

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509039

MARGARET STOGNER,  
EMPLOYEE

CLAIMANT

GREENBRIER NURSING & REHAB CENTER,  
EMPLOYER

RESPONDENT

ACE AMERICAN INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED JULY 17, 2006**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Conway, Faulkner County, Arkansas.

The claimant was represented by HONORABLE STEVEN R. MCNEELY, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on May 17, 2006 in Conway, Arkansas. A prehearing order was entered in this case on March 23, 2006. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Employee/Employer/Carrier relationship existed between the parties on August 13, 2005.
2. Claimant reported an incident where she fell landing one half on the bed and one half on a dresser belonging to the employer.
3. Claimant's date of hire was June 21, 2005. Her average weekly wage was \$390.54 which yields a TTD rate of \$260.00 and a PPD rate of \$195.00.
4. Prior to August 13, 2005, claimant has suffered back injuries - WCC No. D701569 and No. E213987, injuries from motor vehicle accidents, and a personal health condition related to her back. She had received a 10% permanent partial impairment rating in 1987 for her back and a 20% permanent partial impairment rating in 1993 for her back.
5. Respondents controvert claimant's claim for TTD starting October 31, 2005, and respondents controvert any additional medical treatment not already paid for.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability.
2. TTD starting October 31, 2005.
3. Additional medical.
4. Attorney's fees.

The record consists of the May 17, 2006 hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant has several documented low back abnormalities dating back to at least the time of a motor vehicle accident in approximately February of 1982. A 1986

radiology report noted from previous lumbar spine films, the complete lumbarization of the first sacral vertebra, resulting in effect in six lumbar vertebra. This report also noted bilateral pars defects of the sixth lumbar vertebra with the slight forward displacement of S-1 on S-2. A radiology report dated January 10, 1987 documented first degree spondylolisthesis at the lumbosacral level. On April 8, 1987, Dr. John Wilson assigned the claimant a five percent impairment rating for her spondylolisthesis and an additional five percent rating for aggravation of this process.

During the course of treatment at Baptist Medical Center in September of 1989, the claimant underwent additional MRI testing, which according to a September 15, 1989 discharge summary, indicated a focal disc herniation at L4-5 without cord compression. A lumbar CT Scan performed on August 5, 1992 again confirmed moderate central disc bulging at L4-5, and grade one spondylolisthesis with moderate spinal stenosis at L5-S1. A lumbar myelogram performed on August 12, 1992 again indicated grade one spondylolisthesis at the L5-S1 level, believed to be secondary to bilateral spondylosis defects, and a mild anterior impression on the thecal sac present at the L4-5

level. By a letter dated January 6, 1993, Dr. Vern Rowe calculated that the claimant sustained an additional twenty percent impairment for her July 27, 1992 injury. Dr. Rowe opined in a May 31, 1993 letter, that instability in the L5-S1 disc has created Ms. Stogner's pain, discomfort, and numbness in her leg for which she will require some type of treatment on a regular basis for the rest of her life.

The claimant most recently became employed at the Greenbrier Nursing & Rehab Center in June of 2005. Prior to this last employment, the claimant had previously worked at the nursing home in the kitchen, in the laundry, and in maintenance. When she returned in June of 2005, she did so as a certified nursing assistant involved in patient care, including bathing, feeding, and other types of care which patients could not do for themselves.

According to a July 11, 2005 follow-up report in the record from the Conway Interfaith Center, the claimant was seen for follow-up for a prescription of nexium and zoloft, for possible bloodwork, and with complaints of pain in her arms, back, legs, and knees from working at Greenbrier Nursing Home. The record indicated that the claimant was continued on nexium and zoloft, prescribed voltaren, and underwent blood test. The record also contains an August 3,

2005 office note from Conway Interfaith Center indicating that the claimant received a prescription for darvocet.

On August 13, 2005, the claimant tripped over a trash can while moving a patient and jabbed her tailbone on a night stand. At first she did not believe that she was hurt, and continued working putting people to bed until her lunch at approximately 7:00 or 7:30. However, when she sat down at lunch she could not get up, and was taken to the hospital. She was treated and released that evening with a diagnosis of coccyx contusion and lumbar strain. An MRI performed on August 25, 2005 indicated significant foraminal stenosis on the left at L5-S1 secondary to a combination of severe degenerative disc disease and grade one spondylolisthesis of L5 on S1. The report also indicates mild disc desiccation at L4-5.

Dr. Kevin Collins recommended an MRI of the claimant's pelvis on October 31, 2005, and as a result of an MRI performed on November 2, 2005, Dr. Collins concluded that the claimant on January 9, 2006 would be unable to tolerate therapy until she receives some type of interventional care for an L4-5 annular tear indicated by MRI. Dr. Collins has placed Ms. Stogner in off-work status until after the date of the hearing held on May 17, 2006.

After reviewing the entire record, I find that the claimant has failed to establish a new injury with medical evidence supported by objective findings. Specifically, I find that the claimant has failed to establish by a preponderance of the evidence that either the annular tear at L4-5 or the muscle spasms described by Dr. Kevin Collins are causally connected to the incident that occurred on August 13, 2005 for the following reasons. First, I note that when Dr. Meador treated the claimant between August 15, 2005 and September 1, 2005, Dr. Meador did not detect the presence of muscle spasms, as Dr. Collins did later. Second, while the MRI which Dr. Collins ordered on November 2, 2005 may have detected the presence of an annular tear, I note that no such annular tear was documented on the earlier MRI performed on August 25, 2005. Third, I note that the claimant was complaining of pain in her back and legs less than one month before she tripped at work on August 13, 2005, and that she received prescription valium, according to her medical reports, a mere ten days prior to the incident on August 13, 2005. Under these circumstances, I conclude that it would require speculation and conjecture on my part to find that the claimant's muscle spasms and annular tear detected by Dr. Collins are attributable in any

way to the incident described by the claimant on August 13, 2005.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Employee/Employer/Carrier relationship existed between the parties on August 13, 2005.

2. Claimant reported an incident where she fell landing one half on the bed and one half on a dresser belonging to the employer.

3. Claimant's date of hire was June 21, 2005. Her average weekly wage was \$390.54 which yields a TTD rate of \$260.00 and a PPD rate of \$195.00.

4. Prior to August 13, 2005, claimant has suffered back injuries - WCC No. D701569 and No. E213987, injuries from motor vehicle accidents, and a personal health condition related to her back. She had received a 10% permanent partial impairment rating in 1987 for her back and a 20% permanent partial impairment rating in 1993 for her back.

5. Respondents controvert claimant's claim for TTD starting October 31, 2005, and respondents controvert any additional medical treatment not already paid for.

6. The claimant has failed to establish by a

preponderance of the evidence that she sustained a compensable low back injury on August 13, 2005.

**ORDER**

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

IT IS SO ORDERED.

---

MARK CHURCHWELL  
Administrative Law Judge