

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602500/F508601

STEPHANIE BOLLS	CLAIMANT
HERITAGE PARK NURSING CENTER	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 2, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on November 6, 2006, in Springdale, Arkansas. The deposition of Melody Wolfe was also taken on November 6, 2006, and has been admitted as Respondents' Exhibit No. 4.

A pre-hearing order was entered in this case on September 19, 2006. This pre-hearing order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, and by agreement of the parties, certain changes and corrections were made in regard to Stipulation #6 and issue #1. A copy of the pre-hearing order with these amendments noted thereon has been made Commission's Exhibit No. 1 to this proceeding.

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

1. In May of 2005 and July 23, 2005, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates on all relevant dates were \$466.00 for total disability and \$350.00 for permanent partial disability.
3. On July 23, 2005, the claimant sustained a compensable injury to her back.
4. The respondents have paid all medical expenses incurred through the initial visit by Dr. Raben.
5. The respondents continue to pay temporary total disability benefits.
6. The respondents deny the occurrence of any compensable injury to the claimant's back as the result of a specific incident on May 8, 2005, and controvert any benefits for such an injury.

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

1. whether the claimant sustained a compensable injury to her back on May 8, 2005, as the result of a specific incident.
2. The claimant's entitlement to additional medical service provided and recommended by Dr. Cyril Raben.

In regard to these issues, the claimant contends she was injured in mid May of 2005. Her back was injured when she was doing excessive lifting.

In regard to these issues, the respondents contend:

"The respondents contend that the claimant did not sustain a compensable injury in May of 2005. According to the medical records, the claimant woke up with back pain. The claimant developed low back and right leg pain. The claimant was eventually sent for an MRI. The MRI done on May 26, 2005, indicated a central disc extrusion resulted in moderate canal stenosis and compromise of the S1 nerve roots. The claimant underwent physical therapy for that claim. The claimant then had an incident in July of 2005 in which she slipped and jerked her back. She did not actually fall. Dr. Sprinkle noted that the claimant had an exacerbation of her back pain at that time. She had been going to therapy since May for that incident.

Dr. Sprinkle treated the claimant conservatively and noted that she was continuing to work light duty. He also reviewed the MRI and stated that the MRI did not show any additional changes as far as the disc herniation was concerned. In particular, he based that on the report from Dr. Laakman, which stated that he had compared the studies and did not see any significant change.

The claimant was then sent for a Functional Capacity Evaluation. The claimant on the Functional Capacity Evaluation, gave unreliable effort on 37 of the 55 tests.

In addition, the claimant had a positive Waddell's for non organic back pain during the testing. It was felt that the claimant gave unreliable effort, which negated the findings of the Functional Capacity Evaluation.

Subsequent to this, the claimant was seen by Dr. Raben. Dr. Raben recommended a myelogram and post myelogram CT. The claimant was also evaluated by Dr. Schlesinger. The claimant gave Dr. Schlesinger a history that both injuries were work related. Dr. Schlesinger noted that he had reviewed everything and it did not appear that the disc herniation was changed from May of 2005.

He did mention the possibility of one to three steroid injections, which the respondents'

contend is related to the claimant's non work-related problem."

### DISCUSSION

#### I. COMPENSABILITY OF ALLEGED EMPLOYMENT RELATED INJURY IN MAY OF 2005

\_\_\_\_\_The first issue to be addressed is whether the claimant sustained a "compensable injury" to her lumbar spine, as a result of a specific employment related incident, on or about May 8, 2005. The burden rests upon the claimant to prove such a compensable injury.

In order to represent a "compensable injury", under Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must show that her alleged back injury in May of 2005 satisfies five additional requirements. These requirements are:

1. that the injury must arise out of and occur in the course of the employment;
2. that the injury must be caused by a specific incident;
3. that the injury must be identifiable by time and place of occurrence;
4. that the injury must cause internal or external physical harm to the claimant's body;
5. that the injury must require medical services or result in disability.

The claimant's own testimony is the only evidence the claimant has presented to prove the occurrence of a specific employment related incident, on or about May 8, 2005, and to establish the

existence of a causal connection between such an incident and her subsequent difficulties with her back or lumbar spine. The testimony of a party is never considered uncontroverted. However, such testimony cannot be arbitrarily disregarded. If the testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. Clearly, the claimant's testimony would be legally competent to prove the occurrence of a specific employment related incident in May of 2005, and to prove the existence of reasonably close temporal relationship between this incident and the onset of difficulties indicative of the occurrence of a physical injury to her back. However, in the present case, I do not find the testimony of the claimant sufficiently credible to prove either of these facts.

At the hearing, the claimant testified that on or about May 8, 2005, she and another nurse pulled a patient back up in a chair. She stated that, at that time, she felt a little pain in her back and a tingling in her leg. At that time, she did not think anything about this and finished her shift. However, she stated that the next morning, when she awoke, her right leg was completely numb. However, she did not experience any "real pain" in her back and leg. She admitted that she continued working at her regular duties for several days. Finally, it was her testimony that on Tuesday morning, some four days following the accident, she awoke with severe pain in her right leg. At that time, she went to the emergency room and saw a Dr. Busby.

It is apparent from the evidence presented, that the claimant has little or no idea of when this alleged incident of the patient and the chair occurred. In her original AR-C, dated September 28, 2005, the claimant gave an injury date of May 1, 2005. Curiously, she also gave no specific details concerning the events surrounding the incident and merely stated:

“I injured my back while doing excessive lifting”.

On cross-examination, the claimant decided that the incident with the patient in the chair must have occurred on May 20, 2005. Such a change would be necessary for her testimony that she first consulted a doctor four days after the alleged incident to be accurate. The medical clearly shows that the claimant first went to the emergency room of the St. John’s Hospital on May 24, 2005.

The May 24, 2005 records from the emergency room of St. John’s Hospital, in Berryville, show that the claimant appeared at that facility at approximately 10:39 a.m. on May 24, 2005. At that time, the claimant was complaining of right hip and leg pain and numbness. A history was recorded that the numbness and tingling had begun the previous Saturday morning and that the actual pain began the morning of her emergency room visit. In response to the inquiry of any recent injury, the claimant stated “no”.

The claimant continued to give a history to her various medical service providers that her difficulties with her back and leg were not the result of any injury or precipitating event. When the claimant was initially evaluated by the physical therapy service at St. John’s Hospital, a history was recorded that the

claimant had merely woke up with her right leg asleep and numb approximately one week prior.

When the claimant was subsequently seen at the King's River Physical Therapy Department, on June 2, 2005, a history was recorded that the claimant's symptoms began two weeks prior and that her initial symptoms were in the form of numbness of her right leg to her knee that progressed to severe pain in the right leg three days later. In response to a specific inquiry concerning the mechanism of the onset of these difficulties, that the claimant's response was recorded as "woke up with pain, does not recall any injury".

When the claimant was evaluated by Dr. John Nash, on July 28, 2005, he recorded the history of the claimant's symptoms as:

"She is a 44 year old white female that presents here with complaints of low back and hip pain. It started in May, but she has had chronic back pain off and on for years. Saturday night it became acutely worse."

On September 20, 2005, the claimant was evaluated by Dr. Brent Sprinkle (at the request of the respondents). Dr. Sprinkle's recorded a history of an episode of right leg numbness and pain in May of 2005, but again specifically noted:

"It was not work related."

At the hearing, the claimant attempted to deny or explain her failure to report the alleged May incident. She testified that it was not until two to three weeks after the incident that she realized her complaints were due to the incident. She further testified even when though she came to this realization, she did

not make any attempt to file under workers' compensation for this May injury, or even to advise her various treating physicians of its occurrence. I find the claimant's explanation for her failure to timely report the alleged May incident is difficult to accept. In this case, the claimant is a trained medical professional. She would certainly be aware of the significance and importance of waking up with your entire leg numb and would be reasonably expected to promptly seek medical care. She would also be acutely aware of the necessity for providing a correct history of all of the events surrounding the onset of your difficulties, when seeking medical treatment, in order for the treating physician to make an accurate diagnosis and an appropriate treatment plan. I further find it curious that the claimant first reported the alleged injury in May of 2005, shortly after her evaluation by Dr. Sprinkle in September of 2005, and after it began to appear that her continuing back complaints might be due to conditions pre-existing the July 23, 2005 incident.

The evidence presented reveals other factors that would substantially diminish the claimant's credibility. Not the least of these, are the results of a Functional Capacity Assessment, which was performed on November 8, 2005. This evaluation showed that the claimant gave inconsistent and potentially exaggerated responses on the various tests to determine her actual physical capabilities.

At the hearing, the claimant also testified that by July 23, 2005, she was not having any problems with her back or lower

extremity and was “doing great”. She stated her only limitation was that she couldn’t lift or push heavy objects. However, such testimony does not coincide with the complaints noted in physical therapy reports of this period. Nor does such testimony coincide with her subsequent statements to the various physicians she has seen.

It is also worthy to note that the medical evidence also indicates that the claimant failed to mention to Dr. Sprinkle, Dr. Raben, Dr. Schlesinger, and Dr. Bruffett, and the August 2005 Wal Mart incident with the shopping cart. Clearly, this incident would appear to have caused a significant increase in the claimant’s symptomology, similar to that of the July 23, 2005 work related incident. This incident was also sufficient to allow her to recover some money from Wal Mart.

A general review of the medical evidence shows that the nature and magnitude of the claimant’s voiced complaints do not particularly correlate with the findings on objective testing or even subjective findings noted on her numerous physical examinations (i.e. such as straight leg raising tests, reflex testing, strength testing, etc). The majority of the objective defects are degenerative in nature. The majority of these defects would not be compatible with the extensive right extremity complaints voiced by the claimant. These voiced severe complaints, which would appear to be neurological in origin (i.e. numbness, tingling, and loss of control of the entire right leg), would be inconsistent with repeated observations of normal reflexes, full

range of motion, negative straight leg raising, and lack of atrophy of the right leg.

The medical evidence further shows, that contrary to the claimant's testimony, she had experienced significant difficulties with her lower back or lumbar spine, long before May of 2005. As early as November of 2002, substantial degenerative changes were noted in the claimant's lumbar spine, particularly in the area of the L5-S1 intervertebral disc. Finally, it appears from the record that the claimant's subjective complaints have been totally unresponsive to any treatment. In fact, they appear to have worsened with time and treatment.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between any employment related incident in May of 2005, and her lumbar difficulties. Thus, she has failed to prove the occurrence of a physical injury to this portion of her body, in May of 2005, that arose out of and occurred in the course of her employment, that was caused by a specific incident, and that is identifiable by time and place of occurrence. Her failure to prove these necessary requirements of Ark. Code Ann. §11-9-102(4)(A)(i) precludes a finding of a "compensable injury" as that term is defined by this subsection.

## II. ADDITIONAL MEDICAL SERVICES BY DR. RABEN

The remaining issue concerns the claimant's entitlement to medical services, at the respondents' expense, by Dr. Cyril Raben.

Ark. Code Ann. §11-9-508 entitles the claimant at the respondent's expense, to reasonably necessary medical services for their compensable injury. However, the burden rests upon the claimant to prove that any disputed medical services actually represent "reasonably necessary medical services", within the meaning of this subsection.

Medical services are "reasonably necessary", when they are necessitated by or connected with the compensable injury. Further, such services must also be proven to have a reasonable expectation of accomplishing the purpose of goal for which they are intended, at the time the services were rendered.

As previously determined, the claimant has failed to prove that she sustained a compensable injury to her low back or lumbar spine in May of 2005. Therefore, any medical services necessitated by or connected with the onset of the claimant's low back difficulties beginning in May of 2005, would not represent services necessitated by or connected with a "compensable injury". Liability for the expense of these services can not be imposed upon the respondents' herein, under the provisions of Ark. Code Ann. §11-9-508. Liability for the expense of medical services can only be imposed upon the respondents' for appropriate medical services necessitated by or connected with her admittedly compensable lumbar injury of July 23, 2005.

First, it is difficult to determine from the record exactly which medical services of Dr. Raben are in dispute. The claimant initially saw Dr. Raben pursuant to a change of physicians that was

granted by the Cost Containment Division of this Commission, some time in late 2005. The medical records show that Dr. Raben initially evaluated the claimant on December 9, 2005. Clearly, this evaluation would be the liability of the respondent herein, Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W. 3<sup>rd</sup> 204(2002). However, the stipulations indicate that the expense of these services were voluntarily paid.

The reports and records of Dr. Raben show that the claimant was subsequently seen by himself or his nurse practitioner on January 31, 2006, March 2, 2006, March 13, 2006, and April 4, 2006. Various "off work" notes from Dr. Raben's office have been introduced, which bear various dates through September 5, 2006. However, there is no evidence that the claimant was evaluated or treated by Dr. Raben on any of those particular dates.

In his record of January 31, 2006, Dr. Raben noted an improvement in the claimant's various symptoms. He also noted that the claimant had been doing the prescribed physical therapy through the King's Physical Therapy Center. However, he further appears to detect evidence of some abnormality involving the claimant's right knee. In this report, he indicated the desire to perform an MRI scan of the claimant's right knee.

It would appear that the medical services prescribed and provided the claimant for her back complaints by Dr. Raben, on January 31, 2006, were of a type and nature generally accepted as being medically appropriate for the evaluation and treatment of back injuries such as that of July 23, 2005. Thus, the liability

for the expense of these services, subject to the Commission's medical fee schedule, would appropriately rest upon the respondents herein.

However, any medical services to evaluate or treat difficulties with the claimant's right knee have not been shown to be necessitated by or connected with a "compensable injury", particularly, the claimant's compensable injury of July 23, 2005. Therefore, the expense of such services would not be the liability of the respondents herein.

On March 2, 2006, the claimant appears to have been seen by a nurse practitioner at Dr. Raben's office. At that time, the claimant's chief complaint appeared to be low back pain, bilateral leg pain, and right knee pain. It is difficult to ascertain from this record what services were actually provided to the claimant, except for being asked various questions by the nurse practitioner and possibly undergoing a routine examination. I would note that the nurse practitioner appears to have recommended physical therapy for both the claimant's lumbar spine and also her right knee.

Clearly, any medical services, whatsoever, for the claimant's right knee complaints have not been proven to be necessitated by or connected with a "compensable injury". Thus, the expense of any evaluation or therapy for the claimant's right knee can in no way be imposed upon the respondents' herein.

I find that this simple follow up or monitoring of the claimant's condition, in regard to her lumbar spine, could be medically appropriate, and thus reasonably necessary. It should be

compensated as such under the Commission's fee schedule for a brief routine follow up visit by a non physician.

The claimant was again seen again by Dr. Raben's nurse practitioner on March 13, 2006. Again, it would appear that, at that time, only a current status of the claimant's complaints is recorded with no actual physical examination or evaluation. This report indicated that the purpose of this visit was to allow some other individual to initiate a trial use of a "RS" and discuss the claimant's upcoming epidural steroid injection scheduled for the next day. As I have no idea what an "RS" is, or why it was being employed, it is difficult to make a ruling on its appropriateness or even whether it was connected with the claimant's compensable lumbar injury. I am also at a loss as to why an office visit would be necessary to discuss the epidural steroid injection (ESI) that was scheduled for the next day. This would be particularly true in light of the fact that this treatment has previously been given the claimant (without any real success).

On May 14, 2006, the claimant was actually seen by Dr. Raben and an epidural steroid injection of the claimant's lumbar spine was performed. This type of treatment is commonly associated with chronic low back injuries, such as that experienced by the claimant on July 23, 2005. Even though this treatment had been previously employed without success, one final attempt would not be unreasonable.

The medical services provided to the claimant by Dr. Raben, during the visit of March 14, 2006, are to be reasonably necessary

medical services for the claimant's compensable injury of July 23, 2005. Thus, the expense of such services would rest upon the respondents' herein, subject to the medical fee schedule established by this Commission.

The claimant was next seen in follow up by Dr. Raben on April 4, 2006. At that time, he noted that the claimant had noted no real benefit from the prior epidural steroid injection. He further indicated that the claimant's physical examination appeared essentially unchanged, except for a rash. His only recommendations in regard to continued treatment, was that the claimant undergo an evaluation by her family physician, Dr. Spurgeon for her rash and that she return for routine follow up with his nurse practitioner in three to four weeks.

I find the claimant's evaluation on April 4, 2006, to be medically appropriate for follow up of her prior epidural steroid injection. However, I do not find that continued follow up by Dr. Raben's nurse practitioner would appear to be necessary or appropriate. The medical services provided by Dr. Raben on April 4, 2006, represent reasonably necessary medical services. However, the additional medical services recommended by Dr. Raben, at that time, do not appear to be related to a compensable injury (in regard to her rash) or do not appear to have a reasonable expectation of any benefit (in regard to additional follow up by a nurse practitioner).

On June 15, 2006, a discogram and enhanced CT scan was performed on the claimant's lumbar spine either by or at the

request of Dr. Raben. However, no accompanying reports or records from Dr. Raben have been introduced and the radiology reports reflect that the reason for these examinations was given only as "lumbar pain". As the claimant was experiencing "lumbar pain" before the compensable injury of July 23, 2005, and has experienced subsequent trauma and exacerbations of lumbar pain thereafter, it is impossible to determine from the evidence presented that the "lumbar pain" necessitating this test was due to her compensable injury of July 23, 2005.

The claimant has presented absolutely no medical evidence concerning the necessity or purpose of any medical services either provided or recommended by Dr. Raben, after March 4, 2006. In fact, the claimant has not presented any reports from Dr. Raben recommending any further medical services. Although the claimant told Dr. Bruffett that Dr. Raben had recommended a 360 degree two-level fusion of her lumbar spine, the claimant has failed to present any reports or records from Dr. Raben to substantiate such a statement. Therefore, I find that the claimant has failed to prove that there has been provided or recommended any reasonable necessary medical services for her compensable injury of July 23, 2005, after April 4, 2006.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that the medical services provided her by and at the direction of Dr. Raben through April 4, 2006, with the exception of the March 13, 2006 nurse practitioner visit, represent

“reasonably necessary medical services” for her compensable lumbar injury of July 23, 2005. However, any medical services provided to the claimant in connection with her right knee difficulties have not been shown to be necessitated by or connected with the compensable lumbar injury. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense incurred by the claimant as the result of medical services provided to the claimant for her lumbar complaints by and at the direction of Dr. Raben from December 9, 2005 through April 4, 2006, subject to the medical fee schedule established by this Commission.

The claimant has failed to prove by the greater weight of the credible evidence that any medical services provided or recommended by Dr. Raben after April 4, 2006, represent reasonably necessary medical services for her compensable injury of July 23, 2005. Thus, the expense of these services cannot be imposed upon the respondents herein.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of these claims.
2. During May of 2005, and on July 23, 2005, the relationship of employee-employer-carrier existed between the parties.
3. On the foregoing dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$466.00 for total disability and \$350.00 for permanent partial disability.

4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a “compensable injury” to her back, as the result of a specific employment related incident on May 8, 2005, or any other date during May of 2005.

5. On July 23, 2005, the claimant sustained a compensable injury to her back.

6. There is no dispute over the payment of medical expenses incurred through the claimant’s initial visit with Dr. Raben.

7. The claimant has proven that the medical services provided to the claimant by Dr. Raben for her low back complaints from January 9, 2005 through April 4, 2006, with the exception of the March 13, 2006 nurse practitioner visit, represents “reasonably necessary medical services” for her compensable back injury of July 23, 2005. The respondents are liable for the expense of such services, subject to the medical fee schedule established by this Commission.

8. The claimant has failed to prove that Dr. Raben has provided or recommended reasonably necessary medical services for her compensable back injury of July 23, 2005, after April 4, 2006.

9. The respondents have denied the occurrence of a compensable injury to the claimant’s back, as the result of a specific incident on May 8, 2005, or any other date during May of 2005, and controvert her entitlement to any benefits attributable to such an injury.

ORDER

The respondents shall be liable for the expense of medical services provided to the claimant for her compensable low back injury of July 23, 2005, by and at the direction of Dr. Cyril Raben through the office visit of Dr. Raben on April 4, 2006, with the exception of the March 13, 2006 nurse practitioner visit. This liability is subject to the Commission's medical fee schedule.

For the reasons heretofore set forth in this Opinion, Claim Number F602500 is denied and dismissed in its entirety.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE