 2005. At that time Dr. Knox noted that the claimant was totally asymptomatic, in regard to her back and radicular complaints, and had a full range of motion of her back.

The medical record fails to show that the claimant required or received any further medical treatment for back difficulties, until following a subsequent incident or event in July of 2005.

After consideration of the medical evidence presented, it is my opinion that the claimant has proven by the greater weight of this evidence that she continued within her healing period from the effects of her compensable lumbar injury of August 9, 2004 from the date of this injury through March 2, 2005. Thus, the claimant has satisfied this first requirement for her entitlement to temporary total disability benefits during this period.

The claimant testified that she was physically unable to perform regular employment, particularly the employment position she held on August 9, 2004, until she was released to return to employment on March 7, 2005. She testified that the respondents initially paid temporary total disability benefits through December 23, 2004. She stated that when the respondents terminated her temporary total disability benefits, she ultimately received disability benefits under a group disability policy for the period of December 23, 2004 through March 7, 2005. The medical evidence

offers substantial support to the claimant's testimony, concerning her physical ability to maintain regular gainful employment. The reports and records of Dr. Ross reveal that he medically restricted the claimant from engaging in any type of regular employment in order to assist in her recovery from her compensable injury. His records indicate, that on February 2, 2005, he released the claimant to return to employment in a light duty position, that did not require any stooping, bending, or lifting in excess of 5 pounds. However, the respondent made no such light duty available to the claimant and her chance of finding such a position in the open job market would have been negligible. As previously noted, on March 2, 2005, Dr. Ross released the claimant to return to regular or full duty without restrictions.

After consideration of the evidence presented, it is my opinion that the greater weight of the credible evidence further proves that the claimant was rendered totally disabled from performing regular gainful employment, as a result of the effects of her compensable injury, during the period of August 21, 2004 through March 2, 2005. Thus, the claimant has satisfied the second requirement for her entitlement to temporary total disability benefits during this time.

In summary, I find that the claimant has proven her entitlement to temporary total disability benefits for the period of August 21, 2004 through March 2, 2005. However, I find that the claimant has failed to prove that she is entitled to temporary total disability benefits for her compensable injury of August 9,

2004, after March 2, 2005. The respondents would be liable for temporary total disability benefits at the appropriate weekly compensation rate during this period. However, the respondents would be entitled to a credit for any such benefits that they had previously paid. Further, the provisions of Ark. Code Ann. §11-9-411 would be applicable in regard to any temporary total disability benefits accruing during the period wherein the claimant received group disability benefits for this same injury.

The final matters to be addressed concerns the claimant's entitlement to permanent partial disability benefits. As the claimant's compensable injury was to a portion of her body that is "unscheduled" under the Act, her entitlement to permanent partial disability benefits would be controlled by the provisions of Ark. Code Ann. §11-9-522. Under the provisions of this subsection, a claimant may be entitled to benefits for both permanent physical impairment and permanent "functional" disability or loss of wage earning capacity.

In order to be entitled to permanent partial disability benefits for permanent physical impairment, the greater weight of the evidence must establish that the compensable injury was the "major cause" of the degree of permanent physical impairment assessed, Ark. Code Ann. §11-9-102(4)(F)(ii). The existence and extent of permanent physical impairment must also be supported by objective and measurable physical or mental findings, Ark. Code Ann. §11-9-704(c)(1)(B). Permanent physical impairment must also be calculated in a manner that conforms to the official rating

Guide adopted by this Commission (at the present time, the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition), Ark. Code Ann. §11-9-522(g). Finally, no consideration can be given in the assessment of permanent physical impairment to pain, range of motion of the spine, or straight leg raising test results.

In the present case, there has been no expert medical opinion offered concerning the existence and degree of permanent physical impairment from the claimant's August 9, 2004 compensable injury. However, expert medical opinion is no longer required to establish the existence of extent of permanent physical impairment. Under the present law, it is the duty and obligation of this Commission to determine the existence and extent of permanent physical impairment in a manner that conforms to the various requirements of the Act.

In the present case, the medical evidence objectively establishes the presence of physical damage to the claimant's lumbar spine that is in the form of small herniations of two of the claimant's lumbar intervertebral discs, specifically L1-2 and L2-3. The medical evidence also shows the presence on plain x-rays of stenosis of the spinal canal in the lumbar area. As previously noted, the greater weight of the credible evidence establishes that the most likely cause of the small intervertebral disc herniation at L1-2 was the claimant's employment related injury of August 9, 2004. Although the greater weight of the credible evidence further establishes that the employment related incident of August 9, 2004, was the most likely cause of an increase in the magnitude of the

disc herniation at L2-3, the initial herniation was shown to have been present prior to August 9, 2004. There is no indication that the employment related accident of August 9, 2004 played any causal relationship in the claimant's lumbar canal stenosis.

After consideration of the evidence presented, I find that the greater weight of the credible evidence establishes that the claimant's compensable lumbar injury of August 9, 2004, was not only the "major cause," but was, in fact, the sole cause of the herniated nucleus pulposus at the L1-2 level. Thus, the compensable injury would be the "major cause" of any permanent physical impairment resulting from this herniated disc. The Fourth Edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment provide for an assessment top a 5% permanent physical impairment to the body as a whole, based solely upon the existence of an objectively documented herniated lumbar disc (Table 75 II C, page 113).

Based upon the evidence presented, I find that the claimant has failed to prove that the employment related incident and injury on August 9, 2004, was the "major cause" (more than 50% of the claimant's herniated nucleus pulposus or herniated disc at the L2-3 level). I further find that the evidence presented fails to establish that the claimant's employment related accident and injury on August 9, 2004, was the "major cause" of any objectively documented lumbar spinal stenosis. Thus, the claimant's employment related accident and injury of August 9, 2004, would not be the "major cause" of any permanent physical impairment generated by

these objectively documented defects. I would also note that the Fourth Edition of the AMA Guides would only recommend an assessment of an additional 1% permanent physical impairment for the herniated nucleus pulposus or disc herniation at the L2-3 level. Further, the Guides also recommend no degree of permanent physical impairment for lumbar spinal stenosis, unless the stenosis is of such a degree as to result in surgical intervention. Clearly, the claimant's spinal stenosis was not of sufficient magnitude that it was felt to require surgical intervention.

In summary, it is my opinion that the claimant has proven that her compensable lumbar injury of August 9, 2004, was the "major cause" of a 5% permanent physical impairment to the body as a whole. This degree of permanent physical impairment is supported by "objective and measurable physical findings," was calculated in a manner that conforms to the Commission's official rating Guide, and gives no consideration to the factors expressly prohibited by Ark. Code Ann. §11-9-102(16)(A)(ii). The claimant would be entitled, under Ark. Code Ann. §11-9-522(a) to permanent partial disability benefits for this degree of loss of use of her body.

According to the claimant's testimony, she returned to employment with the respondent on March 8, 2005, in the same position she held at the time of her compensable injury on August 9, 2004 (apparently, at the same wage). Her testimony further indicated that she continued in this position until she allegedly sustained yet another employment related injury in July of 2005. Finally, she stated that at the present time she was off work due

to the effects of this “new” injury. Based upon this testimony, it would be inappropriate, under the provisions of Ark. Code Ann. §11-9-522(B)(2) and §11-9-525(d), to make any determination or award of permanent partial disability benefits for permanent “functional disability” or loss of wage-earning capacity at the present time. Thus, this issue is reserved for future determination, when and if necessary.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On August 9, 2004, the relationship of employee-employer-carrier existed between the parties.
3. On August 9, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$453.00 total disability and \$340.00 for permanent partial disability.
4. On August 9, 2004, the claimant sustained a compensable injury to her lumbar spine, which was in the form of a small herniated disc at L1-2 and an aggravation of a pre-existing disc herniation at L2-3.
5. The medical services rendered to the claimant by and at the direction of Dr. Wendell Ross and Dr. Michael Standefer for the claimant’s lumbar and radicular difficulties, on and after August 9, 2004, represents “reasonably necessary medical service” for her compensable injury of August 9, 2004. Such medical

services were necessitated by or connected with the claimants compensable injury and had a reasonable expectation of accomplishing the purpose or goal for which they are intended. The respondents are liable for these expenses, subject to the medical fee schedule established by this Commission.

6. The claimant was rendered temporarily totally disabled, as a result of the effects of her compensable injury of August 9, 2004, for the period of August 21, 2004 through March 2, 2004. Specifically, the claimant has proven that during this period she continued within her healing period from the effects of her compensable injury and continued to be rendered totally disabled from performing regular gainful employment as a result of this injury.
7. Ark. Code Ann. §11-9-411 is applicable to any temporary total disability benefits herein awarded, which accrued during a period that the claimant received benefits under a group disability policy for the disability occasioned by her compensable injury.
8. The claimant's healing period from the effects of her compensable injury of August 9, 2004 ended on March 2, 2005.
9. The claimant has proven her entitlement to permanent partial disability benefits for permanent physical impairment in the amount of 5% to the body as a whole. Specifically, she has proven that her compensable lumbar

injury was the “major cause” of this degree of permanent physical impairment, that this degree of permanent physical impairment is supported by “objective and measurable physical findings,” that this degree of permanent physical impairment is calculated in a manner that conforms to the Commission’s official rating Guides and that this degree of permanent physical impairment gives no consideration to pain, range of motion testing of the spine, or straight leg raising tests.

10. The issue of the claimant’s entitlement to permanent partial disability benefits for permanent functional disability or loss of wage-earning capacity is not right for determination at the present time and should be reserved for future determination, when and if necessary.
11. The claimant has failed to prove that she sustained a “compensable injury” to her neck or cervical spine in the employment related incident of August 9, 2004. Specifically, she has failed to establish by medical evidence, which is supported by objective findings, the actual existence of any physical injury to her neck or cervical spine, as alleged to be the result of the employment related incident on August 9, 2004. Thus, she would not be entitled to any benefits provided by the Act for such an alleged injury.
12. The respondents have denied the occurrence of any compensable injury and have controverted this claim in

its entirety.

13. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the temporary total disability benefits and permanent partial disability benefits herein awarded. This would include an attorney's fee on the temporary total disability benefits initially paid but subsequently controverted by the respondents.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period of August 21, 2004 through March 7, 2005. However, the respondents are entitled to credit for all such benefits previously paid. The respondents are further entitled to an off set for any benefits received for disability during this period by the claimant from a group policy of insurance, but shall escrow an amount equal to this off set in the manner prescribed by Ark. Code Ann. §11-9-411.

The respondents shall be liable for the expense of medical services provided to the claimant for her compensable lumbar injury by and at the direction of Dr. Wendell Ross and Dr. Michael J. Standefer. Such liability shall be limited to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on all temporary total disability benefits and permanent partial disability benefits herein awarded. One-half of this attorney's fee is the obligation of the respondents in addition to such benefits. The remaining one-half

of this fee is to be withheld by the respondents from such benefits.

For the reasons heretofore stated in this Opinion, any claim for benefits attributable to the alleged compensable injury to the claimant's neck or cervical spine must be and hereby is denied and dismissed in its entirety.

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