

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F411648**

**SUSANNE SMITH,  
EMPLOYEE**

**CLAIMANT**

**EXXTRA HELP, INC.,  
EMPLOYER**

**RESPONDENT**

**LIBERTY MUTUAL  
INSURANCE CORP.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JUNE 30, 2005,**

Pursuant to a hearing conducted April 4, 2005, before Administrative Law Judge Richard B. Calaway in Malvern, Hot Spring, Arkansas, with

Mr. W. H. Arnold, Attorney at Law, Arkadelphia, Arkansas, appearing for the claimant, and

Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over compensability of a low back injury which the claimant attributes to a fall at work.

Specifically, the claimant contended that she sustained a compensable injury on June 24, 2004, and should be awarded benefits, including reasonably necessary medical and related expenses. Other possible benefits, including temporary total disability benefits, were reserved for another occasion. An attorney's fee for controversion was also requested.

The respondents contended that the claimant did not sustain an injury during the employment but suffered from pre-existing pathology in her lumbar spine; that a compensable injury cannot be established by medical evidence, supported by objective findings, although there may be objective findings consistent with pre-existing pathology.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, and the claimant's average weekly wage was \$147.69 on or about June 24, 2004.
3. The preponderance of the evidence fails to show that the claimant sustained a compensable injury arising out of and in the course of her employment.

**DISCUSSION**

As a result of her employment by Exxtra Help, Inc., the claimant was assigned to Therapeutic Family Services where she worked in medical records, pulling charts and performing similar services. On June 24, 2004, she slipped on a wet floor and landed in a seated position on what she thought was a cement floor with vinyl covering over it. Sheila Hairston, a co-worker, came in and asked her if she was okay and she said she thought she was all right and got up slowly. Ms. Hairston advised her that it was an accident and it had to be reported, so she reported it to Faye Taylor, her supervisor on the premises. The claimant also filled out a report with the help of Angela Neal and told Ms. Neal that she would be fine, even though it definitely hurt. She continued to work for a month or more without seeking medical care.

About a month after the fall at work, it became necessary for the claimant to move and, after packing up her things and moving one small truckload to her parent's house, the next day, she was

“just in excruciating pain.” Thereafter, she consulted chiropractor Dr. John Bomar at the suggestion of her father. Dr. Bomar’s records and the claimant’s testimony indicated that he wanted her to see a neurosurgeon and suspected a herniated disc. Dr. Bomar’s records and the claimant’s testimony indicate that she had the first onset of low back pain at about age 30 and had received chiropractic care at that time. Dr. Bomar’s records also indicate that the claimant had a prior horse riding accident. The claimant testified that the initial chiropractic care was because she had worked a lot of hours and her back was stressed.

Sheila Hairston gave similar testimony about the incident at work. She stated that she heard the claimant fall and found her sitting up in the floor and that the claimant said she had slipped and kept saying that she was not hurt. Ms. Hairston accompanied the claimant to Faye Taylor’s and then returned to her job. Ms. Hairston testified that the claimant continued to work after the incident and did not say anything else about it, even though they worked together in medical records.

Angela Neal testified that she was the human resources manager and that the claimant told her that she had fallen and Neal told the claimant that she needed to complete an injury report. She stated that the claimant said she was fine and Neal told her “No, you have to do an injury report,” so she did. Ms. Neal also stated that the claimant was a good worker and continued working after the incident without complaint about physical problems or asking to see a doctor. She also stated that when the claimant left the employment, they were begging her to stay because she was a hard worker.

The claimant presently contends that the condition of her back is the result of a compensable injury arising out of and in the course of the employment, her fall on June 24, 2004, and that she should be awarded appropriate benefits and an attorney’s fee.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Here, the preponderance of the evidence cannot be said to show that the fall at work resulted in a compensable injury without impermissibly affording the claimant the benefit of the doubt or resorting to conjecture and speculation on behalf of her claim. The record shows that the claimant did slip and fall at work but missed no time from work, did not consult a physician, and was observed by co-workers as performing her duties without limitation or complaint. After moving a small truckload of personal items and furniture, she began to experience excruciating pain and sought the care of a chiropractor, over two months after the fall at work. He concluded that the claimant had a probable herniated nucleus pulposus at L5-S1 on the left with cord or nerve root compression. His x-ray showed a 50% loss of disc height at that level and his examination showed a loss of deep tendon reflex on the left. However, as contended by the respondents, these objective findings, as opposed to his conclusion that a herniated nucleus pulposus existed, are consistent with

a pre-existing condition. Thus, the preponderance of the evidence simply fails to show that the fall at work, rather than the activity of moving, resulted in an injury which has been established by medical evidence, supported by objective findings, as required by the Act. There is insufficient explanation for the conclusion of the chiropractor that the claimant was injured at work, even though she did not seek medical care and continued her job duties without complaint, but later suffered a mere exacerbation by moving furniture even though she testified that this marked the onset of excruciating pain after which she consulted the chiropractor. Indeed, the claimant testified that the chiropractor told her she could not have hurt herself to that extent or get a herniated disc from lifting furniture. On this record, unless the claimant is afforded the benefit of the doubt or conjecture and speculation is employed in support of her claim, the preponderance of the evidence fails to show that she suffered an injury arising out of and in the course of the employment.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge