

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F511742**

**BEVERLY MORRIS, EMPLOYEE**

**CLAIMANT**

**BAPTIST HEALTH, SELF-INSURED  
EMPLOYER**

**RESPONDENT**

**CROCKETT ADJUSTMENT,  
THIRD PARTY ADMINISTRATOR**

**RESPONDENT**

**OPINION FILED OCTOBER 4, 2006**

Hearing before Administrative Law Judge Barbara Webb on July 6, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Kenneth A. Olsen, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Gail Ponder Gaines, Barber, McCaskill, Jones & Hale, P.A., Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the above-styled claim on July 6, 2006, before Administrative Law Judge Barbara Webb. A Pre-hearing Order was entered in this case on April 18, 2006. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

1. The employer/employee relationship existed at all relevant times through at least August 1, 2005, and thereafter;
2. If the claim is found to be compensable, the claimant earned an average weekly wage sufficient to entitle her to the maximum applicable compensation rate for temporary total disability and for permanent partial disability.
3. The respondents have controverted this claim in its entirety.

By agreement of the parties, the issue to be litigated is:

1. Whether claimant sustained a compensable gradual injury due to rapid and repetitive movement.
2. Claimant's entitlement to temporary total disability benefits from October 25, 2005 until March 28, 2006, the date of maximum medical improvement, medical expenses, and attorney fees.
3. Claimant reserves all other issues.

The record consists of a one volume transcript of the July 6, 2006, hearing, consisting of the testimony of Beverly Morris, Miriam Camille Wilder, Ron Workman, and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order), Claimant's Exhibit No. 1 (correspondence), Respondents' Exhibit No. 1 (correspondence) and Joint Exhibit No. 1 (Medical index and records).

### **FACTUAL BACKGROUND**

The claimant is fifty-two (52) years of age (b. 05/21/54). She finished the twelfth grade. She was employed by the Baptist Health Medical Center for twenty seven (27) years, beginning in September of 1978 until her injury of October 24, 2005. She began in central supply but transferred to the pharmacy in 1980 and worked in the pharmacy for twenty-five (25) years. While in the pharmacy, she primarily performed the job of courier tech, IV tech, and narcotics tech. The courier tech job entailed filling all medications and delivering them to the nursing stations every thirty minutes throughout the hospital. The IV tech is responsible for setting up the IV runs and delivering them to each nursing station. The narcotics tech is responsible for controlling all of the narcotic drugs and makes a morning delivery to the patients once a day. In 2000, the claimant was off work for approximately three and a half months due to a shoulder injury which resulted in a separate workers' compensation claim. She was returned to light duty by Dr. Slater in

December of 2004. She could not perform the job as IV tech because it consisted of a lot of heavy lifting and reaching overhead, but could perform the jobs of courier tech. She was also able to work light duty as a rehab tech which involved a lot of walking. She worked the day shift and often worked double shifts resulting in a work schedule of eight to sixteen hours per day. She described the job as courier tech:

Normally what we would do is, if you had medication for the intensive care unit, you would start with the intensive care unit, and that's on the first floor. You go by way of elevator from the first floor – you go to the first floor and then, after you deliver all the medications to the intensive care units on the first floor, then you would go to the tenth floor unless you had – if you had stats or nows, you're – you were responsible for going to the station that had the stats or the nows first.

Q. How did you go from floor to floor?

A. You would use the elevator to go up, and then you would use the stairs to finish making your deliveries.

She explained that they had only thirty minutes to make the deliveries and would often fall behind. The job duties did not allow them to sit. Between December 4, 2004, and October of 2005, she worked four days as a courier tech and one day as the narcotic relief tech, except when she was asked to fill the narcotics job as relief when others were off work. In August of 2005, she began hurting in her right groin and down the front and in the back of her right leg. She had no falls, accidents, or injuries that caused the onset of the pain and attributed the pain to all of the standing and walking. She did not report an injury at that time. She sought medical treatment with her primary care physician, Russell Cranford. She was treated conservatively with medication and referred to a specialist, Dr. Slater, who had treated her previously for knee, foot, and shoulder injuries. On October 14, 2005, Dr. Slater examined the claimant and referred her for an MRI. She returned for follow-up on October 21, 2005, and was placed on a set of limitations which she explained precluded the performance of her job duties since

she was not able to stand or walk. Her last day to work was October 24, 2005. She testified that she used her leave for a month and drew short-term disability for six months. Morris testified that she had not returned to work. She testified that she had not seen Dr. Slater since April 7, 2006 and did not have any follow-up treatment scheduled. She was released to go back to work on March 28, 2006, but explained that she was unable to perform stair climbing, standing, and walking for approximately forty-five (45) minutes to an hour daily. She did not undergo the functional capacity evaluation recommended by Dr. Slater since it was at her expense. She worked with the respondents to try to locate a job within the Baptist Health System by talking with her supervisor and on the Internet, but could locate no jobs within her physical limitations. She testified she was terminated on April 17, 2006. She had not worked anywhere else and has not looked for a job. She testified that she had applied for disability due to physical limitations with her shoulder, knee, and back. Morris testified that she was currently treating for pain management in connection with the alleged injury with Dr. Angtuaco at Radiology Consultants and is receiving cortisone injections in the right leg, pelvic area which will require follow-up treatments.

On cross-examination, she testified that she had back problems due to motor vehicle accidents in 1990 and 2003. She also testified that she had knee problems that restricted her ability to climb stairs which she contended was work-related but not the result of a specific incident. She has had left knee pain without trauma since 2003 and a Baker's cyst on her right knee. She did not file a claim related to these problems. She also had a foot injury from a grocery cart. She explained that when fully staffed, there were three courier techs. In those instances, the same person did not make all the runs every 30 minutes since the runs would be rotated. She did the narcotics assignments more often than the other techs

since she was cross-trained. By July and August of 2005, she was also performing the IV tech job. She agreed that she did not initially tell her family doctor that her groin pain was related to walking and standing on the job and turned the bill in through her group health carrier. She did not tell Dr. Slater that she thought her problems were work-related and turned his bill into the group health carrier. She did not improve after she was taken off work. She agreed she had walked and climbed stairs for 25 years without any pelvic fractures. She has also applied for long-term disability benefits through Baptist. She testified that she first believed the injury was work related from standing and walking on concrete on October 21, 2005, after a doctor's visit with Dr. Slater.

Miriam Wilder was called to testify by the claimant. She is employed as a pharmacy tech at Baptist Hospital. She started working for Baptist in May of 2005 and has worked as a courier tech, IV tech, and narcotic tech. She testified that the job required you to keep a steady pace and generally did not use elevators because they were too slow. She explained that the number of runs in an eight hour shift varied but she had done about six or seven on her shift the previous night. She testified that she generally worked the evening shift and the claimant worked the day shift. She agreed that she and the claimant were social friends.

Ron Workman testified for the respondents. He is the pharmacy supervisor for daytime operation for Baptist and has held the job since 1978. He explained that a courier delivery is made every 30 minutes. The tech takes a small carrier bucket which contains the medication and goes to the tenth floor by elevator and comes down to whatever floor is required. If time permits, they use the elevator coming down. The employees are not permitted to run. While there are peak periods of activity, the techs do not go to every nursing unit a lot of times. He explained that due to safety concerns, the supervisors schedule the work at a pace that is

comfortable enough that they will not make a dispensing error. If there is a heavy load, he explained that he encouraged the techs to either let him know or split the run with another team member. He did not recall any complaints from Morris that she was unable to safely complete her assignments. She was never counseled for not performing her job duties in a timely manner. In the courier assignment, Morris would make either five or six runs in an eight-hour shift. He testified that the claimant most often performed the narcotics tech job which entailed one delivery a day and the rest working in a controlled environment where they are refilling automated dispensing cabinets and doing a lot of record keeping. He explained that the records revealed that the claimant had worked in a lot of areas and a variety of different assignments. She first reported that she was sick and couldn't work. She later told him after the physician's letter that she sustained an injury from walking, standing, and stair-climbing on the job. He offered her a position without stair-climbing on a temporary basis. He was not aware of any other claims of gradual onset injury to the pelvic area from pharmacy techs.

On cross-examination, he testified that he had worked with the claimant for twenty-seven years and that she was a very good employee. He believed her to be a very honest person and trusted her to work with controlled drugs. He agreed that the tech jobs involved steady motion. He explained that the other supervisor did direct observation, but that he had not personally done an extensive amount of direct observation of the delivery process. He did not observe people on the floor delivering medications to be rapid motion. He testified that he understood the doctor had only limited the claimant on stair climbing and that he could accommodate the limitation on a temporary basis. The claimant declined the offer because she did not feel she could sit or stand. Prior to her leave, he was never

made aware of any physical condition that impaired the claimant's ability to physically perform her job.

The medical records reflect that the claimant first presented to Dr. Cranford on August 26, 2005, complaining of pain in the right groin to thigh and upper right leg pain, along with other problems. She was treated conservatively with medication and diet recommendations and referred for physical therapy and evaluation by OrthoArkansas. Her medical records further reflect that claimant had a significant history of medical problems including problems with her back, right shoulder, right knee, left foot, and obesity. On September 20, 2005, Dr. Slater wrote a letter reflecting that he had examined the claimant for her one year post shoulder surgery follow up. He indicates that she is working full time at a regular job. She had previously worked under restrictions due to the surgery and other problems. At that time, Slater noted that he would let her continue to work light duty indefinitely with the restriction of no repeated overhead reaching or lifting of over 25 pounds. He also rated her with a 10% permanent partial impairment to the upper extremity due to her shoulder surgery. On October 14, 2005, Dr. Slater's notes reflect that the claimant returns with a new problem. He notes that her chief complaint is right lower extremity pain from the groin to the knee which she states had been going on for two months. He noted that x-rays showed some cysts in the ischium and diagnosed her with possible stress reaction in the right ischium. He referred her for an MRI. On October 7, 2005, she returned for treatment with Dr. Boehm. He notes that she has gained some weight. He further notes that she has seen Dr. Slater and reports that she has a fractured bone in her pelvis, etiology unclear. She recalled no particular trauma. On November 18, 2005, the claimant returned to Dr. Slater for follow-up. He notes that the claimant reports a lot of pain in the right groin and back and is considering disability. He further notes that the

claimant's stress reaction in the right ischium and femoral trochanter was confirmed on the MRI of October 14, 2005. He notes that he will keep her on a sit-down job with limited standing and walking but anticipates she will be able to go back to work at some point in time and will not qualify for disability. An MRI of the pelvis and hip area taken on January 13, 2006, reflects that there is no evidence of bone contusion, fracture, avascular necrosis or marrow replacement process. The test results reflect that the observations are consistent with the strain of the hamstring muscles. On February 7, 2006, the claimant returned for follow up with Dr. Slater. At that time, he noted that the claimant had three months of healing time and was getting better. He lifted the prior restrictions of standing and walking and noted that she should avoid stair climbing, squatting, and lifting over five pounds. On February 15, 2006, Dr. Slater notes that the claimant returned for follow up and requested him to answer some legal questions. He notes that he believes that she will recover fully from the pelvis and hamstring pull. He states "I do think the stress reaction in her pelvis is work related, as she has been very active physically at work with walking and standing long hours. On March 7, 2006, Dr. Slater notes that he encouraged the claimant to go back to work. He explained that he believed her pelvis stress reaction is going to heal and do well and not result in any disability. He noted that her shoulder was doing well and that her knee should do well if she avoided the stairs and took the elevator. He noted continued restrictions of stair climbing and repeated overhead reaching with the right upper extremity. On March 10, 2006, Dr. Slater noted that the claimant contacted him concerning disability and recommended a functional capacity assessment. On March 28, 2006, Dr. Slater examined the claimant. He notes that the claimant has reached maximum healing and that the claimant is certainly capable of gainful employment. He notes that the claimant has no additional permanent partial impairment except for the shoulder

and no permanent partial impairment from the stress reaction in the pelvis and released her from treatment. On April 7, 2006, he notes the claimant can perform occasional stair climbing but should not do frequent stair climbing, up or down.

### **DISCUSSION**

The claimant contends, in summary, that she sustained a compensable injury in the form of a pelvic fracture which resulted from gradual work stress and which first manifested itself on or about August 1, 2005; that respondents should be held responsible for all medical and related treatment together with continued reasonably necessary medical treatment; that she is entitled to temporary total disability benefits beginning October 25, 2005, and continuing through March 28, 2006, the end of claimant's healing period; and that a controverted attorney's fee should attach to all benefits awarded. The respondents contend that claimant did not sustain a compensable injury arising out of and in the course of her employment; that a gradual onset pelvic fracture does not meet the statutory definition of compensable injury and is not covered under the Workers' Compensation Act, while maintaining that the claimant's job duties did not involve rapid, repetitive motion as required by gradual onset injuries.

The issue presented is whether the claimant has established by a preponderance of the evidence that the claimant's pelvic fracture constitutes a compensable injury caused by rapid repetitive motion.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed at all relevant times through at least August 1, 2005, and thereafter;

3. If the claim is found to be compensable, the claimant earned an average weekly wage sufficient to entitle her to the maximum applicable compensation rate for temporary total disability and for permanent partial disability.
4. Claimant has failed to establish by a preponderance of the evidence that she sustained a compensable injury to her pelvic area, groin, and right leg caused by rapid, repetitive motion.

## **DISCUSSION**

### **I. COMPENSABILITY**

Ark. Code Ann. § 11-9-102(4)(A) defines “compensable injury”:

- (i) (a)n accidental injury causing internal or external physical harm to the body or accident injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, 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;
- (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is: (a) Caused by rapid repetitive motion . . .
- (v) A hernia as set out in § 11-9-523.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D)(Repl. 2002). Claimant’s burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). If claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may

accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Brotherton v. White River Area Agency, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Dec. 14, 2005); Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). The Commission may accept or reject medical opinions and determine their medical soundness and probative force. Id. It is important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985); Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

Once the presence of an injury is established by objective medical findings, a claimant seeking workers' compensation benefits for a gradual-onset injury also must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of the employment; (2) the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) the injury was the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4) (A) (ii) and (E)(ii) (Repl. 2002).

The Supreme Court of Arkansas has established a two prong test to determine whether an injury is caused by rapid repetitive motion: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1988). As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. Westside High School v. Patterson, 79 Ark. App. 281, 86 S.W.3d 412 (2002). Arguably, even repetitive tasks and rapid work, standing alone, do not satisfy the definition; the repetitive tasks must be completed rapidly. Id.

In the instant case, the claimant testified that her job tasks involved repetitive walking, standing, and stair climbing. However, she offered no evidence that the repetitive action was rapid. The claimant relies on the performance requirement

that the deliveries of medications be performed every thirty minutes. However, the testimony of Wilder, her co-worker, and Workman, her supervisor, clearly demonstrates that the amount and type of work performed varied depending on the number of staff available and the particular work assignments she performed.

In determining whether a worker's injury was the result of repetitive and rapid motion, the appellate courts have required some showing of how rapidly the repetitive actions were performed. See Hapney v. Rheem Mfg. Co., 342 Ark. 11, 26 S.W.3d 777 (2000) (benefits awarded where movements repeated every twenty seconds); Parker v. Atlantic Research Corp., \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W. 3d \_\_\_ (June 30, 2004) (benefits awarded where claimant was required to perform multiple tasks at high volume with quick and fast movements of a repetitive nature over the course of ten-to-twelve hour shift, six to seven days a week); Boyd v. Dana Corp., 62 Ark. App. 78, 966 S.W.2d 946 (1998) (series of repetitive motions performed 115 to 120 times per day separated by periods of only 1.5 minutes constituted rapid motion); High Capacity Prods. v. Moore, 61 Ark. App. 1, 962 S.W.2d 831 (1998) (movements repeated every fifteen seconds found to be sufficiently "rapid").

In the instant case, although Morris's testimony establishes that she was required to perform repetitive work activities while working specific assignments, there is no evidence in this record to indicate these activities were performed rapidly. The evidence showed that the delivery work requiring stair climbing was rotated among the pharmacy techs, the claimant was often given varying work assignments, and the pharmacy techs were given morning and afternoon breaks and a lunch hour during their shift. While it is evident that the claimant's job included maintaining a brisk pace, the claimant has failed to prove by a preponderance of the evidence that her work was rapid. Wright v. Quincy Soybean, 1998 AWCC 301 (Claim No. E602055, August 14, 1998) (stair climbing and walking

are not rapid, repetitive motion); Jobe v. Wal-Mart Stores, Inc., 66 Ark. App. 114, 987 S.W.2d 764 (1999).

## II. OBJECTIVE PROOF OF INJURY

Respondents further contend there is no medical opinion with any degree of certainty linking causation of the alleged injury. Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B)(Repl. 1996). The Arkansas Court of Appeals has held:

the plethora of possible causes for work-related injuries includes many that can be established by a common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident - but not in every case. We find the Court of Appeal's reasoning in Millican and Tilley persuasive. We therefore adopt the holding in Millican that objective medical evidence is necessary to establish the existence and extent of an injury, but is not essential to establish the causal relationship between the injury and the work-related incident (emphasis added).

Freeman v. Con-Agra Frozen Foods, 70 Ark.App. 306, 27 S.W.3d 762 (2000), quoting Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). See Stephens Truck Lines v. Millican, 58 Ark.App. 275, 950 S.W.2d 472 (1997) and Aeroquip, Inc. v. Tilley, 59 Ark.App.163, 954 S.W.2d 305 (1997).

Based on this reasoning, Freeman, summed up the current state of the law as such:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between the injury and the claimant's employment, but if an unnecessary medical opinion is offered on that issue, the opinion must be stated with a reasonable degree of medical certainty.

Freeman, supra, citing Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

In addition to her own testimony, claimant has offered the medical opinion of Dr. Slater to establish that her pelvic stress reaction and bilateral hamstring strain were caused by heavy lifting on the job. In a letter dated February 15, 2006, Dr. Slater opines: "I do think the stress action in her pelvis is work related, as she has been very active physically at work with walking and standing long hours."

The law is clear that medical opinions based upon "could", "may", "possibly", and "can" lack the definitiveness required by Ark. Code Ann. §11-9-102(16)(B)(Supp.1999) which requires that medical opinions be stated within a reasonable degree of medical certainty. Scott v. Middleton Drywall, 2005 AWCC 22 (Feb. 9, 1005) ("probably did" found insufficient to prove causation); Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000) (overruling prior Court of Appeals decision and holding that "could" was insufficient to satisfy standard ); Crudup v. Regal Ware, Inc. , 3341 Ark. 804, 20 S.W.3d 760 (2001) ("theoretical possibility" did not meet standard of proof); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001) (to pass muster, opinion must be more than speculation and go beyond possibilities).

When considering the use of the word "think", it is evident that the medical opinion of Dr. Slater is not stated within a reasonable degree of medical certainty. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991); Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1970); Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). Moreover, the doctor bases his opinion on the claimant's statements and it is only the claimant that attributes pelvic pain to work activities. Where claimant's case for causation rests mainly on her own testimony, the issue is that of credibility and ultimately left

to the discretion of the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996).

While objective medical evidence clearly exists to show the claimant suffered from pelvic strain, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable gradual-onset injury caused by rapid repetitive motion in connection with her work activities.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

**IT IS SO ORDERED.**

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**HONORABLE BARBARA WEBB**  
**Administrative Law Judge**