BEFORE THE ARKANSAS WORKERS COMPENSATION COMMISSION

CLAIM NO. F503671

SHELIA SWINDLE, EMPLOYEE	**CLAIMANT**
LIBERTY BANK OF ARKANSAS, EMPLOYER	**RESPONDENT**
ROYAL & SUN ALLIANCE INS. CO, CARRIER	**RESPONDENT**

OPINION FILE AUGUST 8, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 24, 2006, at Paragould, Greene County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE ANDREW M. IVEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On October 11, 2005, a pre-hearing conference was initially conducted in this claim, from which a Pre-hearing Order was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the contentions of the parties relative to same. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Shelia Swindle, the claimant, Renae Beler, Amy Tribble, Angela Castleman, Mona Shoemaker, David Swindler, and Tim Blankenship, coupled with medical

reports and other documents comprise the record in this claim.

DISCUSSION

Shelia Faye Swindle, the claimant, with a date of birth of June 27, 1972, reached the 12th grade and later obtained her G.E.D. Prior to her employment by respondents, claimant was employed for two years at Affordable Medical as a breast prosthesis consultant.

Claimant commenced her employment as a bank teller in the employment of People's Bank in March 2003. People's Bank was subsequently acquired by Liberty Bank In describing the mechanics of her job duties, claimant testified:

> My duties were to wait on customers, to take their money, to make out deposit slips, to deposit the money into their account, to make withdrawals from their account, to make sure my teller till was in balance at all times, waited on the people in the drive through window, to make sure my station is clean at all times, make it presentable for bank customers, to wait on customers if they wanted to go inside the vault drawers, to make copies for the customers, to make money orders, cashier's checks, I can't remember everything. It's been two years. But I'm trying to remember everything. (T. 11).

Claimant's work day in the employment of respondents begin at 8:00 a.m. and usually ended at 5:00 p.m.

While acknowledging that she had health problems prior to May 4, 2004, claimant nonetheless testified that she was "pretty healthy". Claimant elaborated with respect to her health problems prior to May 4, 2004:

> I had health problems. I had endometriosis and polycystic fibrosis, but I had a hysterectomy to correct those. And I had muscle spasms in my neck, which on occasion if I ever received a blow to the back of my neck, it would - - what happened, I broke my neck when I was four years old. And C-2, C-1 have grown together, which caused the main blood vessel to my neck grow, has grown in between those two. And if I were to ever get a blow to the back of the neck, the muscles

> around that like expand to protect that hurt to the back of my neck. And it cuts off the oxygen to my brain, which causes me to pass out and have a muscle spasm which in my medical history, you could see, seizure like activity. But they would do a lot of workups on me, which would always come back that I wasn't having a seizure. They would put EEG's on me. (T. 12-13).

As a consequence of the above, claimant testified that there were instances where she has lost consciousness prior to May 2004. Regarding the onset of such episodes claimant testified:

> Whenever anyone hit me in the back of the head. If anyone was to come up and say hey what you doing? You know that type of thing, just playing around, that type of thing, I would, you know, because anything, because if you break your neck, you know, that type of thing, it's going to be sensitive. (T. 13).

Claimant's head supervisors at respondent-employer, Debbie Stewart, was aware of her condition prior to May 2004. Claimant's testimony reflects the circumstances surround the disclosure of the afore information to Ms. Stewart:

> We were talking one day, and I was just telling them about what happened to me, you know, when I was younger. And I had told them that, about my muscle spasms that was in my neck. And they were all like, oh my god. So you have seizures? And I'm like no. I don't have seizures. I have muscle spasms. And they said what do you do if you ever have them - - (T. 14).

Claimant described the events which serves as the basis for the present claim, to include those of preceding May 4, 2004:

> Yes. Well, what happened is I went to lunch at 11:00 with Lori Easley and some more people from the bank. And when I was coming back from lunch at 1:00, there is, I brought a diagram of the bank at the time. There's the first set of doors right here. I had entered the first set of doors with Lori Easley and some more friends from, I believe it was Melissa Huckabee and some more and we had entered the second set of doors. And everyone else had went to go check or clock in. And Lori Easley had stopped me to ask me about the - -

* * *

. . . But, so I went ahead and told her I'm going to have to take it. So anyways, she walks off and before I can turn around, Linda Bridges - - Angie Castleman was taking care of Linda Bridges' bank business. If I could go back to 5-3 and tell you what happened on 5-3 that led up to 5-4.

5-3, I was working in the drive through window.

* * *

We had been working as Liberty Bank employees because they were training us on their banking business because we didn't know how to run the computers. And Linda Bridges, we were trying to get set up because of the Social Security check that were going to be going into the bank. The routing on hers were different. And we were trying to get ready for all the different things that were going to be happening because when - - we were going to be held up because they weren't going to bank right. And so Linda Bridges was one of the customers that came through that was upset about her SSI check that hadn't been deposited into our account. And I was trying to explain to her that I was not able to do anything about it. Her check had not been deposited. She did not accept that answer. So I said, hold on jut one second. So I called over to I-S, and asked what had happened to the check. I already know what had happened. And I'm not going to say what they said because it was hearsay. So anyway, I came back and I knew that was the answer, that it was the difference of arriving and which we were just being taken over by Liberty Bank, or the name change. And things were getting changed. And she still was not happy with that answer. She said she had bills to pay that day. I told her, I said if you want to, if you want to, the next day you can come into the bank and get your money from the - - she said because she didn't want to deal with me anymore. I said if you want to, you can come to the bank the next day, and deal with one of the tellers. She said that's what I'm going to do. And so she said - -

* * *

So anyways, so she came in the bank the next day, and was being taken care of by Angie Castleman, when I returned from lunch the next day. And after Lori had walked off, before I could turn around, Ms. Bridges grabbed me around the throat with her forearm. And started, she started talking loudly because everybody else said she wasn't screaming, but she

> was screaming in my ear. I've got my money. Now you won't take my money again, jumping up and down with me with her arm around my throat. And when she let go of me, that's all I remember is when she let go of me. (T. 15-19).

Claimant maintains that her next recollection following the incident at the bank was that of waking up in the emergency room of Arkansas Methodist Hospital receiving treatment for her injuries, abrasion on one of her shoulders. Claimant also maintains that a prolactin level that was performed showed that she had a seizure. Claimant attributes the afore to the incident at work. The testimony of the claimant reflects that after she was provided Dilantin, during the course of the emergency medical treatment she was discharged and directed to follow-up with her primary care physician.

Claimant was seen at Paragould Doctors' Clinic by nurse practitioner Cecile Massey on May 4, 2004, following her discharged for the emergency room of Arkansas Methodist Hospital. An appointment was scheduled for the claimant to be seen by Dr. Demetrius S. Spanos, a Jonesboro neurologist. Claimant continued to work following the May 4, 2004, incident and through the time of her scheduled appointment with Dr. Spanos, which was several weeks following the May 4, 2004, event. Claimant's testimony reflects that following the May 4, 2004, incident she experienced seizures both at home and work. Further, the claimant testified that the seizures she experienced at work and the medication she was prescribed to address same impaired her ability to function properly in the workplace.

Claimant testified that she continued to discharge her employment duties with respondent-employer following the May 4, 2004, incident until September 2004. The testimony in the record reflects that the claimant was again transported to the emergency room from work due to seizure.

Claimant cited several reasons as the basis for her discontinuing her employment duties with respondent-employer on mid-September 2004. Claimant testified regarding the side effects of the medication she was taking for her seizures:

> Besides falling to sleep at work. And having mini seizures at work. I did have some big seizures at work. I think I had two grand mal seizures at work. But other than that, I just had like burned out seizures.(T. 24).

While she did not receive a write-up or disciplinary action regarding her seizures, claimant's testimony reflects that they effected her job performance. Specifically, claimant noted that she became very upset when she was unable to locate a $100.00 shortage in her drawer at the conclusion of her shift. Regarding the afore claimant testified:

> First I went to Debbie. And me and her had talked about the $100.00 that I had lost. And I told her how upset I was about losing the $100.00. And I told her that I'm just not able to fulfill my job duties like I was. And she said everybody loses money. And I got wrote up about the $100.00 that I lost. Because anything over a certain amount of money, you do get wrote up about. And she said you might find it in your paperwork. She said, I know you didn't take - - I can't say that. But so I told her, I said, I just don't think I'm able with this medication because I'm so drowsy. And I'm afraid I'm going to lose more money. So I'm going to go to the doctor and talk to him and see what he says. And that's when I was taken off work until I could get the medication under control. (T. 24-25).

Claimant was taken off work by Dr. Spanos until further notice.

Claimant has not worked since mid-September 2004. Claimant's testimony reflects that while her medication has been adjusted:

> It has function. But I fall - - I'd have to sleep until a certain point in time during the morning because my medicine makes me really, really drowsy in the morning. But then once I wake up, I'm okay during most of the day. (T. 25).

The testimony of the claimant reflects that from the time she last discharged employment duties

for respondent in September 2004, until her employment was terminated by respondent she was on temporary leave. Claimant added that when she was taken off work by Dr. Spanos in September 2004, she used her accrued sick leave and vacation. Regarding the termination of her employment by respondent-employer claimant testified:

> The reason why I lost my job at Liberty Bank was because Workman's Comp said that they weren't paying any of my medical bills. And that they weren't liable for anything, so Liberty Bank went ahead and fired me.
>
> * * *
>
> I got a letter and Nicole Gooch (phonetic) called me.
>
> It [the letter] stated that workman's comp is not paying for any of your bills that your stated that they were paying for. They are not liable for anything. And your work here has been terminated. (T. 28).

Claimant maintains that the afore occurred in 2005.

Claimant testified that she has outstanding unpaid medical bills relative to May 4, 2004, incident growing out of treatment under the care of the physicians at the Paragould Doctors Clinic, Dr. Spanos, the emergency room of Arkansas Methodist Hospital, and the ambulance service. Claimant also testified that respondents have paid some of her medical bills incurred as a result of the May 4, 2004, incident. Specifically, claimant noted that all of her prescription medications were paid by respondent from May 4, 2004, through September 18, 2005, which was filled at the Wal-Mart pharmacy. Claimant added that two of her bills under the care of Dr. Spanos were paid by respondents as was one of bills at Paragould Doctors Clinic.

Claimant distinguishes her physical condition prior to May 4, 2004, and subsequent to the

event at the bank by noting that she experienced muscle spasms prior to the event but seizures subsequent to the event. Further, claimant observed that prior to May 4, 2004, she had a valid unrestricted driver's license, however since the incident she is not authorized/allowed to drive.

Claimant acknowledged providing testimony under oath during a July 15, 2005, deposition. Regarding her prior medical history, claimant testified that since her early childhood neck injury, she has experienced muscle spasms, and severe headaches. While claimant acknowledged experiencing "seizure-like' activities which required medical treatment prior to May 4, 2004, she denies experiencing seizures. Claimant also questioned the lack of definitive diagnostic such as a EEG with respect to medical records of Arkansas Methodist Hospital prior to the May 4, 2004, incident. Claimant acknowledged that she did not inform Dr. Spanos that she had a history of seizure activity and syncopal episodes.

Regarding the specific details of her actions following the incident with Ms. Bridges on May 4, 2004, as reflected in her July 15, 2005, deposition, claimant insists that the same was the product of what other witnesses, Nicole Wright and Candy Ellis, had told her. Claimant maintains that she has no memory or recollection of her actions once she was released by Ms. Bridges. Claimant's deposition testimony reflects a first hand description/account of the incident which serves as the basis of the present claim. (T. 37-40).

Claimant testified that she had known Ms. Linda Bridges for a long time prior to the May 4, 2004, incident. Claimant explained that she knew Ms. Bridges because of Ms. Bridges' daughter. Nevertheless, claimant denies that the contact with Ms. Bridges on May 4, 2004, was the product of "the customer merely grabbing" her playfully from behind or that they were both laughing at the time of the encounter. Claimant acknowledged that she decline to pursue

prosecution or other legal actions against Ms. Bridges.

Regarding an incident which occurred while she was employed at Sunlite Furniture requiring medical treatment, claimant denies that she a seizure in the incident. Specifically, claimant maintains that she got hit in the back of the head at work and had muscle spasm. Claimant attributes her denial of an injury while working for Sunlite Furniture during her July 15, 2005, deposition to the fact that she did not say anything to anybody at work, nor did she attempt to press charges against anyone as a result of the incident.

Timothy Ralph Blankenship testified that he has know the claimant since she was a young teenager. Mr. Blankenship is one of the elders in the congregation where the claimant attends church. Mr. Blankenship's testimony reflects that he was aware of the claimant's muscle spasm. Regarding his observation of any seizure activity involving the claimant, Mr. Blankenship testified:

> As far as - - it's been a little bit, but yeah I have seen your have seizures, too.
>
> Okay. Yes. I've seen the muscle spasms, which you've had for a while.
>
> As far as muscle spasms, I can realize those. I'm not real familiar with the epilepsy. Is that what you're talking about? The muscle spasms have been terrible. And I've seen the epilepsy that's just been something that's current.(T. 54).

At another point Mr. Blankenship distinguished the events/incidents he witnessed in the claimant prior to the May 4, 2004, incident and subsequent to same:

> Between the two. Well, the muscle spasms, from that I've seen before you - - after a little bit of time, maybe rubbing your back or whatever, I've seen different ones to that and it would help. But in the last few months, what I've seen, and it's been, I don't know two

> or three, four months, I guess since I've seen you have one of the other. And they had to literally take you out and get you out of the building where I was at in order to get you some relief. I guess you went home or went to have things checked out. (T. 57).

Mr. Blankenship acknowledged that his familiarity with the claimant is in the claimant's church activities and her life with the church. Mr. Blankenship testified that he had no knowledge of the claimant being hospitalized or seeking treatment for seizure and seizure-like activity prior to May 4, 2004, or since 1991.

Alisha R. Beler, the claimant's sister, is employed at the front desk of Paragould Doctors Clinic and also worked at in the emergency room of Arkansas Methodist Hospital. Ms. Beler has a license for CPR and emergency aide. Ms. Beler testified that she was aware of and had witnessed the claimant experience an episode involving muscle spasms prior to May 4, 2004. Ms. Beler's testimony reflects that she first became aware of the claimant's muscle spasms approximately 14 years earlier:

> Well, she was hurt, well she got hung when she was little at our house, when we were little. And then when she was older, she had gotten hurt in a pool. And since then, and something happened in between after that. She had gotten hit by a picture or something. And it had triggered these. And I didn't notice that she had started having them until I had already gotten married. And we were at my house in Mammoth Springs, well it's in Horseshoe Bend, Mammoth Springs. And she - - we were at the house and she had gotten hit in the head or something like that, and she had passed out. And I didn't notice it, and I asked my mother who was there, because they were having to attend to her what was going on. And that's when I noticed that she had started having them. (T. 64-65).

The testimony of Ms. Beler reflects that she first learned of the claimant's May 4, 2004, incident on the date of the occurrence. Ms. Beler testified regarding the afore:

> Well, I was her emergency number or contact when she worked at Liberty Bank. And Candy called me at the clinic because Sheila, she

said that the ambulance - and she was really upset. And it upset me because she said well, the ambulance is on the way. And I said what is going on.

* * *

Okay. I got to the ER before the ambulance got there. And the ambulance, I had checked her in, got her - I had her information, her medication list in my purse in case - -

* * *

And I got to the ER. I checked her in, signed papers and stuff like that. And about that time, my mother had walked in. She's not there, but anyway. She walked in and we were waiting for the ambulance to get there. We seen them walk in. We went back there while they were getting her off the Gurney and putting her on the table. And Dr. Wilson was there, the ER doctor. And nurses were there. And I was talking to the doctor when he walked in and he said she - - (T. 65-67).

Ms. Beler's testimony reflects that it was during the emergency room encounter that she first observed the claimant experiencing a seizure:

She was biting her tongue, she was, it was, she was - - her hands were convulsing. It was all bottled up. Her hands were like this. Her eyes were rolled in - - because I was in there with her. I seen this. Her eyes were rolled in the back of her head. You could not wake - - there was nothing there.(T. 67).

Ms Beler also testified that she had observed the claimant have seizures on multiple occasions since May 4, 2004. In distinguishing the muscle spasms from the seizures Ms. Beler testified:

Yes. On the spasm, you are able to awake and get the person oriented. After you wake her up, there's certain things yo have to do. On a seizure, you have to medicate.

* * *

Oh. Okay. On the seizure part, she is not conscious at all. And she does certain things like she bites her tongue. She has - - there's - - you can't speak to her at all. You can't communicate with her. She's not oriented at all. You can't - - you have to just wait until it runs its course.

> She - - you just have - - there's only certain - - there are certain things when she has a seizure, if she has more than one, you have to get it under control before she gets to the point that you have to call an ambulance to have them come and help because - - (T. 63-64).

Regarding her observations of the various times that she has seen the claimant experience seizures since May 4, 2004, Ms. Beler testified:

> Multiple times. I had been - - we had, let's see, at her house, while we were out in general, in the vehicle. There's different kinds of seizures. And I talked to her, and she would - - I would be driving her because she can't drive. I would drive her some places, and you would be talking to her, and there was a blank stare. There was nothing there. And she would wake up a couple of minutes later. And she would continue talking on something that had happened a long time ago, you know, passed minutes. (T. 67-68).

Ms. Beler acknowledged that she was not present at the bank at the time of the claimant's alleged assault, however she denies that all of her information concerning same was gained from the claimant. Ms. Beler testified that she talked with other employees of respondent-employer on multiple occasions regarding the assault. Ms. Beler disputes the claimant's loss consciousness as a result of the muscle spasms, but rather offered:

> She is not out. She may not remember speaking to you while she is having the muscle spasms.
>
> * * *
>
> I would think it would be incorrect because it's not truly the fact because she is not coherent. She is not passed out, but she is not able to - - she is able to respond to you whenever I'm speaking to her when she's having muscle spasms. (T. 70-71).

Ms. Beler testified that she was aware of the claimant's 1999 motor vehicle accident. Ms. Beler asserts that the claimant suffered muscle spasms as a result of the blow to her head in the accident but no complete loss of consciousness. Likewise Ms. Beler attributes the claimant's

medical treatment in 1991 to muscle spasms rather than seizure. Ms. Beler testified that a EEG performed at the time ruled out seizure activity.

Ms. Beler testified that the claimant had never had a seizure before she started working for respondent. Ms. Beler's testimony reflects that she worked at Sunlight Furniture in February 1998, at the same time as the claimant, however she was unaware of the claimant sustaining a fall at work and suffering a seizure episode requiring medical treatment.

David Swindle, the claimant 's husband of seventeen years, testified that he was aware of the claimant's muscle spasms prior to May 2004, having witnessed them during the duration of their marriage. Regarding the seizures, Mr. Swindle testified that they had only been presence since May 2004, whenever the accident occurred. In describing the claimant's seizures, which Mr. Swindle attributes to the May 4, 2004, assault, Mr. Swindle testified:

> A seizure with Sheila, when she has a seizure, she can be just sitting there and talking to you, and all of a sudden her facial expressions is like she just loses complete consciousness of what's going on. And due to that, she'll, her head will doze forward or to the side. She will at times, it will be a little bit of a jerking motion, not much. But it's mainly all in the facial where she just - - she doesn't really know what's going on around her. (T. 75-76).

Mr. Swindle also described the claimant's muscle spasm episodes:

> Her muscle spasm is when the muscles in her body contracts, and she's very hard. She can't be held down hardly. You've got to really put a lot of effort into holding her down. Her back will bow, her neck will swell up, this is usually bought on every time that I've seen it, is when someone has squeezed her around her neck or hit her in the back of the head. During this time, she, as I said, she you know, she's hard to handle as far as her muscles, you know. There's quite a bit of difference between the two. (T. 76).

Regarding treatment measures to address the claimant's muscle spasms, Mr. Swindle testified:

> No. Usually what we've done is either put ice on your neck or rub your neck or I think your parents would rub a certain nerve in your foot that would usually bring you out of that. (T. 76-77).

Mr. Swindle also testified about the onset of one of the claimant's muscle spasms episodes:

> Any time one would give you a hug, a lot of times they'll put their arm around your neck and give you're a hug, it will cause that muscle in the back of your neck to be, I guess you'd say irritated, or make it - - inflame the muscle. And because of that reason, according to what we've been told - -
>
> According to what we've seen, it is due to something to that effect when someone just gives you a squeeze. (T. 77).

Mr. Swindle also testified regrading his observation of the impact of the May 4, 2004, incident on the claimant:

> As - - before this - - before this attack at the bank, even though she had muscle spasms, she could carry on a coherent conversation with someone. Okay? She could sit here and ask questions just like he's asking questions. But as you can see right now, as this stress is building on her, since this attack at the bank, she's going to get to the point where she will have to step in and give her the medicine. This never happened before. Not I mean, I've sit here and I've seen her for 17 years. I mean I'm testifying as to what I've seen. For 17 years I've seen her have muscle spasms. And even though I can't say it, even though I have records of what, the seizure-like activities from the doctors. But if she was having seizures, under Arkansas law from what we've been told - - (T. 86).

Ms. Amy Tribble, who has been a teller for respondent for seven years, testified that in May 2004, she worked at the Paragould main branch of respondent-employer. Ms. Tribble's testimony reflects that she was working at the downtown branch of respondent on May 4, 2004, around lunch time. Regarding of the claimant and the events which serves as the basis of the present claim, Ms. Tribble testified:

> Shelia and some other girls had just come back from lunch. And they came in and the customer that had been in the bank prior, and Sheila

> had talked with her in the drive thru. And the lady come up behind her and, you know, grabbed her around the neck, put her arm around her neck in a playful manner, and just - - you're wanting to know everything that happened, or - - (T. 89).

Ms. Tribble explained that the reason she characterized the actions of the customer, Linda Bridges, as "playful" was because "she was just joking with her" and that they were laughing. Ms. Tribble denies that the customer was screaming at the claimant during the encounter, although she was able to hear their conversation due to their location in front of her in the teller line. Ms. Tribble testified that she was in the first window. Ms. Tribble testified that from her observation the customer, Ms. Bridges, did not appear to be angry with the claimant during the encounter. Further, Ms. Tribble denied that at the time the claimant was grabbed from behind by Ms. Bridges she was put in a "headlock".

Ms. Tribble testified regarding the claimant's actions following the encounter with the customer, Ms. Bridges:

> After she had grabbed her - -
>
> Sheila came - - after the customer left?
>
> Sheila went back behind the teller line and clocked in. And she said she wasn't feeling well. So she sat down. There was desks behind the teller line. And she sat down at one of those desks and Mona walked back and forth and was waiting on the drive thru because Sheila didn't feel well. (T. 90).

Ms. Tribble denied that the claimant was crying, coughing or demonstrating any physical distress following her encounter with the customer:

> Yes. She said she wasn't felling well so Mona asked her to just sit down, and she would do the drive thru while she sat down and rested for a little bit.(T. 91).

Ms. Tribble then left for lunch and was not present at the time of the claimant's seizure. Ms.

Tribble testified that she had no recollection of the claimant holding her neck or throat at the time she walked to her work station following the encounter with the customer. Ms. Tribble's testimony reflects that she had been advised by the claimant prior to May 4, 2004, not to hit her in the head or anything due to prior health problems.

During cross-examination Ms. Tribble testified that she did not recall if Lori Easley was present when the customer, Ms. Bridges, put her arm around the claimant's neck. Ms. Tribble did not disputed the description of the encounter of the claimant and the customer during questioning by the claimant:

> Q. This is my personal space. Someone comes up and put their their arm around the back of me, around my throat, to you that looked like a playful manner?
>
> A. She was joking with you. (T. 95).

After the encounter between the claimant and the customer ended, Ms. Tribble testified regarding her observations:

> I never heard you cough, I didn't see you grab your neck. You just said you wasn't feeling well. When you came back there, you walked through the little swinging doors there and you went and clocked in and Mona said she would do the drive-thru so you could sit down at this desk right over here (indicating). (T. 96).

Ms. Tribble denies the encounter between the customer and the claimant was a "scene".

Ms. Angela Castleman, who has held the position of a teller supervisor for four months with respondent-employer, testified that prior to the promotion she was a teller. Ms. Castleman has been employed by respondent-employer for five and a half years. In May 2004, Ms. Castleman worked at the main/downtown branch where the claimant worked as well. Regarding the events of May 4, 2004, which serves as the basis for the present claim, Ms. Castleman

testified:

> I was working at the first teller window when you came in the door. I'm not sure, north, south, I don't - - when I come indoors, I would be the first teller window. And I believe they were coming back from lunch and I was waiting on a lady at my window. And when they came in, Sheila headed for the teller line and then another lady in the lobby had said something to her so she turned her back to the teller line and I finished with my customer and she turned around and said something, I don't remember exactly the words and kind of laughingly put her arm around her shoulder, neck and then Sheila come back behind the teller line to her station. I'm not for sure exactly how long later, five, 10 minutes, she said she didn't feel good. And Mona told her that she might want to sit down. So, she sat down at a desk behind the teller station and Amy asked if she should stay and Mona told her no, that would be fine, she could leave. So, she went ahead and left for lunch. And Mona and I continued to wait on customers. Mona was waiting on the drive-thru customers, which was behind me. She was walking from the teller, from the drive-thru window back to her station to wait on them and would take the work back to the drive-thru window. (T. 99-100).

The customer that Ms. Castleman was assisting at the time the claimant returned from lunch has been identified as Ms. Linda Bridges. In describing the "playful manner" of the contact between the customer and the claimant, Ms. Castleman testified:

> She was laughingly doing it, like wonder where she had been and, like I say, I don't recall exactly what was said but - - (T. 101).

While Ms. Castleman testified that she could not hear the conversation between the claimant and the customer during the encounter, the customer was not yelling or screaming at the claimant:

> No. Nobody in the bank even knew later on what was going on. There was no commotion, no - - (T. 101).

Ms. Castleman testified that she did not notice the claimant having any problems walking following the encounter. Regarding any crying or coughing on the part of the claimant, Ms. Castleman testified the same did not occur until later on afterwards. Ms. Castleman's testimony

further reflects of the claimant:

> She was sitting at the desk and I was waiting on a customer and I heard Mona say her name and I turned around and she was kind of sliding out the chair she was sitting in and Mona was catching her and lowering her to the floor. And then like I said, there was really no, it wasn't a commotion, not really anybody else in the bank realized what was going on because Mona lowered her to the ground and when I walked over there she had her head in her lap. And I said well, I - - we were the only tellers there so I proceeded to wait on the customers and Chip Luter (phonetic) who was the vice-president of the bank then come out of his office and I motioned him to the teller line and told him he might want to call 9-1-1 and I kind of pointed back and then that's when everybody kind of noticed on that side of the teller line what was going on. (T. 102).

Ms. Castleman testified that she did not observe the claimant's head or any part of her body strike any object. Regarding her knowledge of the claimant's health history prior to May 4, 2004, Ms. Castleman testified:

> She had advised me when I came to work at that branch with her that - - not to hit or strike her in the head or behind the back of the head because she had had, when she was a little girl she had been in an accident involving a rope or a robe-tie of some kind that hung around her neck and she would have muscle spasms if she was hit in the back of the head. (T. 103).

On cross-examination, Ms. Castleman testified that on May 4, 2004, she was at the first window assisting the customer, Ms. Linda Bridges, when the claimant returned from lunch. Ms. Castleman responded that she did not "recall" to the question of seeing the customer grab the claimant by the neck or seeing the claimant cough once she was released by the customer. Ms. Castleman testified:

> No. I don't recall you coughing or crying - - I remember your crying after you woke up from the seizure. That's the only time I remember you crying. (T. 105).

Ms. Castleman testified that approximately thirty (30) minutes elapsed between the time

of the claimant's encounter with the customer and the arrival of the ambulance, noting that it was probably 10 to 15 minutes before the ambulance was called. Ms. Castleman was uncertain if the claimant clocked in or if one of the co-workers that she had been to lunch clocked her in. As to whether or not the claimant performed any employment duties after her return from lunch Ms. Castleman testified:

> I don't think she waited on any customers. To my recollection I believe she went back and got her station ready but then said she wasn't feeling good so Mona told her she might want to sit down. (T. 107).

Finally, Ms. Castleman testified that she did not recall the claimant telling her of an altercation she had with a customer in the drive-thru window on May 3, 2004.

Ms. Mona Shoemaker testified that she has been employed by respondent-employer in the downtown branch for five and a half years as a teller. Ms. Shoemaker was working on May 4, 2004, however did not observe the claimant being grabbed from behind by a customer. Ms. Shoemaker testified that she did not recall prior activity of screaming or yelling in the bank or anything significant enough to call her attention to it. Ms. Shoemaker's testimony reflects when she became aware of something occurring involving the claimant:

> She walked over to her teller station, I mean there was a group of people at the end but I wasn't paying attention. She walked over to her teller station and she clocked in from lunch and she said, I don't feel very well. And I said, sit down at this desk and I'll continue to work the window until you get to feeling better. And she said, okay. And so she did. And I don't know how long it was between but then as I was - -
>
> * * *
>
> And so then I continued to walk back and forth to the window. And at one point I was almost right behind her and I saw her slipping out of the chair and I hollered her name and she didn't respond and so I just kind of was there, grabbed her and went down to the floor with her,

> as she was going to the floor. And stayed with her until things kind of calmed down a little bit. And then we went and got a pillow from the couch that was in the lobby and put under her head. And some other employees then stayed with her and I went back, got back to work, there was only two of us there at the time. (T. 114-115).

Ms. Shoemaker testified that she did not notice the claimant coughing, crying or holding her throat or neck as the claimant proceeded to her teller station to clock in.

Ms. Shoemaker's testimony reflects that the claimant had advised her prior to May 2004, that she suffered from muscle spasms, that she had broken her neck when she was small, and that if she ever got hit in the head she would have a muscle spasm. With respect to the events of May 4, 2004, Ms. Shoemaker testified that when the claimant did reach the floor, with her assistance, the claimant was not convulsing. Claimant was not responsive.

The deposition of the claimant was obtained on July 15, 2005. Claimant denied that she experienced difficulty with reading or comprehending prior to the onset of her seizures, which she attributes to the May 4, 2004, work-related incident. The claimant's work history consisted of various employment, ranging from bussing tables in a restaurant, telemarketing, working as a laborer for a lawn furniture manufacture, cashier at fast food restaurant and grocer store, to a medical supply clerk. Claimant commenced her bank teller employment with Peoples Bank, which was later acquired by respondent-employer. Claimant testified that while she does have skills in the use of regular office machinery, work processor, fax machine and computer, since she begin experiencing seizures following the May 4, 2004, incident the computer now bothers her eyes.

During the July 15, 2005, deposition, claimant testified that she suffered from fibromyalgia prior to the May 4, 2004, work-related incident. However, claimant attributed a

ruptured disk in her back as a product of a fall down some stairs while having a seizure three to four months prior to the July 15, 2005, deposition. Claimant testified that she had declined to have surgery in the treatment of the herniated disk. Claimant denied having seizures prior to May 4, 2004, and offered access to her medical records, to include EEG's as evidence of same.

Claimant described the mechanism of her early childhood neck injury, a broken neck sustained while jumping on her parents' bed. While uncertain of the extent of medical treatment she received following the injury, claimant testified that as a consequence of the injury she had muscle spasms. Claimant attributed the prior EEG's to the residual muscle spasms:

> Yes. That's why they've had to do those EEG, but they've always come back clean. (RX.#2, p. 26-27).

Claimant explained that the muscle spasms caused her to fall and seek medical treatment:

> Yeah. I was in the hospital and they always thought they were seizures and then they would to the MRI's or they would test my protactin (sic) level and they would come bak as negative for seizures. And they would do the MRI on my brain or they would do a CAT scan or they would do the EEG and it would come back normal. And they would say, you're having a muscle spasm. It would just be like scrapes, stuff like that, but never be major. (RX. #2, p. 37).

Claimant testified that as a result of depression suffered following the death of her brother six (6) years earlier, she sought and obtained psychiatric/psychological treatment and counseling under the care of Dr. Hashmi. Claimant has also been prescribed antidepressants. Clamant noted that she is now taking Lexapro and had in the past taken Wellbutrin. With regard to the claimant's past and current medications, claimant's testimony reflects:

> Right. And, Prozac and Xanax. Right now the Xanax is treating my seizures, though.
>
> Right now they've got the Xanax treating my seizures because I was on Valium treating my seizures, but the Valium were too, too much

> for me to be able to take care of my children. So, I asked to be taken off the Valium and just try to do the Xanax for my seizures.(RX. #2, p. 28).

Dr. Lance Monroe and Dr. Spanos prescribed the claimant's anti seizure medication while Dr. Hashmi prescribed the anti psychotic medication.

During the July 15, 2005, deposition claimant testified that she would be interested in vocational rehabilitation/job placement or retrain if offered by respondents. Claimant also provided testimony of a typical day at the time of the afore deposition:

> Average day. Let's see. I get up, I take my medication. My medication knocks me back out, I go back to sleep.
>
> My kids usually end up fixin' their own breakfast, I sleep to about eleven o'clock, I get up, I fix their lunch, I lay back down to take a nap to be able to function the rest of the day. And then I'm up the rest of the night until I take my medication again at ten o'clock and it knocks me out for the rest of the night. (RX. #2, p. 30).

In July 2005, during the deposition, claimant testified regarding the type of work she would be willing to do:

> Well, if it can work to where I can, the basic thing is with my, I don't know what I can do, because when I get up in the morning, I just take my medication, my medication makes me very sleepy and with me having my seizures. If I had a seizure at work, I don't know what they're going to do, if they're going to, I don't need no more medical expenses, because I have enough medical expenses now. I don't need no more incurred on me. (RX. #2, p. 41).

The July 15, 2005, deposition testimony of the claimant reflects that she had been involved in two (2) motor vehicle accident in the past. In the more serious of the two, claimant's Grand Jeep Cherokee was rear-ended. Claimant testified that her head struck the top of her vehicle when the seatbelt broke and she was rendered unconscious. Claimant received medical treatment at Arkansas Methodist Hospital for her injuries. Claimant described the second motor

vehicle accident as a fender bender with a residual whiplash injury.

During her testimony at the hearing claimant testified that any descriptions of her actions following the May 4, 2004, encounter with the customer, which serves as the basis for the present claim, is the product of what witnesses had relayed to her. Claimant was specifically questioned during the July 15, 2005, deposition, about what occurred on both May 3, 2004, and May 4, 2004, with respect the to same customer, Linda Bridges, which resulted in her present workers' compensation claim. Claimant testified:

> Okay, on May 3rd , I was in the drive through, taking care of the drive through, and Linda Bridges came through to take care of her SSI check. And what happened was, Liberty Bank had bought People's bank and when another bank buys another bank they had already, they already told us that the routing numbers were going to be different and we were gonna have some checks that were going to get caught in this system because of the routing number. But, we had already been told that this was going to happen. What we were told to tell the customers that their checks was going to be deposited the following day.
>
> We were going to have some customers that were going to be very upset and we were going to know this, but we were to tell them that we were very sorry for their inconvenience but if they could come back the very next day. So, when she come through, I told her this. She was not satisfied.
>
> * * *
>
> When she come through, I told her this, but she was not satisfied. And, I sympathized with her because I knew she needed her money. And I told her that there was nothing I could do, that the routing numbers had changed and her check was in limbo out there, but it was going to be deposited the very next day. She could come inside or back through the teller line and get her check, or the drive through.
>
> * * *
>
> Right, she had come through many, many times.
>
> * * *

Yes, yes. I knew her outside the bank because I had seen her at Affordable Medical. Her husband was sick many, many times, I'd know her, I'd seen her through Affordable Medical, her husband had been sick.

* * *

But apparently this had upset her. I don't know why she got so upset at me about this, apparently she got really upset about this.

I couldn't, she said, well is there anyway that you can call somebody and see if you can't get my check, I need my check. So, I told her, I said, okay, just hold on. So, I called Julie over at the IS department and I told her, I said, look we've got a customer in the window, she really wants her check. I said, she said, well we can't do nothing about it, it's not in her checking account. I told her, I've already to her this, but she's not taking no for an answer. She said, well just tell her, I said, I've already told her that, about the routing numbers. She said, well I don't know what you can tell her, just tell her anything you want to, but you can't give her her check cause it's not there. So, I hung up with her and I told her, cause Debbie, our supervisor, was out to lunch at the time?

And I told, I told her, I come back and I told her, I said, look Linda, I said, I'm very sorry your check is not in the bank, there's nothing I can do. She said, well this is a bunch of crock. I knew when y'all switched over this was gonna happen. It's already trouble, she just went on. So she just hauled and she just went off.

So the next day, I was out to lunch and me and Lori had come back in to the bank, Lori Easley. We were talking about the insurance because we had had, we didn't know whether or not we were gonna take out the insurance cause they had already said that they were going up the price on the insurance, basically from what we were paying, like $71 to $180. So we didn't know whether we were going to take it or not.

So we were in the lobby talking about the insurance premiums, I told her, I have no other choice but to take it. So she, me and her were talking back and back and my back was to the teller line. And, she turned around and was walking the other way and I went to turn around and I didn't even get turned around good and all of a sudden I felt an arm go around my neck and all of a sudden she was choking me. I mean, choking me good. And she was screaming, well I got my money now, you're not taking it away from me now. And I mean, just screaming. And, I was like, I was like, just stunned, I couldn't believe what was going on. But, she was squeezing me so hard that my throat, I mean, it was like right in through here is where she was squeezing me.

> And when she finally let me go, I started, I was coughing, and just, I couldn't catch my breath. I just kept coughing there, I just couldn't catch my breath. And, all of a sudden, I guess she realized what she had done, she goes, did I hurt you? And, I'm like, I just kept coughing, and kept coughing, and I looked at Angie and I said, I can't believe what she did and I just kept coughing, I kept coughing.
>
> Angie goes, I don't think she meant to hurt you and I just kept coughing and I was like, yeah right. And, I walked around to the desk and I sat down at a desk like this in the middle of the area.
>
> And I sat down and I had turned like sideways, like this, and I was sitting down, I just kept coughing, it was like roller type thing, I just kept coughing, I couldn't catch my breath. And, Mona Shoemaker, was walking back and forth trying to take care of her teller and that, the drive through. And, Amy Tribble was trying to get ready to leave and she didn't know whether she should leave or stay.
>
> And I kept coughing, and kept coughing and coughing and I just, I told then, I said, I'm feeling lightheaded, I just feel really bad and all of a sudden, that's , that's the last thing I remember. Angie was like, the chair just rolled out and Mona said she tried to run over there and catch me, but it was like, I hit the desk and went down. (RX. #2, p. 42-47).

A review of the claimant's July 15, 2005, deposition clearly reflects that the same, with respect to the events following the encounter with the customer, is conveyed in a first person account, with a small portion based on what others (Angie Castleman and Mona Shoemaker) told her. Further, the deposition testimony credibly reflects that the claimant did not immediately lose consciousness after being released by the customer. Claimant's testimony reflects that she "clock in" on her computer after lunch. Claimant has no recollection of clocking in from lunch on May 4, 2004.

While the claimant asserts that she hit the disk and the floor when she fell, she testified that she had scrapes on her legs from the concrete. In response to whether she disclosed her "scrapes" to the medical providers, claimant's testimony reflects:

> They, well they were minor compared to my head injuries. But, they said, when I came back, it wasn't, I don't know but it was the next

> day or the following day. Everybody said that the, Crete Rhodes, which she is the, she takes care of all workman's comp things. . .
>
> Human Resource she was there and she was helping take care of me. That's why I didn't file on workers' comp or tell anybody because she takes care of the workman's comp. I figured if she thought it was workman's comp she would had told me we need to file this on workman's comp. She said nothing about workman's comp.
>
> So that's why I didn't say anything about it, but then when Liberty Bank, when my, Dr. Spanos, wrote me a letter to come back to work, because I begged him too, because I needed to go back to work, that's why he wrote me a letter to come back to work. When he wrote me a letter and it had to go to Teresa Ashley, she goes, well when did this accident happen and it all started coming forward. Then she goes, this should have been on workman's comp. (RX #2, p. 48).

At the time of her July 15, 2005, deposition, claimant testified that she had not been released by her treating physician to return to work, and, as a consequence, had not sought employment. Likewise, claimant testified that she had not applied for unemployment benefits because she cannot work and is unable to seek employment due to medical status. Claimant had applied for social security disability benefits, however had been turned town. In explaining her decision not to seek prosecution of the customer, Linda Bridges, claimant testified:

> I did and then I felt guilty about having her arrested because maybe she was only allowed to have that SSI check and have grandkids and I didn't want. .
>
> I didn't, I felt guilty about having her arrested. I did fill out the warrant, I mean, the warrant but I never turned it in. (RX. #2, p. 51-52).

The medical in the record reflects that the claimant was admitted to Arkansas Methodist Hospital on February 19, 1991, with chief complaints of headaches and seizures. A medical report relative to the afore admission reflects, in pertinent part:

> Approximately 4 days prior to admission she began to experience "seizure activity" described by witnesses as head rolled back, eyes

> open and rolled back, rocky type motions and some shaking. The witnesses said the patient never became incontinent of urine and feces. Never bit her tongue. She was observed in the Emergency Room to have a seizure of approximately 15 seconds duration and it was manifested by neck pain followed by seizure like activity, however the tongue was never seen and there was no clamp down throughout this entire episode and the extremities equally were in tonic/clonic movement for about 15 seconds. This was relieved with intravenous valium. The patient is admitted for evaluation. (RX.#1, p.3).

The February 20, 1991, Discharge Summary Report of Dr. O.E. Bradsher, relative to the claimant's February 19, 1991, admission reflects, in pertinent part:

> HOSPITAL COURSE: This 18 year old white female presented at the Emergency Room with severe headache, anxiety and a history of seizures. Patient did not have typical history for seizures. Did not lose consciousness, no tonic/clonic muscular activity. EEG and CT scan were negative. Patient was discharged to follow at home and to see me in the office in one week. (RX. #1, p. 5).

A May 25, 1994, radiology report regarding a CT of the claimant's cervical spine which was performed at St. Bernards Regional Medical Center reflects the conclusions of a congential lack of fusion of C1 anteriorly and congenital fusion of C2 and C3. (RX. #1. p. 11).

A July 26, 1994, of Dr. Norman E. Smith relative to the claimant reflects, in pertinent part:

> She also has a history of some neck trauma which causes some motor seizurelike activity. It is uncertain whether this is jacksonian type activity in these muscles or spasms. These appear to be previously treated well by chiropractic and muscle relaxants, therefore, I think it is more of a local muscle spasm. (RX. #1, p. 13).

On February 13, 1998, claimant was seen at the emergency room of Arkansas Methodist Hospital. During the visit, the report reflects that the claimant relayed a history of falling a work, Sunlite Furniture, and having complaints of head and neck pain. The triage report reflects:

> c/o syncopal episode & states poss. seizure activity. onset 30 minutes ago. (RX. #1, p. 15).

Claimant was seen at Mid-South Health Systems, Inc., in Jonesboro, pursuant to a referral of Dr. Sandra Stubbfield for an evaluation due to depression. The Intake report recites a history of the claimant's various injuries complaints, to include two motor vehicle accidents. (RX. #1, p. 18). A March 2, 1999, Medication maintenance/evaluation report relative to the claimant reflects, in pertinent part:

> **HISTORY OF PRESENT ILLNESS:**
> This patient has had a history of having been seen by a psychiatrist in 1997. This was after the death of her younger brother, but she appeared to have been doing fairly well. She was working full time as a photographer at Sears up until about December which is when she had the first of her two car wrecks in the last two and one half months. The second one, she had in January of 1999. In the second accident, apparently she injured her tail bone and did receive a significant head injury. In addition to having chronic pain form her back injury, she has also had significant memory problems and mood liability since she had the head injury. Apparently, she passed out and was unconscious for awhile and she woke up in the hospital the next day. Over the last month or two months, especially since her second accident, she has obviously been significantly depressed with frequent crying spells, depressed mood, decreased energy, decreased sleep, decreased appetite, feelings of hopelessness, helplessness, thought of suicide, memory and concentration problems, social isolation, inability to return to work, etc. She was quite apathetic and tearful throughout the interview and is obviously in quite a lot of stress mentally due to her state of mind. This has also affected her marriage. There is a lot of arguments between herself and her husband about the fact that she has memory problems. She has found herself unable to do her housework properly since the accident. She is quite forgetful. She finds it difficult to manage household chores like going to the grocery store, etc. She does not really have any significant anxiety symptoms. Denies any auditory or visual hallucinations. She denies any active suicidal ideation at this time, however, she did have suicidal ideation on Sunday which is when she called the emergency number for an emergency screening. (RX. #1, p. 20).

The record reflects September 7, 1999, Arkansas Methodist Hospital report regarding the claimant and a chief complaint of "had a seizure". The report reflects, in pertinent part:

> PRESENT ILLNESS: Ms. Swindle is a 27 year old white female who does not have a local doctor. She sees Dr. Langley in Walnut Ridge.

> She states that she really does not remember the seizure itself but relates the following history in regards to time proceeding the seizure.
>
> Approximately 3:00 to 4:00 in the morning she was going out to her car to go somewhere. She states that she saw a dog and became frightened. She ran back into the house. She subsequently went out to the car a few minutes later. At that time someone exclaimed that they saw the dog again. She states she became very frightened at that point, started coughing, proceeded to vomit and remember choking on some of her vomit just prior to the seizure. Bystanders states she did have a grand mal type seizure with tonic clonic activity. The patient subsequently related that she was very tired.
>
> * * *
>
> IMPRESSION: Seizure activity most likely secondary to hypoxia - other etiologies cannot be ruled out at this point.
>
> PLAN: Admit with seizure work. Please see orders for further details. (RX. #1, p. 27-28).

The claimant was discharged from the hospital on September 9, 1999, as a result of the above admission following diagnostic studies. The claimant's discharge diagnoses are reflected as "new onset seizures" and bronchitis. Further the discharge summary reflects that during the claimant's admission an EEG, CT scan of the brain, and chest x-rays were performed. Finally the discharge summary reflects that the claimant did not have any other seizure activity during her admission and that the seizure work up was "essentially" negative. (RX. #1, p. 29).

A November 28, 2000, office note of Family Practice Clinic of Paragould relative to the claimant reflects a medical history of the claimant consistent with her testimony during the July 15, 2005, deposition and May 24, 2006, hearing before the Commission:

> . . . . . Her mon was with her today and she states that she broke her neck when she was at the age of 4. Chiropractor set is and pushed the first vertebrae up into the skull and now she has muscle spasms. She knows when these are going to occur and she will pass out from the muscle spasms

> and almost have an epileptic-like seizure. She knows when these are about to happen, therefore, she states that she still drives. Her mon says that anything can trigger these as simple as just touching her head. She has seen numerous doctors over this, but she has never seen a neurosurgeon. She also has headaches when her blood pressure is up. It is unknown whether or not the blood pressure goes up and then the headaches occur or she has the headaches and then this rises the blood pressure. . . (RX. #1, p. 31).

Among the assessments rendered by Dr. John Wilson of the claimant's condition during the November 28, 2000, visit was "status post fractured neck now with neurological symptoms". (RX. #1, p. 32).

On October 9, 2001, claimant was seen by Dr. Wilson at Family Practice Clinic following a loss of consciousness episode. The office note regarding same reflects, in pertinent part:

> HPI: Sheila says that three days ago she hit her head while standing up on a weight bar. Her friends said she had a loss of consciousness for 10 or 15 minutes. She said that she did not go to sleep for three hours afterwards. Her husband would not allow her and she felt extremely tired and dizzy the next day. She had a bloody nose and severe headache and then yesterday she also had a bloody nose and severe headache. She says she has a headache today, but no ringing in the ears. She doesn't have any problem with consciousness. She is a little bit more foul-tempered, but she has a bad headache, also.(RX. #1, p. 35).

The medical reflects that the claimant was seen on three (3) occasions in early 2002 by Dr. Wilson relative to her severe headaches.(RX. #1, p. 37-39). Also in July 2002, claimant underwent a arthroscopy of her left knee under the care of Dr. John W. Harp, a Jonesboro orthopedic surgeon. The afore was the product of an injury sustained while attending to her injured son. (RX. 1, p. 40-41).

A September 12, 2002, patient progress note of Leachville Primary Care Clinic reflects that the claimant was seen with a chief complaint of having "passed out". The patient progress note further reflects regarding the claimant:

> As above she had a "spell"at work where she passed out and had a "seizure". At ER, head CT was (-). She's shore all over and fatigued. (RX. #1, p. 42).

Claimant was assessed by the medical providers at the Leachville Primary Care Clinic with syncope, and was seen in follow-up at St. Bernards Medical Center on September 18, 2002.

While at St. Bernards Medical Center on September 18, 2002, claimant underwent CPL 24 hour holter, EEG, and a head MRI with and without contrast. The September 18, 2002, neurodiagnostics report of St. Bernards Medical Center relative to the claimant reflects in pertinent part:

> BRIEF HISTORY: This is a 30 year old white female with a single episode one week ago while at work where a co-worker states she passed out with seizure activity and they called 911. She was non-responsive for 1 ½ hours. During this seizure, she did have some knots on the right side of her head.
>
> PAST MEDICAL HISTORY: Pertinent for depression, migraine headaches, episodic muscle spasms with loss of consciousness and questionable workup years ago was negative. (RX. #1, p. 44).

The EEG which was performed during the September 18, 2002, neurodiagnostic testing showed no evidence of focal slowing, paroxysms or spike and wave discharges of any significance to suspect any focal or generalized seizure disorder. (RX. #1, p. 44). The September 18, 2002, medical imaging report relative to the claimant's head MRI reflects, in pertinent part:

> CONCLUSION: Unremarkable MRI brain study. No areas of abnormal signal intensity identified within the brain parenchyma to indicate underlying disease. (RX. #1, p. 45).

Claimant was seen by Dr. Ali Hashmi at Mid-South Health Systems, Inc., on April 18, 2003. A progress note generated as a result of the visit reflects, in pertinent part:

> Ms. Swindle is doing fairly well. She denies any problems. She is back

> to working as a Bank Teller at a local bank. She complains about the lack of time between her husband, job and herself. She says "I stay tensed up all of the time." She understands that part of this is related to her hectic schedule. She does not appear depressed at all today. (RX.#1, p. 46).

On July 21, 2003, claimant was again seen at the emergency room of St. Bernard's Regional Medical Center and diagnosed with musculoskeletal chest pain and headache. (RX. #1, p. 47).

The final medical in the record prior to the May 4, 2004, incident, is a Mid-South Health Systems, Inc., progress note of November 18, 2003, regarding the claimant when she was seen by Dr. Hashmi for medication maintenance. The progress note reflects, in pertinent part:

> Ms. Swindle is a thirty one year old Caucasian female with a prior diagnosis of Mood Disorder Secondary to Head Injury with Mixed Depression and Anxiety. She is not happy with the Wellbutrin. It is basically not helping much at all. She is snapping at her co-workers, not getting along well with her husband and children. She wants to try something else. We talked about atrial of Lexapro. She is willing to give that a try. She is still taking the Xanax. She states "sometimes I think that is all that is helping me." She appears a bit anxious today. She is not overly depressed or tearful. (RX. #1, p. 48).

The claimant was seen at the emergency room of Arkansas Methodist Medical Center on May 4, 2004. The emergency room records reflects that the claimant was seen at 12:34 p.m., having arrived by EMS. Additionally, the May 4, 2004, emergency room report reflects a chief complaint of "seizure" and "hx of seizure disorder". The report also reflects that multiple episodes, "2", occurred prior to the claimant's arrival at the ER. The emergency room report also recites, with respect to the claimant's complaint of headache, "headlock at work by customer". (RX.#1, p. 49). The May 4, 2004, emergency room report reflects in terms of injury "abrasion to right shoulder" relative to the claimant. (RX. #1, p.49-50).

On May 5, 2004, claimant underwent a MRI of the brain and pituitary gland at Arkansas Methodist Medical Center. The radiologist report regarding the afore reflects, in pertinent part:

> This is a 31 year old female who was involved in an assault, chocking incident 5-4-04. She had a possible seizure prior to the ER visit. She has hyper-prolactinemia. She has headaches. She struck her head on The concrete when she had a syncopal episode. (RX. #1, p. 51).

The May 5, 2004, Arkansas Methodist Medical Center radiology report relative to the claimant reflects as admit physician, "Massey Cecile A.P.N".

On May 26, 2004, claimant was seen by Dr. Demetrius S. Spanos, a Jonesboro neurologist at Neurology Associates of Northeast Arkansas, pursuant to a referral by nurse practitioner Cecile Massey. The May 26, 2004, consultation report of Dr. Spanos regarding the claimant reflects, in pertinent part:

> **HPI:** The patient is a 31-year-old right-handed female with a past medical history significant for hypertension and depression who was a work as a bank teller when a customer apparently became upset with her and placed the patient in a "head lock." The patient subsequently lost consciousness and as she fell she struck her head. She indicates that the head strike was on the right occipital area and apparently immediately after this head injury she suffered a convulsion. She was transported by ambulance to Arkansas Methodist Hospital and while enroute she had two more seizures. Her seizures were confirmed by elevated prolactin levels that were drawn in the emergency room. She does have a family history of seizures in her mother. She has not EEGS thus far but has had an MRI of the brain that she reports was normal. She denies any previous history of generalized tonic-clonic seizures or sequela such as tongue biting, incontinence, fatigue, muscle aches or pains, or confusion. She denies any blank staring spells, automatisms, etc. No description of auras or similar events is given.
>
> The patient does, however, indicate an unusual "tremor" involving the right upper extremity that can last for one or two minutes that may occur once or twice a year in the past. This only occurs with very severe headaches, however. She indicates that she has daily headaches but only has a "migraine" approximately once a month. There severe headaches are accompanied by nausea but no vomiting. There is photo and phonophobia associated with them and

stress seems to bring them on. The severe headaches begin in the occipital area and radiate to the eyes bilaterally. There is no visual deficit, diplopia, visual loss, dysarthria, aphasia, focal weakness, numbness, or incoordination. In the past the patient has never been placed on any prophylaxis and typically she takes Tylenol, Aleve, and Percocet. She does also describe nearly daily headaches of nearly variable intensity.

Of note is that this past weekend the patient has had approximately five mor seizures. Her Dilantin level was apparently low and she has been asked to increase her regimen to 5 tablets per day. She has found that this makes her sedated and incapable of working as a bank teller as effectively as before.

* * *

Recommendation:

1. EEG
2. Obtain Dilantin levels
3. Obtain previous MRI
4. Continue Dilantin at current regimen
5. Tegretol 200 mg 1 tab po qd gradually increase to tid
6. Tegretol level in 10 days
7. Once Tegretol level is therapeutic begin gradual reduction of Dilantin

Discussion: Given that the patient's prolactin levels were elevated there is no question that she suffered a seizure. This seems to have been related to her head injury; however, given that her mother has a history of seizure disorder I wonder if the patient has had a potential for seizure brought on by the customer's actions. In other words, had the customer not put her through the events described above she would have gone through her life without any seizures.

Be that as it may the patient has had at least three confirmed seizures and I have recommended that she continue to take antiepileptic medication. We will obtain an EEG later today but because she has been affected by Dilantin I will begin Tegretol as above and eventually begin a slow reduction of her Dilantin regimen depending of what her most recent Dilantin level indicates.

Finally I hope that the patient will be on Tegretol with complete control of her seizures and I may be required to place another medication on board to help with her headaches. I will keep in mind the possibility that some of the recent "seizures" that she may have had this past weekend may actually be due to pseudoseizures as she seems to be under some duress from all of the recent events that have disrupted her life. I did not help matters today by informing

her that she is not able to drive until she is seizure free for twelve months. (CX. #1, p. 1-3).

During the claimant's May 26, 2004, visit to Dr. Spanos an EEG was performed, which yield an abnormal EEG recording. The EEG report further reflects, in pertinent part:

> **Conclusion:** Generalized sharply contoured abnormal activity is noted during this EEG recording. Although this does not confirm seizure disorder it raises suspicions given the patient's natural history. No focal abnormalities are seen to help locate the patient's epileptogenic focus. (CX. #1, p. 4).

The claimant was seen in follow-up by Dr. Spanos on July 13, 2004. The report reflects, in pertinent part:

> **Higher Integrative Function:** The patient was alert/oriented, speech was fluent, memory was intact, fund of knowledge was appropriate, attention span and concentration was normal.
>
> * * *
>
> **Impression:**
>
> 1. Generalized convulsive seizures
> 2. Headache
>
> **Recommendation:**
>
> 1. Continue Tegretol 200 mg tid
> 2. Topamax 25 mg bid to increase to 100 mg bid after 1 month
>
> **Discussion:** The patient has discontinued the Dilantin without any increased seizure activity. She is tolerating her Tegertol well and I will continue her current dose. Her most recent Tegretol level was 7.4.
>
> Now that her seizures appear to be well controlled I have recommended that the patient begin Topamax 25 mg bid gradually increasing to 100 mg bid over one month to see if we can improve her headaches. We discussed at great length the possible side effects and she will contact me with any problems. I will see her again in approximately six weeks for further recommendations. (CX. #1, p.7-8).

On August 19, 2004, Dr. Spanos a work excuse on behalf of the claimant. Due to adjustment in the claimant's medication, Dr. Spanso requested that the claimant be excused from work for the dates August 19, 2004 through August 31, 2004. The afore excuse noted that the claimant would be able to return to work on September 1, 2004. (CX. #1, p. 15).

The claimant was again seen by Dr. Spanos on August 31, 2004. The chart note relative to the August 31, 2004, visit of the claimant reflects, in pertinent part:

> **Discussion:** Current the patient is on Lamictal 25 mg bid and this will gradually be increased to 100 mg bid. In the meantime her Tegretol dose is being slowly tapered by one tab per week. The patient's headaches have been improved with Topamax use. If Lamictal does not help she will proceed ambulatory monitoring. The patient will return in three months. (CX. #1, p.17).

Claimant's next scheduled appointment with Dr. Spanos was November 23, 2004. The chart note of Dr. Spanos relative to the afore visit of the claimant reflects, in pertinent part:

> Subjective: In the past two and a half months the patient states that she has had approximately 30-40 nonconvulsive seizures during which she will "blank out" or she feels "as if I'm drifting back into a black hole and I can't get back into the real world." She has had one convulsive seizure. She is currently on Topamax 100 mg bid and Lamictal 100 mg qd. She denies other symptoms of headache, diplopia, visual loss, dysarthria, aphasia, focal weakness, numbness, or incoordination.
>
> * * *
>
> **Impression:**
>
> Generalized convulsive seizures and nonconvulsive seizures
>
> * * *
>
> **Discussion:** During the course of the discussion with the patient and her father, who came into the exam room later, the patient demonstrated her typical "seizure" event. This began with an apparent alteration of consciousness. This was followed by the patient clinching her hands together and subsequently rubbing them in an automatism manner. Her eyes teared

> but her pupils did not dilate. She then demonstrated a fast hertz mild tonic-clonic movement of both upper and both lower extremities. There was no incontinence or tongue bitting noted and the patient subsequent to the event, which lasted approximately 1 ½ minutes, was disorient and emotional. I recommended that we obtain a prolactin level at 15 minutes and 2 hours today as well as obtain her Tegretol level.
>
> Apparently the patient was begun on Tegretol by Dr. Asa Crow and she is currently taking 300 mg bid. I do not feel that a third antiepileptic is necessary given that her Lamictal dose is still at 100 mg qd and her Topamax dose is at 100 mg bid. I think we should first try to increase these two antiepileptic medications to their maximum dosage before we add a third antiepilepthic drug. If her Tegertol level is low I will plan to discontinue it; otherwise I will plan to taper it slowly.
>
> The patient will also be scheduled for EEG monitoring through our office which will be available in mid-December. (RX. #1, p. 65).

The final medical document contained in the record is a September 19, 2005, correspondence of Dr. Spanos, which was responsive to a solicitation/inquiry of the attorney for the respondents. The letter reflects, in pertinent part:

> . . . . As you indicated that patient's history of present illness in the consultation is obtained solely from her description of events and not from any other investigation. We require accuracy in the description of the events. The description given to me by Ms. Swindle was considerably more violent than the description given in your letter which states the patient was "merely grabbed from behind in a playful manner." If indeed the claims made in your letter are accurate I would say that seizure disorder was unrelated to the work related incident described by the patient. Again, this depends on the validity of exactly what happened. If the patient was placed in a "headlock" manner that she described to me and then loss consciousness, falling and striking her head, she could certainly suffer from seizure disorder. If, however, your description of events is accurate then it is unlikely that a seizure disorder would ensue.
>
> Also of note is that the patient had presented to St. Bernard's Hospital in September of 2002 with another episode of seizure-like activity. Specifically, on my history of present illness I had asked the patient if she had ever had any previous history of seizures and she denied this. (RX. #1, p. 66).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, observation of the mannerisms of same while testifying during the hearing, review of the medical reports and other documentation, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On May 4, 2004, the relationship of employee-employer-carrier existed among the parties.

3. On May 4, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of $256.00/$192.00, for temporary total/permanent partial disability.

4. On May 4, 2004, the claimant sustained an injury arising out of and in the course of her employment.

5. The claimant was temporarily totally disabled for the periods beginning August 19, 2004, through August 31, 2004, and mid- September 2004 continuing through the end of her healing period or until such time as she is by her treating physician to return to work, a date to determined.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's injury of May 4, 2004.

7. The respondents have controverted this claim in its entirety.

CONCLUSION

There is not a dispute regarding the employment relationship between the claimant and respondent during the pertinent time period regarding this claim. Nor is there a disputed

regarding the claimant's assigned job duties on May 3, 2004, and May 4, 2004. Claimant asserts that she sustained an injury within the course and scope of her employment, and that as a result of same she required and continues to require medical treatment which is reasonably necessary in connection with her injury. Further claimant asserts that as a result of the injury she has been rendered temporarily totally disabled from engaging in gainful employment. Claimant seeks corresponding medical and temporary total disability benefits. Respondents deny that the claimant sustained a work-related injury, and controvert the claim for workers' compensation benefits.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore statutory provisions. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the clamant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics,* 56 Ark. App. 126, 938 S.W.2d 876 (1997).

It is undisputed that the claimant suffered an injury to her neck as a small child which

later resulted in severe headaches. Claimant also suffered "seizure-like" episodes attributed as residuals of the early childhood neck injury. The claimant's medical records are replete with instances of the claimant receiving medical treatment due to "episodes", "spells" of the claimant passing out or loss of consciousness. The claimant was also involved in at least two separate automobile accidents wherein she suffered blows to the head and loss of consciousness. Despite all of the claimant's episodes and medical treatment, to include diagnostic studies, she had never been diagnosed, with medical certainty, as having seizures prior to May 4, 2004. It is also noteworthy that the various diagnostic studies performed on the claimant relative to her "seizure-like" episodes had not yielded results warranting a neurological referral prior to May 2004. Further, the claimant's driving privilege had not been medically restricted or impaired prior to May 2004.

The claimant's prior medical history, regarding seizure-like episodes of loss of consciousness, was not a mystery to her employer, supervisor or co-workers. Claimant had disclosed her childhood neck injury and the fact that a blow to her head could result in her loss of consciousness. Prior to May 2004, the last seizure-like episode involving the claimant that is document in the record was on or about September 12, 2002. (RX. #1, p.42). Diagnostic studies performed at St. Bernards Medical Center in connection with the September 2002 episode did not yield findings "of any significance to suspect any local or generalized seizure disorder". (RX. #1, p. 44).

On May 3, 2004, while discharging her employment duties as a teller in the drive-thru line of Liberty Bank claimant had an encounter with a bank customer, Linda Bridges, who was upset at her inability to access her SSI check in her account. The afore was the product of the

transition/acquisition of People's Bank by Liberty Bank. Claimant contacted supervisory personnel of respondent in an effort to assist the customer and to provide a satisfactory explanation of why the customer could not have access to money from her SSI check in her account. The credible evidence in the record reflects that the customer was upset with the claimant due to the encounter.

On May 4, 2004, claimant had returned from lunch with co-worker and had just completed a discussion regarding the cost of the health insurance being offered by respondent-employer when she was assaulted the customer with whom she had the encounter the previous day. Contrary to the assertions of the witnesses offered by respondent-employer, the credible evidence in the record reflects that the May 4, 2004, assault on the claimant was violent. Further, the evidence reflects that the claimant's discharging her employment duties during the May 3, 2004, encounter with the customer was basis for the assault.

It is undisputed that the claimant disclosed to co-workers and supervisory personnel of respondent-employer that any blow to her head/neck could result in her loss of consciousness due to a childhood neck injury. The testimony of Ms. Amy Tribble reflects that the claimant had contact with the customer, Linda Bridges, the previous day at the drive-thru window; had just returned from lunch on May 4, 2004, "and the lady come up behind her, and you know, grabbed her around the neck". In an attempt to moderate her testimony, Ms. Tribble described the manner in which the customer put her arm around the claimant's neck as "a playful manner". In her efforts to discount the claimant's assertion that the customer was screaming at her during the assault, Ms. Tribble testified that she was able to hear the conversation between the claimant and the customer "because they were in front of" her. (T. 89). Following questioning by the

claimant, which entailed use of a diagram (Commission Exhibit #1) and clarification of the physical location of the parties at the time of the assault, Ms. Tribble testified that she did not hear what the customer said to the claimant. (T. 96),

While Ms. Tribble testified that she was in the "first window" working as the teller at the time of the encounter between the claimant and the customer on May 4, 2004, (T. 96), Ms. Angela Castleman testified that she was working the first teller window on May 4, 2004. Further, Ms. Castleman's testimony reflects that she was the teller that was waiting on Ms. Linda Bridges at the time the claimant returned from lunch. In describing the physical contact between the claimant and Ms. Linda Bridges Ms. Castleman testified that after the customer completed her transaction at her window, "she turned around and said something, I don't remember exactly the words and kind of laughingly put her arm around her [claimant's] shoulder, neck and then Sheila came back behind the teller line to her station". (T. 100).

Despite the efforts of Ms. Tribble and Ms. Castleman to downplay or minimize the physical assault on the claimant by the customer, the evidence preponderates that the claimant was grabbed in a "headlock" from behind by the customer. Ms. Mona Shoemaker, who was working at the drive-thru teller window on May 4, 2004, testified that she did not or could not witness the encounter between the claimant and the customer from her work station. Ms. Shoemaker's testimony does reflect that there was "a group of people at the end", however she was not paying attention. (T. 113).

Each of the witnesses of respondents testified that following the claimant's encounter with the customer claimant reported that she was not feeling well. In light of the afore Ms. Tribble offered to stay and work rather than take her scheduled lunch break. The offer was

declined and Ms. Tribble left before the claimant's loss of consciousness. While Ms. Castleman and Ms. Shoemaker maintain that the claimant did not strike anything or fall to the floor in her loss of consciousness, the medical evidence is to the contrary.

The May 4, 2004, emergency room report of Arkansas Methodist Medical Center relative to the claimant reflects a history of the claimant being grabbed in a headlock by a customer at the bank. The report further noted that the claimant had an abrasion on her right shoulder. The May 4, 2004, emergency room report corroborates the claimant's account of the events at the bank involving to the customer, and specifically the occurrence of a violent assault on the claimant. It is noteworthy that while the assault occurred in the lobby of the Paragould Main Branch bank of respondent-employer, security surveillance film was not offered by respondent to corroborate the "playful" manner of the contact between the claimant and the customer on May 4, 2004, which serves as the basis for the present claim.

The history recited by the claimant of the May 4, 2004, incident at the bank and the mechanism of her injury are consistent with the history in the medical records generated immediately subsequent to the event. Further, diagnostic studies performed on the claimant subsequent the May 4, 2004, assault have yield objective findings of seizures. While the claimant had a medical history of neck./cervical injury, head injury, "spells", muscle spasms, seizure-like episodes, diagnostic studies prior to the May 4, 2004, event did not definitively diagnose seizure. (CX. #1, p.1-8). Specifically, a comparison of the EEG performed on September 18, 2002, with that conducted May 26, 2004, demonstrate objective findings in place subsequent to the claimant's assault that were not in place prior thereto.

While the testimony of the witnesses of respondent-employer sanitize the May 4, 2004,

physical contact of the customer with the claimant, the evidence nevertheless preponderates that the claimant was the recipient of disparaging comments of an irate bank customer on May 3, 2004, and was assaulted by the same customer on May 4, 2004. Further, the credible evidence preponderates that the May 4, 2004, assault was directly related to and grew out of the claimant's employment activity/contact with the May 3, 2004, irate bank customer. The claimant's head was placed in a headlock by the customer during the May 4, 2004, assault. The customer had physical contact with the back of the claimant's head during the May 4, 2004, encounter. The May 4, 2004, emergency room records of Arkansas Methodist Medical Center reflects the history of the claimant's injury which corroborates the claimant's July 15, 2005, deposition testimony. Further, the emergency room report also records the physical injury of shoulder abrasion evidenced from the claimant's May 4, 2004, encounter.

There is no evidence in the record to reflect that the claimant had experienced an episode similar to that she suffered following the May 4, 2004, assault by the customer during her employment with respondent prior to the May 4, 2004, event. Respondents were aware of the claimant's "muscle spasms" and had been admonished by the claimant not to strike/hit the back of her head. Claimant was not taking anti-seizure medication prior to the May 4, 2004, assault. The claimant's driving privilege was not impaired prior to the May 4, 2004, assault.

In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox,* 302 Ark. 69, 787 S.W.2d 64 (1990); *Arkansas Power & Light Co. v. Scroggins,* 230 Ark. 936, 328 S.W.2d 97 (1959). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or

infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown,* 53 Ark. App. 30, 917 S.W.2d 550 (1996).

Claimant was referred to Dr. Spanos by her primary care physician who was fully aware of the claimant's pre-existing "muscle spasms". As noted above, the September 18, 2002, event cited by Dr. Spanos in his September 19, 2005, correspondence did not yield the same positive objective findings of seizure as was rendered following the May 4, 2004, assault, by way of EEGs. The credible evidence reflects that the claimant was in fact placed in a "headlock" by the customer during the May 4, 2004, assault, and that she subsequent loss consciousness and fell striking her head on the concrete surface floor. The claimant has sustained her burden of proof by a preponderance of the evidence that she suffered an injury arising out of and in the course of her employment with respondents on May 4, 2004. Respondents have controverted this claim in its entirety.

Arkansas Code Annotated §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with an employee's injury. *Cox v. Klipsch & Assoc.,* 71 Ark. App. 433, 30 S.W.3d 764 (2000). What constitutes reasonable and necessary medical treatment is a question of fact. The injured worker does not have to support a continuing need for medical treatment with "objective medical findings". *Chamber Door Industries , Inc. v. Graham,* 59 Ark. App. 224, 956 S.W.2d 196 (1997).

In the instance claim, claimant was placed on Dilantin at the time of her May 4, 2004, emergency room visit following the earlier assault by the bank customer at work. Thereafter, a review of the medical reflects that the claimant's medical treatment has consisted of medication and efforts to adjust same to maximize therapeutic benefits while minimizing the adverse side

effects. The evidence preponderates that the medical treatment rendered to the claimant subsequent to May 4, 2004, is reasonably necessary in connection with the claimant's compensable injury. Respondents have controverted this claim in its entirety.

Following the May 4, 2004, assault, claimant returned to work after receiving medical treatment for her injuries and complaints. Claimant suffered a subsequent seizure at work which resulted in another emergency room visit via ambulance. The credible evidence further reflects that the side effects of the medication that the claimant was prescribed relative to her seizures adversely impacted her employment duties. Claimant was taken off work by Dr. Spanos on August 19, 2004, while her medication was being adjusted. There is no evidence that the claimant's medication has been adjusted to the point that she has been released to return to work by her treating physician.

Temporary total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *Arkansas State Highway and Transportation Department v. Breshears,* 272 Ark. 244, 613 S.W.2d 392 (1981); *Georgia-Pacific Corp. v. Carter,* 62 Ark. App. 162, 969 S.W.2d 677 (1998). Ark. Code Ann. §11-9-102 (13) defines "healing period" as, "that period for healing of an injury resulting from an accident." Accordingly, the healing period ends when the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel,* 46 Ark. App. 303, 879 S.W.2d 457 (1994). The claimant has sustained her burden of proof by a preponderance of the evidence that she remains within her healing period as a result of the compensable injury of May 4, 2004, and has been totally incapacitated from engaging in gainful employment since August 19, 2004. Respondents have controverted this claim in its entirety.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of $256.00, for the period commencing August 19, 2004, through August 31, 2004 and mid-September 2004, and continuing through the end of her healing period, a date to be determined, or until such time as the claimant is released to return to work by her treating physician, as a result of her compensable injury of May 4, 2004. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable and necessary medical, hospital, nursing and other apparatus expenses growing out of the claimant's compensable injury of May 4, 2004, to include medical related milage.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809 until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge