

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F501662 (1/28/04); F501663 (9/24/04); & F501072 (1/1/05)

RUBY NELL MEACHUM, EMPLOYEE	CLAIMANT
CROSS COUNTY SCHOOL DIST., SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INC., TPA	RESPONDENT

OPINION FILED AUGUST 22, 2005

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

Claimant appeared pro se.

Respondent represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claims to determine the claimant's entitlement to workers' compensation benefits.

On April 19, 2005, a pre-hearing conference was conducted in these claims, from which a Pre-hearing Order of April 20, 2005, 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 parties stipulated that the claimant did not sustain an injury on January 1, 2005, and as such the claim number referencing the injury should be dismissed. Respondents further stipulated that AR-1's were filled out showing the incidents of

January 28, 2004, and September 24, 2004, were reported by the claimant.

The testimony to Ruby Nell Meachum, the claimant, coupled with medical reports, and other documents comprise the record in these claim.

DISCUSSION

Ruby Nell Meachum, the claimant, with a date of birth of June 19, 1937, has a GED. Claimant commenced her employment with respondent in August 1969. Regarding her employment with respondent, the testimony of the claimant reflects:

No, sir, I started off as a bus driver. I worked about a year and a half as a bus driver, and then I went into special education. I worked there for about twenty something years, and now I just work with kindergarten and I do p.e. now at the elementary school. (T. 10).

Claimant has worked continuously for the respondent since 1969.

Claimant testified that she suffered an injury within the course and scope of her employment with respondent on January 28, 2004. At the time of the injury claimant was discharging duties as a physical education instructor. In describing the January 28, 2004, injury, claimant testified:

Okay. We was having a game of kickball that, you know, kicking the ball back and forth, and we was like in a circle.

* * *

The ball was coming to me and I started to kick it because I was in the circle. I always do the things with the boys and girls, the exercises and stuff. I mean, my feet was kicked out from under me, and I didn't have time to get my hands down or nothing, and I hit right - our gym floor is concrete with tile on it. When I hit, the kids, you know, they helped me up, and it took me awhile to, you know, get to maneuver. Well, I went on down to the office and I told them, I said, "Man, I just hurt myself." And they said, "Well, do you need to go to the doctor?" And I said, "No, I'll probably be okay." I said, "I've just got to get where

I can move pretty good.” Well, it bothered me for awhile, but I just kept on going, you know. Then Ms. Otterpohl kept - - she had seen me getting on an d off the bus, and she said, “Ruby, don’t you think you ought to go to the doctor?” I said, “Oh, it’s just old age.” I kept saying, “It’s old age.” Like I had said, you know, I was just bought up, you just keep going, you just go. (T. 11-12).

Claimant’s testimony reflects that the class of student involved in the physical education exercise program at the time of her January 28, 2004, injury was fifth graders, ages 10-12, at Van Dale Elementary School. Claimant denies having in problems with her back prior to the January 28, 2004, accident. Claimant described any prior physical complaints as minor:

No, sir, no more than when I do exercises or something like that that you get from the soreness, but I mean, that was just up and down because I’ve said, I’ve done exercises with the kids, I’ve done push-ups. I’ve showed them how to do sit-ups, everything. Prior to that I started - - I had shingles and shingles kills you. I mean, I had them from May until August, almost, and I was trying to decide if I could go back to school. I didn’t know that my back was really - - because I had them from here to here, and I don’t know if it was my back, the shingles, or what, you know. Then I went back to school, but then I was re-injured, and then that’s when I really noticed it, and I did - - I just didn’t go to the doctor. (T. 13).

Claimant denies that she had seen a physician for any back complaint prior to the January 28, 2004, accident. Claimant acknowledge having seen a doctor for her shoulder as a result of having fallen off of a bus one time.

Regarding whether there was a progression of her symptoms following the January 28, 2004, accident, claimant relayed:

Well, like I’ve said, you know, it was really hard to tell that it was really my back because I’ve had colon trouble, and my colon trouble would cause my back to bother me, so I went and had, you know - - I went to the doctor and I still didn’t - - you know because I was thinking probably it was colon. Then I got the shingles and then it just - - when I realized really and truly that it was probably my back

was when I went and had the MRI. I mean, I'm not going to . . . (T. 14).

Claimant did not miss any time from work as a result of the January 28, 2004, accident.

Claimant worked until the conclusion of the school year in late May 2004.

Claimant's testimony reflects that when she returned to work in August 2004, she began to realize that she had possibly injured her back in the January 28, 2004, accident. Claimant explained:

. . . . - - because I started in p.e. again. When I started doing some of the things with the kids, I thought, "Now, three or four months can't make this much difference." I said something to Ms. Otterpohl, and she said, "You might ought to go to the doctor." And I said, "Oh, you know, I'll be okay." But I got to where I couldn't - - I would show the kids how to do the exercises because I have kindergarten kids, you know, and I'd down with them to show them, you know, how to do the exercises, and things. And I said, "Something ain't right." To be honest with you, Judge, I really and truly - - I'm sixty-eight years old. I was sixty-eight Sunday. I really and truly though maybe it was old age because I've been real active all my life, but I just know this past year that I can't do, you know, and it's been since January [28, 2004] that I got where I couldn't do these things. (T. 14-15).

Claimant's testimony reflects that she suffered another work related incident on September 24, 2004:

We had gone to Parker's Homestead up around Cherry Valley, just between Cherry Valley and Harrisburg. We had gone up there to the pioneer thing, and we had took out lunches and things, and the buses, well, they have a place out in kind of an open field for the lunches and things for different schools to take. Well, I got a lady to go with me on a - - kind of a like a golf cart thing, but that ain't what you call them. They have a back end. We was taking the ice chest and things, and we was helping each other. We started back from the bus this way to the go-cart, and I stepped in a hole, and when I did I kind of twisted. I thought - - I said, I made the remark to her, I said, "Man, I ought not done that." I stood there a minute and we still had like one or two, and I just helped her. When I went to help her I noticed, "Man, this is smarting real good, you know." I went ahead and so we took it back up there.

When I got back up there to the teachers and things, I made the remark to Dana and Ms. Otterpohl, and then I said, "You all," I said, "You all are going to keep wanting me and these buses and going on trips and things and it's going to kill me." And they said, "What did you do?" I said, "I don't know for sure," but I said, "It kind of smarts," but it kind of, you know, got where other than the hurting that had been hurting me all the time, so I still didn't go, but I did report it. (T. 15-16).

Claimant attributes additional complaints to her back and right leg to the September 24, 2004, incident.

Claimant testimony reflects that as a result of the two incidents/accidents she now has problems/pain in her back and entire right lower extremity. Claimant testified regarding her symptoms:

In my back it just - - like I'm sitting here now, I'm perfectly fine, but when I get up it takes me three or four steps before the pain leaves. And I mean, it hurts, and it goes down. And then if I've been on my legs a lot, when I get still my leg right in the back of my knee, the muscles and things, they'll just draw my leg. (T. 17).

Regarding her right leg symptoms, claimant's testimony reflects:

Yes, sir. And that's just my right leg, my right side. That's where my back hurts is in the lower part. (T. 17).

Claimant acknowledged that she filed a claim for payment of her bills for the medical treatment she received relative to the injuries with Blue Cross Blue Shield after respondents denied her claim. Claimant sought the payment of diagnostic studies because her symptoms were progressing down her right leg.

The testimony of the claimant reflects that she treated with her primary care physician, Dr. Barber for her complaints attributed to the accidents, and was later referred to Dr. Ray at Semmes-Murphy in Memphis, following a MRI scan. Claimant's testimony reflects that she has

paid out of pocket expenses relative to the medical treatment she received at Cross County Hospital, and Semmes-Murphy Clinic. (T. 19).

Claimant's testimony reflects that she was last seen by Dr. Ray on May 26, 2005.

Claimant testified that it is her understanding that should her symptoms worsen she can return to Dr. Ray for further medical treatment, to include a possible nerve block. The testimony of the claimant reflects that while she has been provided prescription pain medication, she has refrained from taking it. The medication was provided in connection with the treatment of her shingles.

The testimony of the claimant reflects that she reported the January 28, 2004, accident to the school secretary, Ms. JoAnn Robersen. Claimant noted that the necessary form was secured from the school bookkeeper, Ms. Katheryn Rolland. Claimant's testimony reflect that she reported the September 24, 2004, accident to the same individuals as she had the January 28, 2004, accident. Regarding the reporting of the September 24, 2004, accident, claimant testified:

First I told Dana and then, you know, up at the park that day, but by the time I got back to school, it didn't seem to be bothering me that much other than what had already been bothering me for about six months. (T. 21).

The evidence in the record reflects that claimant underwent physical therapy in Wynne relative to her injuries growing out of the accidents. Claimant's testimony reflects regarding prescription medication in connection with her accidental injuries:

No, sir, like I said, they wanted me give me muscle relaxers, and I told them, "No, no, no, I don't . . ." - - because medicine, I'm kind of - - I'm allergic to aspirin, and stuff, and medicine for inflammatory and stuff that's got aspirin in it, and I've been to the emergency room twice for aspirin. I mean, like I told - - I mean, if I hurt all the time I would have to do something, but it's not what I call chronic pain until I get up, and then after that, I can get here and I can step down and walk a step or two because I'm walking. I walk and it just- - I told them, I said, I just, you know. (T. 22-23).

Claimant acknowledged that she did not go to the doctor between the January 28, 2004, and September 24, 2004, accidents for her back complaint:

No, sir, because like I said, I just really kept on thinking it was going to be okay. I had gone to him just for the colon thing, they done it, and then I got the shingles, and I had had inner ear trouble, you know, but I mean, I just didn't. I just kept thinking, "It's old age. I'm going to get okay."(T. 25).

Claimant's credible testimony reflects that after the onset of her shingles she attributed her back pain to the condition. The evidence in the record reflects that the claimant underwent and passed her pre-season DOT physical on August 10, 2004.

Claimant concedes that when she was seen by Dr. Barber on October 6, 2004, for dizziness which she attributes to an inner ear infection, she did not report complaints relative to her back or leg relative to either one of her accidents:

No. You know, when you go to the doctor for one thing, that's all they want to hear. They don't want you to say, "I've got this, too, and I've got this, too." So I didn't - - I never did , no, sir. (T. 27).

The testimony of the claimant reflects that she went to see Dr. Ray in January 2005, however he decline to see her until her claim was either accepted or rejected as a workers' compensation claim.

Claimant denies that she was informed by Dr. Ray that she had scoliosis. Claimant's testimony reflects:

Well, no, sir, but I said I wished I had thought before this morning, but I had a bone density about five years ago at Dr. Marose's. And the lady that done it, she said, "You've not got to worry about any. . ." - - what did you say that word was - - ". . . unless you have an injury, or something. You're bones are strong enough for you to live to be 100." I said I wish I had a, you know, but I didn't even think about it until this morning, but I thought about that, and I said, you know, they keep saying, you know,

I said, it's funny, I just had that done here about five years ago, and they told me, "Your bones are strong. You haven't got to worry about having anything unless you have an injury." An injury will cause these things. It might take a month or two sometimes, you know, for it to show up. Even Dr. Ray told me this. (T. 28-29).

When questioned regarding the May 26, 2005, report of Dr. Ray, claimant testified:

Well, what he told me the first time I went, he said this could have been caused - - he said sometimes it takes, you know, several months for an injury to show up to have arthritis and stuff. He said usually arthritis is caused by an injury. (T. 30).

Claimant candidly acknowledged that it was not until she received the results of the MRI scan that she associated her complaints relative to her back and right lower extremity to the accidents of January 28, 2004, and September 24, 2004. Claimant testified:

Yes, sir, it was about December whenever - - I had the MRI, and they said that, and I said, "You know, that's probably what's been wrong with me all this time, and I should have come on and went to the doctor." (T. 34).

The testimony of the claimant reflects that she went to Dr. Barber in December 2004, after school let out for Christmas, approximately December 21 or 22, 2004, at which time the MRI scan was ordered.

The medical in the record reflects that the first physician to see the claimant following the January 28, 2004, was her primary care physician, Dr. Jeff Barber, D.O., at Wynne Medical Clinic, on February 27, 2004. (RX. #1, p. 15). Claimant acknowledged that the medical treatment she sought during the February 27, 2004, visit was not related to the January 28, 2004, accident. The medical evidence is consistent with the testimony of the claimant, in that she did not attribute her complaints low back pain to either the January 24, 2004, accident or the September 24, 2004, accident until December 2004.

Between the January 28, 2004, first accident and the point in time in December 2004, that she attributed the symptoms to the work-related accidents, claimant underwent a esophagogastroduodenoscopy and colonoscopy on March 19, 2004; treatment for shingles in April and May 2004; successfully passed her annual physical examination on August 10, 2004; and received treatment for sinus congestion/cough and dizziness in September and October 2004.(RX. #1, p. 15-29). Nevertheless, the claimant was referred by her primary care physician, Dr. Barber, to Dr. Morris W. Ray, a Memphis neurosurgeon, once she relayed as history of the two work-related accidents to Dr. Barber and her continuing symptoms.

In his February 2, 2005, correspondence to Dr. Barber, Dr. Ray acknowledged the referral and provided a copy of his office note regarding the visit. The letter further reflects:

. I think her main pain is degenerative osteoarthritis and degenerative disc disease of the lumbar spine which has been aggravated by her two work related injuries. I have suggested trying her on some conservative treatment including physical therapy and a Medrol Dosepak. We were going to see her back in about a month. If she's not better then consideration for an epidural block would be the next step. (CX.#3).

The February 1, 2005, x-ray report of the claimant, obtained pursuant to the directions of Dr. Ray reflects, in pertinent part:

FINDINGS: There is extensive degenerative changes at L4-5, worse on the left, with disc space narrowing on the left and vacuum disc phenomenon. There is no abnormal motion with flexion/extension views. There is a very minimal lumbar scoliosis concave to the left. There is moderate degenerative facet joint changes. (RX. #1, p. 32).

The February 1, 2005, office note of Dr. Ray reflects that the claimant was referred by Dr. Barber with a chief complaint of low back and right lower extremity pain. The office note further reflects, in pertinent part:

History of Present Illness: She states this all began January last year. She works as a teacher's aide in physical education. She fell flat on her buttocks on a concrete floor. She states she had a lot of pain but subsequently developed the shingles and some other problems and really never attended to it. She improved somewhat. She then stepped in a hole in September, the pain worsen and had been constant since that time.

She complains of pain in the low back, both hips, right lower extremity posteriorly to the foot, especially below the knee and calf area. This is a burning, drawing type pain. She has no numbness or tingling. It occasionally feels weak. Over the past three weeks or so she has developed some pain on the left but this is minimal. It hurts her more, she states when she sits for any length of time to try to get out of a chair. Once she starts walking she does fairly well. She cannot bend. Lying down she has a lot of pain. She's had no bowel or bladder dysfunction.

She has had a MRI but she has had no treatment for this. She states that she Filed a workman's comp claim last year when it first happened but shw was denied.

When she stepped in the hole in September she was at work unloading a basket.

The pain seemed to increase in September. It hurts her even at night. It particularly hurt to roll over in bed.

* * *

Data reviewed: I reviewed her MRI data 12/28/04. It is on a very low Tesla unit. She has marked degenerative and modic changes at L4-5 and moderate at L5-S1. There is disc space narrowing at L5-S1. There appears to be fairly extensive facet joint degenerative changes particularly at L4-5 and lesser extent L5-S1. It is possible there may be a right posterior synovial cyst at L4-5, however, I cannot be certain of this on this low Tesla unit.

* * *

Recommendations:

1. Physical therapy three time a week for three weeks for low back heat, massage, ultrasound, and gentle range of motion.
2. Medrol Dosepak.
3. Follow the Medrol with Bextra 10 mg daily and we have given her samples of this.

4. If she fails to respond to this regimen then I would recommend a trial of lumbar epidural blocks. (CX. #2, p. 1-3).

The claimant was again seen by Dr. Ray on May 26, 2005. The office note relative to the visit reflects, in pertinent part:

Ms. Mechum returns. She states that she took about three of the pills of the Medrol Dosepak after she was here, but they made her feel terrible so she stopped them. She did go to physical therapy at Cross Ridge Hospital but it did not seem to help any. She states that really the pain is tolerable except that she has more pain at night especially in the right lower extremity behind the knee. When she first gets up to walk she has pain but after she takes a few steps she is find. She is having some low back pain, but the pain behind her knee seems to bothering her more than anything.

Ms. Meachum recalls that she had had none of this pain until her fall.

EXAM: She has good range of motion of her back, negative straight leg raising and no motor or reflex deficit.

I discussed with her that she has extensive degenerative disc changes and degenerative osteoarthritis of the spine. I think her current pain is related to that. I think she'd had these x-ray changes for some time, but they were made symptomatic by her fall.

I didn't give her a specific return appointment. If her pain gets bad enough she will call us and we will make arrangements for a trial of epidural blocks. However, if the pain is tolerable I recommend she just work on her exercises. (CX. #1).

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

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims.

2. On January 28, 2004, and September 24, 2004, the relationship of employee-employer existed between the parties.

3. On January 28, 2004, and September 24, 2004, the claimant sustained injuries arising out of and in the course of her employment.

4. The respondent shall pay all reasonable hospital and medical expenses arising out of the injuries of January 28, 2004, and September 24, 2004.

5. The respondent has controverted these claims in their entirety.

CONCLUSIONS

_____ On January 28, 2004, while discharging employment duties and within the course and scope of her employment claimant suffered a fall and landed on her buttock on the concrete tile gymnasium floor. On September 24, 2004, while discharging duties within the course and scope of her employment claimant stepped in a hole resulting in a twisting movement and pain in her lower back and right leg. Claimant asserts that the injuries to her low back and right leg suffered in the two incidents required medical treatment for which respondent is liable. Respondent denies that the claimant suffered compensable injuries in either of the acknowledged incidents.

The present claims are governed by the provisions of Ack 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provisions. In order to be entitled to workers' compensation benefits for a specific incident injury, claimant has the burden of proving by a preponderance of the evidence that she suffered an accidental injury, identifiable by time and place, that arose out of and in the course of her employment, caused internal or external physical harm to her body and required medical services by medical evidence supported by

objective findings. Ark. Code Ann. § 11-9-102 (4) (A) (i). *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997); *Kimbrell v. Arkansas Department of Health*, 66 Ark. App. 245, 989 S.W.2d 570 (1999).

There is not a dispute regarding occurrence of the January 28, 2004, and September 24, 2004, events. The credible evidence in the record reflects that subsequent to the January 28, 2004, incident claimant experienced symptoms in her lower back unlike any she had previously experienced. Claimant had in place a primary care physician prior to January 28, 2004. There is no evidence in the record to reflect that claimant sought, obtained, or required medical treatment relative to her low back in close proximity to January 28, 2004, incident. The last time claimant had received medical treatment preceding the January 28, 2004, incident, based on the evidence in the record, was November 17, 2001, regarding an injury to her forehead suffered in the course and scope of her employment.

The credible evidence in the record reflects that subsequent to the January 28, 2004, accident, which was timely reported to appropriate personnel, claimant experienced symptoms of pain and stiffness in her lower back. Access to medical treatment was afforded the claimant, however she declined it. While claimant's symptoms persisted, she did not seek medical treatment or miss any time from work as a result of same.

On September 24, 2004, claimant suffered another work accident when she stepped in a hole while carrying a basket and twisted her right leg and low back. The September 24, 2004, incident increased the low back symptoms. The September 24, 2004, accident was reported to appropriate supervisory personnel of respondent. Claimant received conservative treatment under the care of her primary care physician for her low back and right leg pain.

Claimant has been employed by respondent since 1967. Although claimant experienced symptoms and complaints of pain in her low back and right leg as a result of each of the accidents, she continued discharging her regular job duties and did not miss any time from work. Claimant finally took the opportunity to obtain medical treatment relative to the complaints attributable to the January and September 2004, accidents during the time that school was out for the Christmas holidays in December 2004.

The claimant is honest and forthright regarding her injury, symptoms, and request for workers' compensation benefits. In her claim, claimant seeks only the payment of medical benefits relative to medical treatment she received for the injuries suffered in the January and September 2004, accidents.

It is undisputed that claimant suffered accidents within the course and scope of her employment with respondent on January 28, 2004, and September 24, 2004. Following the January 28, 2004, accident, claimant, who previously had been asymptomatic regarding her low back, experienced pain in her low back along with stiffness, which restricted her physical level of activity. Claimant did not seek medical treatment for the symptoms. Following the September 24, 2004, accident, claimant's symptoms increased. Claimant has not been asymptomatic since the January 28, 2004, accident.

The claimant is sixty-eight years of age. The medical in the record reflects that claimant suffered from pre-existing degenerative disc changes and degenerative osteoarthritis to the spine prior to the January 28, 2004, accident. Nevertheless, there record is devoid of evidence that the afore degenerative disc and degenerative osteoarthritis was symptomatic prior to the January 28, 2004, accident or required medical treatment prior to the accidents. Dr. Morris Ray, the

Memphis neurosurgeon, opined that the claimant's x-ray changes were present for some time, however, they have been made symptomatic by her accident.

The medical evidence reflects that while under the treatment of Dr. Ray, claimant was prescribed physical therapy and medication. Among the medications prescribed and provided to the claimant by Dr. Ray was Medrol Dosepak and Bextra. Further, Dr. Ray recommended a trial of lumbar epidural blocks in the event claimant did not respond to physical therapy and medication regimen. In *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000), the Arkansas Supreme Court ruled that the prescription of for Valium as needed for muscle spasm constituted objective medical findings to support compensability of the claim. In *Fred's Inc., v. Jefferson*, ___ Ark. ___, ___ S.W.3d. __ (3-31-05), noted:

This case is distinguishable from *Estridge*, however, in that Dr. Rhodes did not indicate specifically what the medications were for or specifically why he prescribed physical therapy. Yet, following the logic expressed in *Estridge*, a reasonable inference from the chronology of events is that the medication and the physical therapy were prescribed to aid Jefferson and to treat her injury. Any other construction of these event does not withstand scrutiny or pass the test of reasonableness.

Supra.

According, I find that the claimant has sustained her burden of proof by a preponderance of the evidence that she suffered an injury arising out of and in the course of her employment on January 28, 2004, and September 24, 2004; the injuries caused internal or external harm to the body which required medical services; further, there is medical evidence supported by objective findings, as defined by Ark. Code Ann. § 11-9-102 (16), establishing the injury; and the injury was caused by specific incidents and identifiable by time and place of occurrence. Additionally,

the claimant has established a causal connection between the objective findings and the compensable injuries. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998); *Farmland Insurance Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). Respondent has controverted these claims in their entirety.

In the instant claim, the cost of claimant's medical treatment relative to her compensable injuries of January 28, 2004, and September 24, 2004, has either been borne by the claimant, third-party health care carrier, or remained unpaid. Pursuant to Ark. Code Ann. § 11-9-508, the employer is required to 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).

Pursuant to Ark. Code Ann. § 11-9-411, respondent is entitled to credit for medical benefits paid by the group health care carrier in this claim. Respondent is not, however, entitled to credit for the sums paid by the claimant for the medical treatment. Respondent shall reimburse the claimant for sums she has heretofore paid for her medical treatment relative to her compensable injuries of January 28, 2004, and September 24, 2004.

Claimant in the instant claim appears pro se. The evidence reflects that claimant executed a medical release authorization and furnished same to respondent. At the time of the hearing claimant credibly testified that once she picked up copies of her medical records from Dr. Barber's office, which included reports of Dr. Ray, she promptly telephoned the office of respondent's attorney to relay that she had the record. The respondent obtained the medical records of Dr. Ray, which included a February 1, 2005, X-Ray Report, relative to the claimant.

Respondent does not assert that it did not have copies of the reports offered by the

claimant. Ark. Code Ann. § 11-9-704 (c) (2) (A), provides in pertinent part:

Any party proposing to introduce medical reports or testimony of physicians at the hearing of a controverted claim shall, as a condition precedent to the right to do so, furnish to the opposing party and to the commission copies of the written reports of the physicians of their findings and opinions at least seven (7) days prior to the date of hearing. However, if no written reports are available to a party, then the party shall, in lieu of furnishing the report, notify in writing the opposing party and the commission of the name and address of the physicians proposed to be used as witnesses at least seven (7) days prior to the hearing and the substance of their anticipated testimony.

In its June 13, 2005, respondent noted that claimant had been deposed and that it had obtained most of her medical records from the providers. Respondent further noted in the June 13, 2005, correspondence that it had not received any exhibits from the claimant, and would be objecting to the admission of any exhibits that the claimant attempted to submit at the time of the hearing. More importantly, the June 13, 2005, correspondence of respondent reflects, “As this case involves what appears to be simply a medical question concerning whether there are any objective finding to support compensability, the Respondents will probably not be calling any witnesses, and will only be cross-examining the Claimant at the time of the hearing.” (RX. #3).

Since respondent had access to, if not actual possession, of all to the claimant’s pertinent medical records, to included those offered by the by the claimant, the contents of the records does not come as a surprise to respondent. Additionally, respondent characterized the issues, after acknowledging the occurrence of the events/accidents involving the claimant of January 28, 2004, and September 24, 2004, as one of whether there are objective findings to support compensability.

In the instant claim, claimant is a credible, hard-working, long term employee of

respondent who suffered two (2) work-related accidents. The accidents were reported by the claimant to appropriate supervisory personnel of respondent shortly after the occurrence. More importantly, claimant disclosed the history of her work-related accidents to her treating physician when she sought medical treatment for her complaints growing out of the accidents. Since respondent was aware of the contents of the claimant's medical record, particularly as the same related to medical treatment received and the results of diagnostic studies, the contention of a lack of objective medical evidence to support compensability becomes somewhat disingenuous when coupled with an effort to exclude the very medical records.

Ark. Code Ann. § 11-9-705 (c) (3), provides:

A party failing to observe the requirements of this subsection may not be allowed to introduce medical reports or testimony of physicians at hearing, except in the discretion of the hearing officer or the commission.

In the instant claim, with disclosure and access to the pertinent medical records, I find that the claimant has complied with the spirit of the Pre-hearing Order, and that respondent is not prejudiced by the admission of the medical records.

AWARD

Respondent is hereby ordered and directed to pay all reasonably necessary and related medical, nursing, hospital, and other apparatus expenses growing out of the compensable injuries suffered by the claimant on January 28, 2004, and September 24, 2004, to include medical related milage. Respondent may claim credit for the payments made by the third-party health care carrier on behalf of the claimant's medical treatment, pursuant to Ark. Code Ann. § 11-9-411. Respondent shall reimburse the claimant for out-of-pocket expenses paid toward her medical treatment relative to her compensable injuries.

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.

Andrew L. Blood, Administrative Law Judge