

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F408077**

<b>PAULA L. KEFFER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>EMERGENCY AMBULANCE SERVICE, EMPLOYER</b>	<b>RESPONDENT</b>
<b>LIBERTY MUTUAL INSURANCE CORP., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 9, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on September 15, 2006 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE STEVEN R. MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is whether or not the claimant sustained a compensable low back injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit fo the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on July 25, 2004 at which time the claimant sustained compensable injuries in a motor vehicle accident at a compensation rate of \$296.00/\$222.00. Medical expenses and temporary total disability benefits were paid until August 22, 2004 when the claim was controverted.

The claimant contends she injured her low back in the compensable accident and seeks payment of medical expenses and attorney's fees.

The respondents contend they paid for medical treatment of the right shoulder, thoracic spine and hip but there is no objective medical evidence to substantiate a lumbar injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and her husband, Tom Keffer who corroborated the claimant's testimony.

The claimant, age 39 (D.O.B. December 14, 1966) has a high school education and some college courses. The claimant began work for the respondent-employer in 2001 as an Emergency Medical Technician (EMT).

On July 25, 2004 the claimant was injured when her ambulance hydroplaned and rolled over three times before coming to a stop. She spent the night in the hospital and received conservative treatment. The claimant returned to work temporarily as a dispatcher. She tried unsuccessfully to return to her job as an EMT and was fired. Since then the claimant has worked as a substitute teacher. The claimant stated she remains symptomatic but is financially unable to pursue medical treatment.

The claimant testified she had no prior back, shoulder or hip problems prior to the compensable accident. She continues to experience back pain and spasm with difficulty walking. She also thinks her back problems are adversely affecting the compensable hip injury. Although the claimant stated she was requesting medical

treatment for her low back and hip, she described back spasms in the upper and mid back, between and below her shoulder blades.

### **MEDICAL EVIDENCE**

The claimant has been treated by the ER, Dr. Michelle Eckert, a general surgeon, Dr. Bruce Safman, an orthopaedic surgeon, and Dr. Stan Burleson, her family physician.

The July 25, 2004 ER records signed by Dr. Skowronski show the claimant was complaining of right shoulder, pelvis and hip pain, headache, neck and back pain. Multiple contusions were observed and the claimant stated she was “sore all over”. X-rays were made of the claimant’s spine (cervical and lumbar), chest, pelvis, hip and shoulder. She was prescribed medication and referred to Dr. Eckert who recommended light duty for two weeks.

On Dr. Eckert’s reports of August 2, 2004 and August 23, 2004 there are notations indicating the claimant was complaining of low back pain at the site of a bruise in the L1/L2 region. A CT scan of the spine revealed “no evidence of acute findings.” The radiologist noted mild degenerative facet disease and spurring at L4-5/L5-S1 with a “general abnormality at the SI joint but no soft tissue swelling. In view of the claimant’s pain, the radiologist suggested a bone scan.

Instead, the respondents sent the claimant to Dr. Safman for an “independent” medical evaluation. Dr. Safman diagnosed coccydynia and recommended an MRI scan of the spine and hip, along with injections, medication and a cushion to sit on. The claimant also related a second work-related incident to Dr. Safman that exacerbated her pain when a cot fell on her while trying to unload a patient from an ambulance.

An MRI scan conducted December 8, 2004 revealed an atypical hemangioma (benign tumor) of the SI joint.

In his report of November 29, 2004 Dr. Safman emphasized that he would not be treating the claimant however, it appears Dr. Safman did assume the claimant's care because she returned to him on December 20, 2004. He recommended medication, home exercises, and a 30 pound lifting restriction. The claimant returned to Dr. Safman on January 20, 2005 still in pain. Dr. Safman suspected fibromyalgia and the claimant related a conversation with her physician about fibromyalgia, however, that information concerning injections is not found in the medical records. The carrier has refused to authorize medication for chronic back pain. Dr. Safman released her to full duty with a 0% impairment rating.

The claimant sought help from her family physician, Dr. Burleson, who prescribed medication and recommended additional diagnostic testing. He opined the claimant suffered a work related back injury substantiated by muscle spasm, however, he did not specify thoracic or lumbar.

None of the physicians have been asked to comment on the possibility that the accident may have aggravated a preexisting condition.

### **FINDINGS AND CONCLUSIONS**

Under Ark. Code Ann. §11-9-102(4)(D) the claimant is required to establish the existence of an injury based on medical evidence supported by objective medical findings as described in Ark. Code Ann. §11-9-102(16). Objective findings cannot come under the voluntary control of the patient.

I found the claimant to be a credible witness who has made a sincere effort to return to the workforce after the undisputed accident. It is unclear why the

respondents have stopped payment for the claimant's prescription pain medication since they accepted the thoracic spine as compensable and her muscle spasms are located in the thoracic spine area. Arguably, the respondents would remain liable for treatment of chronic pain for the compensable shoulder, hip and thoracic spine injuries even if this treatment benefitted a non-work related lumbar injury.

The greater preponderance of the credible evidence of record shows the claimant suffered low back pain and bruising in the L1/L2 region immediately after the compensable accident. Ultimately she developed pain in the SI joint and was diagnosed with coccydynia. There is no evidence the claimant suffered from back problems before the accident. According to the medical records, contusions were observed in the area of the low back and hip, correlating with her symptoms. Bruising is an objective medical finding substantiating a low back injury. There is also expert medical testimony from the physician chosen by the carrier, that the claimant requires medication for chronic pain. As I interpret the medical evidence, further diagnostic testing, possibly a bone scan, may be necessary or consultation with a pain specialist or rheumatologist might be beneficial.

Based on the lay and expert testimony, I find the claimant suffered a compensable lumbar back injury and is in need of further medical treatment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on July 25, 2004. Benefits were paid for shoulder, hip and thoracic spine injuries until the claim was controverted on August 22, 2004.
2. The claimant has proven by a preponderance of the credible evidence that she sustained a compensable lumbar injury, caused by a specific incident, arising out of and in the

course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

3. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

### **AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

---

ELIZABETH W. HOGAN  
Administrative Law Judge