

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F502258**

**JACQUELINE F. WEBB,  
EMPLOYEE**

**CLAIMANT**

**STANT MANUFACTURING  
COMPANY, INC.,  
EMPLOYER**

**RESPONDENT**

**INS. CO. OF THE STATE  
OF PENNSYLVANIA;  
AIG CLAIM SERVICE, TPA,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JULY 31, 2006,**

Pursuant to a hearing conducted March 10, 2006, before Administrative Law Judge Cynthia Estes Rogers in Little Rock, Pulaski County, Arkansas, with

Mr. Steven R. McNeely, III, Attorney at Law, Little Rock, Arkansas, appearing for the claimant, and

Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This was a hearing to consider the primary issue of compensability of the claimant's herniated disc in her low back and the related issues of entitlement to medical and indemnity benefits.

The claimant has worked for Stant Manufacturing since 1987 and in quality control for the last six years. Until February, 2005, she worked primarily in quality control in the assembly department. In February, 2005, she was transferred to quality control in the injection molding or plastics department and her job duties changed. Prior to the transfer, she had suffered from fibromyalgia and had had a low back strain on one occasion but no serious back injury. After the

transfer in February, 2005, and the change in her job activities, she developed symptoms in her low back and down her leg and was diagnosed as having a herniated disc.

On March 22, 2005, Little Rock neurosurgeon Dr. Scott M. Schlesinger performed surgery on the claimant's spine. Following the surgery, Dr. Schlesinger released the claimant to light duty and then full duty work and assigned an impairment rating of 8% to the body as a whole. Based upon the claimant's history, Dr. Schlesinger attributed her back problems to her employment. The respondents initially accepted this claim as compensable and provided medical care and indemnity benefits before controverting the claim in its entirety as of March 29, 2005. Dr. Schlesinger was later deposed primarily to address the issue of causation.

At the hearing, the claimant contended that she suffered a compensable back injury by gradual onset and was entitled to benefits, including temporary total disability benefits from February 10, 2005, until May 3, 2005, when she was released to return to light duty work, together with temporary partial disability benefits in the amount of \$965.00 for a period from February 3, 2005, until June 20, 2005. The claimant also requested benefits for anatomical impairment of 8% to the body as a whole, as well as reasonably necessary medical and related expenses, including mileage and prescription costs. An attorney's fee for controversion was also requested.

The respondents contended that there was no gradual onset compensable injury while working for this employer and that the claimant's job duties were not the type that you would expect to cause herniated discs.

The record, which included the testimony of the claimant, Allen Webb, Todd Michael, and the deposition of Dr. Scott M. Schlesinger, as well as documentary evidence, was closed at the conclusion of the hearing. Thereafter, a letter dated April 19, 2006, advised counsel that the claim

would be transferred to another administrative law judge for decision on the existing record, unless an objection was received within ten days. No objection was received and the claim was transferred to the present administrative law judge on May 3, 2006.

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employee-employer relationship existed on February 10, 2005, and at all pertinent times; the claimant's average weekly wage was \$459.60; the respondents originally accepted the claim as compensable and paid indemnity benefits of \$806.14 and medical benefits in the amount of \$3,952.00; if compensable, the amount of partial disability due to the claimant for the period in question would total \$965.00; and that the claim was controverted in its entirety as of March 29, 2005.

3. On or about February 10, 2005, the claimant sustained a compensable injury to her low back, by gradual onset, arising out of and in the course of her employment, which was the major cause of her disability and need for treatment.

4. The claimant is entitled to such medical care as may be reasonably necessary in connection with her compensable injury, specifically including the medical care she has received, such as the surgery performed by Dr. Schlesinger.

5. As a result of her compensable injury, the claimant remained in a healing period and was totally incapacitated to earn wages from the date of injury until May 3, 2005, so that she is entitled to benefits for temporary total disability.

6. As a result of her compensable injury, the claimant continued in her healing period and was temporarily partially disabled from May 3, 2005, until June 20, 2005, so that she is entitled to temporary partial disability benefits in the amount of \$965.00.

7. As a result of her compensable injury and related surgery, the claimant has sustained permanent anatomical impairment in an amount equal to 8% to the body as a whole, as assessed by Dr. Scott M. Schlesinger.

8. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

### **DISCUSSION**

The record shows that the claimant's duties in quality control required her to take a master part, a test part, and run it through a machine to see if the machine was operating properly. It was her testimony and the testimony of the witness for the respondents that the job required her to stand, bend, and stoop. When the claimant performed this job in assembly, she was responsible for only three machines and was not required to do as much bending as she would after February, 2005, when she was transferred. At that time, she tested approximately twenty machines and the amount of bending, stooping, and twisting increased and changed. She described her job activities at the hearing in some detail.

Earlier, in July, 2004, she had developed pain in her back and consulted her family physician Dr. Paul Wayne Davis who treated her briefly and released her to return to work without indicating that she had suffered a herniated disc in her back. Her testimony and the medical record tend to show that she had recovered well and had successfully returned to work by the time her job assignment was changed in February, 2005. The claimant testified that her symptoms in February, 2005, were more severe. This is consistent with the note of Dr. Davis who requested an MRI scan. That scan, performed February 11, 2005, showed that the claimant had a right paracentral disc herniation with inferiorly extruded fragment at L5-S1, displacing the right S1 nerve root. The claimant came under the care of neurosurgeon Dr. Scott M. Schlesinger who confirmed the diagnosis and performed surgery March 22, 2005.

The notes from Dr. Davis' office visit February 10, 2005, attributes the claimant's condition to the change in her work activity. Similarly, Dr. Schlesinger's notes tend to attribute the claimant's spinal pathology to switching to a new job requiring more bending, lifting, and reaching out in an awkward position. On March 18, 2005, he wrote to the case manager that he had reviewed pictures sent by the case manager concerning the claimant's job activities and, despite the appearance that the lifting was not heavy, he concluded that there was certainly bending, which could have led to the claimant's unfortunate disc herniation, if she had not been accustomed to it. He stated that based on the claimant's history that this began with the change of jobs one would have to assume with a reasonable degree of medical certainty that this work change and the bending involved with this change led to the disc herniation. In an April 25, 2005, letter, Dr. Schlesinger again addressed the nurse case manager and stated that there appeared to be conflicting data and he would say it was unclear whether this was a work-related injury or not. He acknowledged the claimant's July, 2004,

back problem, but commented that it was about a year before the current presentation. On May 2, 2005, he wrote the claimant's treating physician that after speaking with the claimant, and based on her history, he would state within a reasonable degree of medical certainty that the change in her job did result in the herniated disc, if the history was valid. On June 6, 2005, Dr. Schlesinger wrote about the claimant's limitations and assigned her impairment rating of 8%, based upon the American Medical Association Guides to the Evaluation of Permanent Impairment (4th Edition). He stated that the claimant had reached maximum medical improvement and released her from his care. His notes continued to describe limitations on the claimant's work activities, including six-hour day for two weeks before resuming full duty. A July 18, 2005, letter from the claimant's family physician, Dr. Davis, stated that he could not see how this could be anything but work related and there will be no doubt that this is a workers' compensation injury. Dr. Davis had earlier treated the claimant for her July, 2004, back problem. Finally, the February 23, 2006, deposition also tended to show that, based on the claimant's history, her herniated disc was related to the change in her job activities.

Although the respondents controverted the claim as of March 29, 2005, perhaps based upon the somewhat equivocal language in one of Dr. Schlesinger's letters and the fact that the claimant did not originally know the cause of her back problem when she reported it to the employer, the preponderance of the evidence tends to show that the change in her activities at work was the cause of the herniated disc in her low back. The claimant and her husband testified that there had been no change in her personal activities during this time. There is little in the record to support the respondent's contention that the claimant's job activities, including bending at the waist, were not the type that would be expected to cause herniated discs.

There is little dispute that the claimant has received appropriate medical care for her condition and was temporarily disabled and permanently impaired as described above. Accordingly, the preponderance of the evidence shows that the claimant has suffered a compensable back injury and is entitled to related benefits.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge