

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F302409**

**JANE C. REIS, EMPLOYEE**

**CLAIMANT**

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

**RESPONDENT**

**OPINION FILED OCTOBER 11, 2005**

A hearing in this case was conducted on July 13, 2005, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Little Rock, Pulaski County, Arkansas.

Claimant was represented by Philip M. Wilson, Attorney at Law, Little Rock, Arkansas.

Respondent was represented by Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

**STATEMENT OF THE CASE**

A prehearing telephone conference was held on this claim on May 17, 2005; a Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to five stipulations. Four of these stipulations are found in the Prehearing Order, and were confirmed by the parties at the hearing; the fifth stipulation was agreed upon at the hearing. The following stipulations are hereby accepted.

1. The employee-employer relationship existed on December 30, 2002, and at all other relevant times.
2. Claimant sustained a compensable low back injury on December 30, 2002.
3. Respondent controverts additional benefits related to Claimant's low back injury from March 1, 2004.

4. Respondent controverts Claimant's cervical injury claim in its entirety.

5. Claimant's temporary total disability benefits rate is \$180.00; her permanent partial disability benefits rate is \$154.00.

At the July 13, 2005 hearing, the parties discussed the issues set forth in the Prehearing Order. The parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether Claimant sustained a compensable injury to her cervical spine.

2. Whether Claimant is entitled to medical treatment for her cervical spine.

3. Whether Claimant is entitled to additional medical treatment for her low back.

4. Whether Claimant is entitled to a 9% permanent impairment rating as a result of her cervical spine injury.

5. Whether Claimant is entitled to an attorney's fee.

Claimant contends that when she sustained her compensable low back injury on December 30, 2002, she also sustained compensable injury to her cervical spine. She seeks medical treatment for this injury, as well as additional medical treatment for her low back. Dr. Ronald Williams assigned Claimant a 9% permanent impairment rating following surgery upon her cervical spine; she seeks a determination that she is entitled to this rating. Claimant also seeks an attorney's fee. Respondent contends that Claimant's neck condition is a pre-existing condition; it also notes that Claimant did not initially report a cervical spine injury. With regard to additional medical treatment for Claimant's low back, Respondent contends that additional treatment is unreasonable and unnecessary.

## **DISCUSSION**

In December of 2002 Claimant worked for Respondent as a department manager

in household chemicals and paper goods. On December 30, 2002, she sustained an injury.

Q. Now, tell the Judge briefly what you were doing, how this occurred.

A. I was in the back picking up and moving freight around, cases of Tide. I was getting into my bin, which is like the storage, and crawling out. There was quite a few boxes, and I was rearranging and trying to find a particular scent of Tide to fill my shelf. I was taking them out of the bin, putting them on the floor, and then lifting them from the bin or the floor onto the L-cart. The L-cart is basically what I use to walk them out to the floor.

Q. Did you injure yourself?

A. Yes. I hurt my back, and I had pain in my neck and shoulders.

The parties stipulated that Claimant sustained a compensable low back injury on December 30, 2002. She completed a Form AR-N on that date, which lists only her “back (lower)” as the part of her body that was injured. On December 31, 2002, she completed a form entitled “Associate Statement - Workers’ Compensation.” It notes that she was injured “lifting cases of Tide from bin.” When asked to list what part of her body was injured, Claimant merely responded “Back.”

#### **A. Compensability of Cervical Spine Injury**

Following her incident, Claimant’s low back hurt the most: “my neck hurt at that time, but it just wasn’t as painful as my back was.” Respondent directed Claimant to present to Dr. Barry Carroll, which she did on December 31, 2002. He recorded the following history:

She reports that she does a lot of lifting at work and reaching at work as far as stocking paper products primarily and household goods. She reports that she injured her lower back when she was pulling out a case of Tide yesterday and picked it up. With her back in her lower back she also reports some numbness radiating down into her right leg. This is along the lateral aspect of her leg and it stops above the knee.

Dr. Carroll assessed a low back strain and prescribed physical therapy as well as

medication. Claimant returned to Dr. Carroll on January 14, 2003. Again, she reported back symptoms; Dr. Carroll's clinic note records no cervical spine complaints.

A physical therapy progress report dated January 13, 2003 reports that Claimant presented for "therapeutic exercise for lumbar stabilization"; this form does not record a complaint of cervical spine pain. Nonetheless, Claimant made an appointment to see Dr. Harry Starnes because "my physical therapist recommended that I go because I was complaining about my neck hurting." She testified that Respondent "would never send me anywhere for my neck."

Dr. Starnes' January 15, 2003 medical record reports that Claimant "has had a knot in the back of her neck for the past year." Upon examination, Dr. Starnes recorded that Claimant was positive for neck pain, as well as "(+) c-spine tenderness. Fullness on back of neck." He diagnosed Claimant with neck pain and requested an MRI of her cervical spine. A report dated January 22, 2003 concerning Claimant's MRI states the following impression: "Left C6-7 neural foraminal narrowing due to focal disk extrusion or prominent ... osteophyte. If surgical intervention is considered, CT myelogram of the cervical spine would be helpful to discern between these two possibilities."

Claimant returned to Dr. Starnes on January 28, 2003. She continued to complain of neck pain. Upon examination, Dr. Starnes again assessed neck pain and referred Claimant to Dr. Williams. Claimant returned to Dr. Starnes on January 31, 2003, prior to seeing Dr. Williams, "to get something for the pain in her neck and shoulders (+)." Dr. Starnes prescribed Darvocet "as needed for pain."

Dr. Williams' February 13, 2003 letter reports that "[f]or about two months now [Claimant] has had difficulty with neck pain that goes into both shoulders, worse on the

right than the left, but not on down into the arm.” On examination Dr. Williams found full range of motion in Claimant’s neck, as well as weakness in her left triceps muscle and the external rotators of her left shoulder. He arranged for Claimant to have an outpatient cervical myelogram and EMG and nerve conduction studies on her left arm and right leg on February 26, 2003.

During this time, Claimant continued to see Dr. Carroll to treat her low back. In his clinic note dated February 24, 2003, he notes for the first time that Claimant “reports some pain in her neck.”

Claimant underwent a number of studies on February 26, 2003. Her cervical myelogram recorded an impression of “[e]xtradural impressions on the thecal sac at the C4-5 and C6-7 levels.” Her subsequent CT scan of her cervical spine reported:

Multi-level degenerative disc disease. The findings are most pronounced at the C6-7 level. At this level there is a combination of diffuse bulge and spur with marked Luschka joint hypertrophy on the left. There is marked narrowing of the left C7 neural foramen.

Claimant’s motor nerve conduction studies of her left arm and right leg were normal.

Dr. Williams reviewed these studies when Claimant returned to him on February 27, 2003. His letter of that date reports:

She tells me the exact date her neck pain started was on December 30, 2002 at which time she also injured her back. EMG and nerve conduction studies of the left arm and right leg were normal. Myelogram/post-myelogram CT showed marked foraminal stenosis at C6-7 secondary to a bone spur and disc fragment. She is tentatively scheduled to have an anterior cervical fusion done on 3/13/03.

Claimant apparently was uncertain about this surgery. When she reported to Dr. Wayne Bruffett on March 10, 2003 concerning her low back, she also reported neck pain and asked his opinion regarding her cervical spine surgery.

At some point, Claimant returned to Dr. Starnes. He referred her to Dr. Harold Chakales for a second opinion regarding cervical spine surgery. In the interim, on May 9, 2003 Dr. Williams reported to one of Claimant's attorneys: "[Claimant] indicated to me when she was in my office on February 27, 2003 that she began having back and neck difficulties when she injured her neck on December 30, 2002. If that is the case, then the incident should be considered the cause of her medical care."

Dr. Chakales examined Claimant on May 14, 2003. He opined that she "has a cervical disc syndrome at C6-7 which appears to be central and somewhat left-sided, but she is having right-sided pain." He noted that Claimant did not wish to undergo surgery. He opined that she would be a suitable candidate for cervical epidural injections; if those were ineffective, he believed that Claimant might be a surgical candidate. Claimant apparently reported to Dr. Chakales that her cervical spine injury stemmed from her incident at work in December of 2002.

Claimant could not recall any problems with her neck prior to December of 2002; likewise, she denied any injuries, accidents, or incidents involving her neck since that time. She claimed she told her supervisors that her neck hurt, and that "[t]he first time I went to the doctor and saw Dr. Carroll, I told him my neck and my shoulder hurt, but the main reason I was there was because my back hurt." She underwent an anterior cervical fusion on her neck in December of 2003; the surgery was paid for by her group health policy. On cross-examination, she denied that the knot on her neck reported to Dr. Starnes on January 15, 2003 was related to her incident:

Q. Okay. Prior to this incident, you'd had some problems with you neck before; is that right?

A. No. I didn't have problems with my neck. I did have a lump on the side of my neck that I wanted them to look at, but I didn't have any pain before I hurt myself.

Q. Had you had that lump on your neck for about a year before this incident of December 30, 2002?

A. I'd say yes.

Q. In 2000 or 2001, had Dr. Starnes recommended an MRI on your neck?

A. No.

She insisted that she told Dr. Carroll on December 31, 2002 that her back and her neck hurt. However, she did not report a neck claim until after she learned the extent of her neck injury during her visit with Dr. Williams: "When I got home from Dr. Williams' office, I called Wal-Mart's workman's comp and told them that I'd hurt my neck at the same time I hurt my back." As to her neck surgery:

It helped the strength. I was losing strength on the left side of my body. I was real weak, and it has improved the weakness in my arm. I can lift again and I don't notice it. As far as the pain, it doesn't - like before, I'd say my pain level was at a nine. Now it's probably a seven to an eight when it starts hurting.

Claimant conceded that she has good days and bad days, depending upon her physical activity.

Claimant must prove that she sustained a compensable injury.

"Compensable injury" means: ... an accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

Ark. Code Ann. § 11-9-102(4)(A)(i); see Hargis (War Eagle) Transp. v. Chesser, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (September 8, 2004). A compensable injury must be established

by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

The employee must sustain her burden of proving a compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, \_\_\_ (1947).

I find that Claimant sustained her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine on December 30, 2002. The elements required by the statute will be discussed in turn.

Claimant’s injury was accidental, caused by a specific incident identifiable by time and place of occurrence. Claimant testified to lifting cases of Tide out of a storage bin, moving the cases, then setting the cases on the floor; she subsequently lifted the cases onto an L-cart. This all occurred at Respondent’s place of business on December 30, 2002. Claimant identified this incident as causing the injury to her cervical spine.

Claimant’s accidental injury caused physical harm to her body. Although her neck injury was not the primary focus of her initial medical treatment, Claimant testified that her neck hurt following the incident and continued to do so. She sought treatment for this condition as early as January 15, 2003. Dr. Williams’ May 9, 2003 letter states that Claimant “began having back and neck difficulties when she injured her neck on December 30, 2002. If that is the case, then the incident should be considered the cause of her medical care.” Thus, Dr. Williams concurs that Claimant’s December 30, 2002 accidental

injury, if it occurred as reported by Claimant, caused physical harm to her cervical spine.

Claimant's accidental injury arose out of and in the course of her employment. As noted, Claimant was performing her duties as department manager in household chemicals and paper goods when she was injured on December 30, 2002. Claimant was at work when her accidental injury occurred.

Claimant's accidental injury required medical services. Again, Dr. Williams' May 9, 2003 letter establishes that, given Claimant's history, her "incident should be considered the cause of her medical care." Claimant testified to needing medical services, such that she sought treatment from three doctors and ultimately underwent recommended anterior cervical fusion in December of 2003.

Objective findings support the medical evidence. The January 22, 2003 MRI of Claimant's cervical spine recorded an objective finding at C6-7. Her CT scan cervical spine dated February 26, 2003 identified "a combination of diffuse bulge and spur" at C6-7. On May 14, 2003, after reviewing these and other studies, Dr. Chakales diagnosed "cervical disc syndrome, C6-7, with central and unilateral findings."

I acknowledge the evidence in the record to the contrary. Claimant's Form AR-N does not mention a neck injury; her "Associate Statement - Workers' Compensation" form does not mention a neck injury; and, Dr. Carroll's initial medical records do not report complaints of neck pain. However, Claimant testified that her neck hurt following her incident, but that the initial focus of her treatment was her back. Dr. Starnes' January 15, 2003 medical record corroborates that Claimant complained of pain shortly after her incident. Claimant denied any neck pain prior to the incident, and she denied any injuries, accidents, or incidents with her neck since the incident.

If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the commission's refusal to make an award. But if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the Commission's conclusion is controlling.

Hall v. Pittman Constr. Co., 235 Ark. 104, 105-6, 357 S.W.2d 263, \_\_\_ (1962)(citations omitted). Here, Claimant's disability arose soon after her accident and is logically attributable to it; there is nothing to suggest any other explanation for her condition. Although she reported "a knot in the back of her neck for the past year" to Dr. Starnes on January 15, 2003, she testified that she did not have any neck pain prior to December of 2002; and, the medical records do not reflect that Claimant sought any treatment for her neck prior to the incident. In this context, there is a causal connection between Claimant's December 30, 2002 accidental injury and her need for cervical spine treatment.

#### **B. Medical Treatment - Cervical Spine**

As noted above, Claimant testified to the absence of problems with her neck prior to December of 2002; she denied any injuries, accidents, or incidents with her neck since that time. The medical records reflect that she sought treatment for her neck pain as early as January 15, 2003, and fairly consistently pursued such treatment since that date. She underwent anterior cervical fusion in December of 2003; this surgery was recommended by Dr. Williams; Dr. Chakales concurred that "surgery is definitely indicated if she so desires." At the hearing, Claimant testified that this surgery helped with her strength on the left side of her body, but that she continues to have pain depending upon her physical activity.

Claimant seeks medical treatment for her cervical spine injury. Respondent offers no specific contention in response to this request.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Constr., Full Workers’ Compensation Commission Opinion filed February 14, 2003 (E906565) (citations omitted). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (March 16, 2005).

I find that Claimant sustained her burden of proving by a preponderance of the evidence that she is entitled to medical treatment as may be reasonably necessary in connection with her cervical spine injury. The medical treatment received to date has been necessary to diagnose the nature and extent of Claimant’s cervical spine injury. Further, her anterior cervical fusion reduced or alleviated her symptoms, and achieved a certain level of healing. Thus, this medical treatment has been reasonably necessary. It is certainly connected to her cervical spine injury occurring December 30, 2002. Claimant did not have neck problems prior to this date; since that date, she has not sustained additional injury to her neck. Dr. Williams’ May 9, 2003 letter confirms that, given Claimant’s history, her “incident should be considered the cause of her medical care.”

### **C. Additional Medical Treatment - Low Back**

Dr. Carroll initially treated Claimant's back. His December 31, 2002 clinic note assesses "lower back strain," and prescribes physical therapy and medication. Claimant underwent physical therapy and reported to Dr. Carroll on January 14, 2003 that this therapy and her medication had been helpful. Nonetheless, as of that date, she still experienced back pain.

On February 3, 2003, Claimant again presented to Dr. Carroll; she reported that her back pain remained the same, and that her physical therapy had not made any significant change in that pain. She further reported numbness and occasional tingling in both legs down to the toes in her feet. Dr. Carroll reported:

She has had a[n] MRI of her lumbar spine. The MRI showed earlier degenerative desiccation of the intravital disc of L5 S1 with a minimal diffuse inter disc bulge. It was commented on that there was no significant stenosis or S1 nerve root impingement. There is also mild degenerative change present within the facets bilaterally from L3 L4 through L5 to S1.

Dr. Carroll assessed "back pain that is about the same with report paresthesias in both legs." He recommended a neurology referral. Claimant's February 24, 2003 examination by Dr. Carroll produced a similar report.

Dr. Bruffett examined Claimant on March 10, 2003. He noted that Claimant "injured her back at work on 12/30/02. She does quite a bit of lifting with her job at Wal-Mart and says that she noticed significant pain here. She also has some numbness and tingling into her legs, but probably 90% of her problem is in her low back." Claimant described her back pain as "severe, stabbing, aching, and burning in nature. It is intermittent and seems to be worse with lifting, twisting, lying in bed, bending, squatting, or sitting." Upon reviewing Claimant's MRI scans, Dr. Bruffett observed that her "lumbar spine shows some disk

desiccation, but no evidence of disk herniation.” He assessed disc desiccation and lumbar strain, and recommended that Claimant be treated non-surgically with a trunk-stabilization-exercise program. If that was not successful, he recommended “that she see one of the nonoperative specialists such as Dr. Bruce Safman...”

Claimant returned to Dr. Carroll on April 11, 2003, reporting continuing “tingling in her toes” and that she was currently undergoing physical therapy. Upon examination, Dr. Carroll assessed “backache with tingling sensation in her toes,” and opined that Claimant “needs to see a neurologist.”

Dr. Bruffett responded to one of Respondent’s attorneys on June 17, 2003.

I do not know if [Claimant] has yet reached maximum medical improvement because I think that would be based on how she is responding to her treatments with Dr. Safman. In my opinion, she reaches this point when she plateaus in her recovery. Certainly, that may already have occurred, but I would leave that question up to Dr. Safman. I do think she was referred to Dr. Safman for treatment of her lumbar strain and also probably for aggravation of her preexisting disk degeneration. I do not know that there are any “objective measurable findings” that “substantiate extended healing on the soft tissue strain.” I think sometimes some people just take longer to heal than others.

There are no records from Dr. Safman in evidence.

Claimant testified at the hearing that Respondent never sent her to a neurologist, but instead referred her to Dr. Bruffett, an orthopaedic surgeon. She confirmed that she underwent physical therapy as recommended by Dr. Bruffett, but that she returned to Dr. Carroll for prescription refills. She has not had surgery on her low back.

Claimant testified that she experienced a lumbar strain “back in the 80's” that did not require surgery. Apart from that, she denied any low back problems prior to her December 30, 2002 compensable back injury. She also denied any injuries, accidents, or incidents

with respect to her low back since December of 2002.

Respondent initially paid for Claimant's medical care. However, that stopped at some point, although Claimant believes she still needs treatment.

Q. ... Who was your primary treating physician for your back that Wal-Mart originally paid for?

A. Doctor Carroll.

Q. And at some point in time, did they stop paying for his treatment?

A. They did, but I wasn't aware of it until I went to the doctor's office and they told me. After one of my appointments, they told me that Wal-Mart wasn't paying any more.

Q. Were you still having problems with your low back?

A. Yes, sir.

...

Q. Are you still having symptoms from your low back?

A. Yes, sir.

As of the last time Claimant saw Dr. Carroll, "[h]e was giving me anti-inflammatory medication and muscle relaxers, and he also wanted to do some blood tests." There is no indication in the record that Dr. Carroll has released Claimant from his care.

On cross-examination, she denied turning in any low back treatment on her group health policy. She testified concerning the condition of her back as of the hearing:

ALJ. Ms. Reis, how does your low back feel today?

A. I'm having a lot of pain with it, especially lately. We're just preparing for inventory, and I'm doing a lot more lifting and carrying than I normally do. So how much it hurts depends on the situation.

ALJ. How does that compare to after the injury?

A. Well, if you had asked me yesterday, I would say it was about the same

pain. I had to take pain pills in order to be able to work.

ALJ. So it feels differently today than it did yesterday?

A. Well, I haven't been doing as much lifting. I've just been sitting. It hurts a little bit when I sit, but not as much as when I'm up lifting and moving around.

As with her neck, Claimant confirmed that she has good and bad days, depending upon her physical activity.

Claimant seeks additional medical treatment for her low back. Respondent contends that additional treatment is unreasonable and unnecessary.

I find that Claimant sustained her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her low back. Claimant is working but continues to experience pain in her low back. As of her last paid visit with Dr. Carroll, she was being treated with anti-inflammatory medication and muscle relaxers; Dr. Carroll wanted blood tests. This testimony, uncontradicted by the record, indicates that Claimant's treatment was ongoing when Respondent stopped paying. Claimant testified to needing pain medication in order to work and that she continues to have symptoms from her low back. Thus, additional medical treatment would reduce or alleviate Claimant's symptoms resulting from her compensable injury, as well as maintain the level of healing she has achieved; such medical treatment is reasonably necessary. See Greer, supra. Continued medical treatment for Claimant's ongoing pain attributable to her compensable low back injury is reasonably necessary. See Lewis v. WSD Turner, Full Workers' Compensation Commission Opinion filed July 12, 2004 (F212623). The medical records corroborate Claimant's continuing low back complaints, and establish that her need for additional medical treatment is connected with her compensable injury.

**D. Permanent Impairment Rating - Cervical Spine**

Dr. Williams wrote Claimant's attorney on June 4, 2004:

[Claimant] indicated to me in her original history of 2/27/03 that she began having difficulty with her back and neck when she was injured at work on 12/30/02 and had no prior history of any problems. If that is the case, then that should be considered the cause of her need for medical care. As you know, she has had an anterior cervical fusion. The American Medical Association publication Guides to the Evaluation of Permanent Impairment indicates that an operatively treated disc derangement in the cervical spine with residual produces a 9% whole person impairment. These opinions are stated with a reasonable degree of medical certainty.

Claimant argues that she is entitled to this impairment rating; Respondent offers no specific contention in response.

There are three statutory requirements to establish an entitlement to benefits for a permanent impairment. See Excelsior Hotel v. Squires, 83 Ark. App. 26, 33-34, 115 S.W.3d 823, \_\_\_\_ (2003); Schalski v. Family Cleaners & Laundry, Full Workers' Compensation Commission Opinion filed March 3, 2004 (E711809). First, it must be determined that the compensable injury was the major cause of the impairment at issue. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). "Major cause" means more than fifty percent of the cause. Ark. Code Ann. § 11-9-102(14)(A). Second, any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. § 11-9-704(c)(1)(B). Third, benefits for permanent impairment must be based on an impairment rating using the American Medical Association's Guides to the Evaluation to Permanent Impairment (4th ed. 1993) (hereinafter "Guides"). Ark. Code Ann. § 11-9-522(g); Workers' Compensation Commission Rule 34. A claimant must prove by a preponderance of the evidence that she is entitled to an award of permanent physical impairment. Schalski, supra; see Ark. Code Ann. § 11-9-704(c)(2).

I find that Claimant's December 30, 2002 accidental injury was the major cause of the impairment at issue. Claimant testified that she did not experience neck problems prior to this date; she has had neck problems since that date, but has not had any other injuries, accidents, or incidents involving her neck since then. Given this history, Dr. Williams opined that it "should be considered the cause of her need for medical care." Claimant's December 30, 2002 neck injury is the sole, and therefore major, cause of the impairment at issue. See Polk County v. Jones, 74 Ark. App. 159, 165, 47 S.W.3d 904, \_\_\_ (2001).

I find that a determination of the existence or extent of Claimant's physical impairment in her cervical spine is supported by objective and measurable physical findings. The January 22, 2003 MRI of her cervical spine reports "[l]eft C6-7 neural foraminal narrowing due to focal disk extrusion or prominent ... osteophyte." Her February 26, 2003 CT scan cervical spine reports "multi-level degenerative disc disease ... most pronounced at the C6-7 level," where "there is a combination of diffuse bulge and spur..." Following these studies, Dr. Williams recommended an anterior cervical fusion.

Utilizing the Guides, I find that Claimant is entitled to a permanent impairment rating of 8% to the whole person. Dr. Williams' February 27, 2003 letter interprets Claimant's February 26, 2003 studies as showing "marked foraminal stenosis at C6-7 secondary to a bone spur and disc fragment. She is tentatively scheduled to have an anterior cervical fusion..." Although his June 4, 2004 letter makes reference to "operatively treated disc derangement in the cervical spine with residual," Dr. Williams does not define or identify that "residual." Thus, referring to Table 75 on Page 113 of the Guides, a single level spinal fusion with or without decompression, without residual signs or symptoms, in the cervical region, translates to an 8% impairment of the whole person.

To summarize, I find that Claimant sustained her burden of proving by a preponderance of the evidence that she is entitled to an 8% permanent impairment rating as a result of her cervical spine injury and subsequent anterior cervical fusion.

**E. Attorney's Fee**

Attorney's fees shall only be allowed on the amount of compensation for indemnity benefits controverted and awarded. Ark. Code Ann. § 11-9-715(a)(2)(B)(ii). This Opinion awards Claimant an 8% permanent impairment rating; the parties stipulated that Respondent controverts Claimant's cervical injury claim in its entirety. Thus, Claimant is entitled to an award of an attorney's fee pursuant to the statute to be paid by Respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer relationship existed on December 30, 2002, and at all other relevant times.
3. Claimant sustained a compensable low back injury on December 30, 2002.
4. Respondent controverts additional benefits related to Claimant's low back injury from March 1, 2004.
5. Respondent controverts Claimant's cervical injury claim in its entirety.
6. Claimant's temporary total disability benefits rate is \$180.00; her permanent partial disability benefits rate is \$154.00.
7. Claimant sustained her burden of proving that she suffered a compensable injury to her cervical spine on December 30, 2002. An accidental injury occurred as Claimant lifted and moved boxes out of a bin and then sat them on the floor at Respondent's place of business on that date. Claimant's testimony, corroborated by her medical treatment and

in particular Dr. Williams' May 9, 2003 letter, all establish that this accidental injury caused physical harm to Claimant's cervical spine. The testimony establishes that this accidental injury arose out of and in the course of Claimant's employment. Her accidental injury required medical services as evidenced by the records of Dr. Starnes and Dr. Williams, including an anterior cervical fusion in December 2003. Claimant's January 22, 2003 MRI and February 26, 2003 CT scan cervical spine both provide objective findings at C6-7.

8. Claimant sustained her burden of proving that she is entitled to reasonably necessary medical treatment in connection with her compensable cervical spine injury. Her medical treatment prior to surgery was necessary to diagnose the nature and extent of her injury; her anterior cervical fusion reduced or alleviated her symptoms, and achieved a certain level of healing; this medical treatment was therefore reasonably necessary. Because Claimant did not have cervical problems prior to December 30, 2002, and did not sustain additional injury to her neck after that date, the record demonstrates that Claimant's need for medical treatment is connected with her compensable injury.

9. Claimant sustained her burden of proving that she is entitled to additional reasonably necessary medical treatment in connection with her compensable low back injury. Claimant continues to experience symptoms, including pain, associated with this injury. At the time Respondent stopped paying for her treatment, she was still under Dr. Carroll's care; nothing indicates that she has been released. Thus, additional medical treatment would reduce or alleviate her symptoms, maintain the level of healing she has achieved, and treat her ongoing pain; such care is reasonably necessary. She has not sustained additional injury to her low back following her compensable injury, so her need for additional medical treatment is connected with this injury.

10. Claimant sustained her burden of proving that she is entitled to an 8% permanent impairment rating as a result of her cervical spine injury. Her December 30, 2002 compensable cervical spine injury is the major cause for this impairment; Claimant did not experience neck problems prior to this date, and has not had any injuries, accidents, or incidents involving her neck since then. Her January 22, 2003 MRI and February 26, 2003 CT scan cervical spine provide objective and measurable physical findings in support of a determination of the existence and extent of her physical impairment. Utilizing the Guides, in light of Claimant's December of 2003 anterior cervical fusion, Claimant is entitled to a rating of 8% permanent impairment to the whole person.

11. Claimant's attorney is entitled to the maximum prescribed attorney's fee under Ark. Code Ann. § 11-9-715.

**AWARD**

Respondent is directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth herein.

Claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondent in accordance with Ark. Code Ann. § 11-9-715 and Death and Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

**IT IS SO ORDERED.**

DFA/ml

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D. FRANKLIN AREY, III,  
Administrative Law Judge