

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510926

ROXIANNE FULKS, EMPLOYEE	CLAIMANT
OZARK HEALTH, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER/TPA	RESPONDENT

OPINION FILED March 20, 2007

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, at Conway, in Faulkner County, Arkansas.

Claimant was represented by the HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondent was represented by the HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on January 29, 2007, in Conway, Arkansas. A Prehearing Order was entered in this case November 27, 2006. This Prehearing Order set forth the stipulations offered by the parties and the issues to be litigated.

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

1. The employee-employer-carrier relationship existed on June 20, 2003; August 24, 2005; and at all other times.
2. The claimant's average weekly wage at the time of her injury was \$389.00, which entitles her to a weekly temporary total disability compensation rate of \$259.

3. The respondent has controverted this claim in its entirety.

By agreement of the parties, the issues to be litigated were limited to the following:

1. Whether the claimant's August 24, 2005 low back injury is a recurrence of her June 20, 2003, injury.
2. If claimant's August 24, 2005 low back injury is a recurrence, whether her claim for benefits is barred by the statute of limitations.
3. In the alternative, whether the claimant's August 24, 2005 low back injury is an aggravation of a pre-existing condition or a new injury.
4. Whether the claimant is entitled to medical benefits.
5. Whether the claimant is entitled to temporary total disability compensation.
6. Whether claimant's attorney is entitled to an attorney's fee.

The claimant reserved all other issues.

In regard to the foregoing issues, the claimant contends she sustained two compensable injuries to her low back while employed as a CNA for the employer. The first low back injury occurred while doing a patient transfer on June 20, 2003. This injury apparently was a medical only (Respondent and the claimant later clarified at the hearing that no medical benefits were ever paid on this injury). Claimant had a second low back injury on August 24, 2005 transferring a patient. The respondents have claimed that the August 24, 2005 incident is a recurrence of the June 20, 2003 incident, and that the statute of limitations has run on the

2003 injury. Claimant contends that the statute has not run on the June 20, 2003 claim and that if claimant sustained a recurrence, she is due TTD and medical benefits. Alternatively, claimant contends that she sustained a new injury on August 24, 2005, and respondents are liable for payment of the same benefits claimed. Claimant has objective evidence of injury, she timely reported both incidents; and claimant is entitled to compensation based on either or both injuries. The claimant further contends she was off work sporadically between August 24, 2005 and September 25, 2005, her treating physician took her off work. Claimant is not at MMI and has not been released to return to work. Claimant contends she is entitled to payment of medical expenses and TTD for dates to be proven at trial between August 24 and September 25, and TTD from September 25, 2005 to a date to be determined. Claimant also contends that respondents have controverted this claim with respect to the benefits claimed at present. Therefore, claimant contends she is entitled to maximum attorney's fees on all benefits awarded.

The respondent contends that the statute of limitations has run with respect to claimant's alleged June 20, 2003 injury to her low back. The claimant failed and/or refused to report any injury occurring on or about August 24, 2005 until filing the Form N on October 7, 2005 alleging an injury. The respondent further contends that the claimant's present complaints are the result of

a pre-existing condition and/or a recurrence of the claimant's prior injury.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order marked Commission's Exhibit No. 1, and a Notice of Lien was marked as Commission's Exhibit No. 2. The claimant's Prehearing Questionnaire was marked as Claimant's Exhibit No. 1, and medical records submitted by the claimant were marked as Claimant's Exhibit No. 2. The respondent's Prehearing Questionnaire was marked as Respondent's Exhibit No. 1, and medical records submitted by the respondent were marked as Respondent's Exhibit No. 2. However, it is noted that pages 32 through 37 of Respondent's Exhibit No. 2 were not considered since these pages related to some other patient rather than the claimant. Post-hearing Briefs were also filed by the parties and are hereby incorporated by reference.

The following witnesses testified at the hearing: the claimant, Stephanie Kennedy (Applewhite), Christine Fletcher, and Lisa Swafford.

DISCUSSION

The claimant, age 47(4/15/59), worked for the respondent as a certified nursing assistant. The claimant maintains that she was involved in two work-related injuries while working for the respondent. According to the claimant, her first injury occurred on June 20, 2003, while transferring a patient from the wheelchair

to the bed, and her second injury occurred on August 24, 2005, while working for the respondent as she transferred a patient.

At the hearing, the claimant testified that during her first injury of June 20, 2003, her lower back, below the waistline was injured. She admitted to having experienced pain up and around her shoulders, but denied having pain into her arms or legs. According to the claimant, she did not miss any time from work due to this injury, nor did she receive any medical treatment for the 2003 injury. The claimant essentially testified she merely reported this injury in case she had problems later. She further testified she continued working after her 2003 injury.

The claimant testified:

Q. Did you have any back problems between 2003 and 2005?

A. No.

Q. Did you lose any days from work because of your back between 2003 and 2005?

A. No

Q. Did you see a doctor for your back between June of '03 and August of '05?

A. No.

As to her second injury, the claimant admitted her second injury occurred on August 24, 2005. She testified her injury occurred while transferring a very large patient. At which time, she felt pain in her lower back above her waistline and into

her right leg and foot. The claimant testified her left leg bothered her some, but not as bad as the right, as she had numbness in her feet, as well as tingling and a shooting-type pain. According to the claimant, her leg problems started some days after her injury. The claimant testified she reported her 2005 injury to the charge nurse, Stephanie Kennedy. At the time she reported her injury, the claimant testified she was given some forms to fill out, and sent to a doctor for a drug test. According to the claimant, she first saw Dr. Krishna Reddy, the company doctor, who sent her for x-rays, and then back to work at full duty. The claimant essentially testified when she returned to see Dr. Reddy, he recommended she see a neurosurgeon. The claimant also admitted to seeing Dr. Carroll, her family doctor, as she felt Dr. Reddy was not doing anything for her back. She testified that Dr. Carroll gave her some medicine and referred her for an MRI. The claimant subsequently testified that it was Dr. Carroll who sent her to see Dr. Ron Williams. According to the claimant, Dr. Williams referred her for a myelogram, which was done sometime in October of 2005.

The claimant testified that Dr. Carroll took her off work but released her to return to work after her surgery. She denied being released by Dr. Carroll to work between the time she saw him and the time he referred her to Dr. Williams. According to the claimant, Dr. Williams took her off work and gave her additional

treatment after she had the myelogram in October of 2005. The claimant testified that Dr. Williams performed surgery on her back in November of 2005, after which she continued to treat with him. The claimant testified Dr. Williams eventually released her to return back to Dr. Carroll, who sent her for physical therapy treatment. The claimant testified Dr. Carroll referred her to Dr. Ahmad at United Pain Care, and she has been seeing him ever since. As of the date of the hearing, the claimant essentially testified her back related pain symptoms were being managed by Dr. Ahmad, as he had done some injections on her, and started her on oral medication in the form of a Duragesic patch.

As of the date of the hearing, the claimant testified she had not returned to work. She testified that although she had been released to return to work by Dr. Carroll, no other doctor or Dr. Ahamad had released her to return to work. The claimant testified she continues with leg numbness and pain, with some relief from her medicine. According to the claimant, a typical day for her is to get up, get dressed, have breakfast and do housework in intermediate times, with the assistance of her husband, which is followed by supper and then to bed.

The claimant testified there were periods of time she did not work while raising her kids, which was between the 1994 and 2003 injuries.

The claimant admitted to working at a nursing home (which is

the same Van Buren County outfit she was working for in 2003 and 2005, as the names have been changed) back in 1993 and 1994, and to having a back injury, in the form of a "pulled a muscle."

Although the claimant did not recall seeing Dr. Robert Dickins, a neurosurgeon, she testified she would not disagree if there were medical records in evidence showing she treated with him.

According to the claimant, after this injury, she got better, settled the claim without an attorney and went back to work.

The claimant agreed she was making a request for payment of her medical treatment. She admitted that Core Source has paid for a lot of her medical treatment. The claimant denied having drawn any short-term disability, but admitted she has a Social Security Disability claim pending.

On cross-examination, the claimant admitted to having worked for a furniture factory, Franklin Electric, and Ward Bus Company (AmTran). After this, she testified she worked in home health for White River Area on Aging, and then she worked for Ozark Health a couple of times. The claimant admitted to being injured in 1993 while working for Ozark Health, taking care of residents, an injury wherein she actually filed for and received workers' compensation benefits. During this injury, the claimant admitted to having reported her injury to her supervisor, the charge nurse. The claimant admitted to having a trigger finger injury while working for Ward Bus Company due to the tools she had been using.

The claimant further admitted to having also injured her right leg while working for Ward Bus Company as a result of a fall.

The claimant admitted to completing the CNA course in 2002, after which she became certified and has since been working as a CNA. On June 20, 2003, the claimant agreed she was working on the floor at Ozark Health as a CNA, when she pulled a muscle in her low back while transferring a patient. The claimant further agreed that she told the charge nurse she had been injured, and then completed the paperwork necessary in order to report that injury. The claimant admitted that the process for reporting an injury had not changed any in August of 2005.

The claimant specifically testified:

Q. So you would have completed a form very similar to that in 2005 if you had been injured?

A. Yes.

Q. Do you also - is there a phone call system or a number that you call?

A. Yes

Q. And that would have been done in 2005?

A. Yes.

Q. And you provide the information regarding the claim or your injury and what happened?

A. Yes.

Q. And then they tell you to go for treatment or direct what you do at that point?

A. Yes.

Q. And that happens at the time you report that injury; is that right?

A. Yes.

Q. Okay. Now you're claiming today that you were injured again on August 24 of 2005; is that right?

A. Yes.

Q. And again, you would have been working as a CNA on the floor?

A. Yes.

Q. And your supervisor would have been the Charge Nurse on duty that day?

A. Yes.

Q. And again, you were claiming that you had injured your back while moving a patient?

A. Yes.

Q. And shortly after moving that patient, you would have told Ms. Kennedy what happened?

A. Yes.

The claimant admitted to having worked the remainder of her shift on August 24, 2005. The claimant agreed that she had low back pain as a result of this incident. She also agreed that she stated during her deposition that she thought she was basically having complaints or problems in relation to the June 2003 event because of the pulling in her back and the pain she felt in 2003.

The claimant admitted to seeing Ms. Virginia Sayner, (a nurse practitioner) on her own for her 2005 injury. According to the claimant she reported her injury to the charge nurse and then she

saw Nurse Sayner. The claimant agreed that she did this because she believed her complaints were from her old injury. She further admitted no one from work told her to see Nurse Sayner, and that she was knew Nurse Sayner was not the company physician or the workers' comp doctor. The claimant agreed the Form N for this injury is dated October 7, 2005, and is in her handwriting and has her signature at the bottom. The claimant agreed this form was completed exactly a month after her September 7, 2005 MRI of the lumbar spine.

The claimant admitted she had back pain and right leg pain before August of 2005 and in fact that she had it before June of 2003. The claimant further admitted to having complained of low back pain and pain down her right leg into her thigh in 1994.

The claimant essentially admitted that at the time of her injury, her supervisor was Ms. Kennedy, and that she would have been the person to fill out a Supervisor's Accident Investigation Report. The claimant admitted this report reflects an accident date of September 24, 2005, and not August 24, 2005, which was signed by her and dated October 10, 2005.

The claimant admitted to discussing her injury with Lisa Swafford, who is the director of human resources, who indicated the statute of limitations had probably run on her claim because she was relating it back to the June of 2003 incident. According to the claimant, this conversation with Ms. Swafford took place

after she had made the 800 call to the doctor. She also admitted that after this conversation, she came back to Ms. Swafford and later told her about the August 24, 2005 event. The claimant testified that she did not tell Ms. Swafford that she had injured her back in August of 2005 until after she had gotten her MRI results of September 7, 2005 back. According to the claimant, the second time she reported her herniated disc, they sent her to the hospital to get a drug test, and then sent her over to see Dr. Reddy.

On redirect examination, the claimant essentially admitted to having called the Company Nurse outfit on August 29, 2005, but denied having previously seen a copy of the report. The claimant gave the following explanation as to why she waited so long to file the Form N in October:

Whenever I first went in there and told them that I thought this stemmed from the old injury, they sent me to Dr. Reddy. I called the Company Nurse, and they sent me to Doctor Reddy; and that's when they told me that the Statute of Limitations had run out."

Then I kept hurting. So I went back to my doctor, and he ran an MRI on me. I actually went back to work and kept getting worse. My leg started getting numb....

The claimant testified that her injury in 2003 was just a strain of her back, which she reported and went back to work the next day or maybe the next couple of days, after which it did not bother her. According to the claimant, with her 2005 injury, the problems went down into her foot. The claimant denied any

symptoms that went down into her foot with the 1994 injury.

The claimant testified she talked to Ms. Swafford before she called the company nurse, as she had gone down to get the paperwork to call the company nurse. The claimant denied being offered a Form N by Ms. Swafford at this time. According to the claimant, Ms. Swafford did not offer her this form until October, when she signed it.

The claimant denied having actively sought treatment for her back between 1994 and 2003, but admitted there were times when she would hurt all over, as she was head CNA and had to do more than others.

Stephanie Kennedy (Applewhite) was called as a witness. She testified that in August of 2005, she was employed at Ozark Health as an LPN and charge nurse, but she now works there part time as needed. Ms. Applewhite denied being present at the nursing center on August 24, 2005. Ms. Applewhite testified she did not recall the claimant having reported to her when she was working as charge nurse that she had injured her back. Ms. Applewhite admitted to completing the Supervisor Accident Investigation Report on October 10, 2005, which was the day she got the information. Ms. Applewhite admitted she got the date of injury as being September 24, 2005 from the claimant. Ms. Applewhite did not recall being involved in any other documentation of an event involving the claimant other than the October 10, 2005 report. She also

testified the first time the claimant came to her claiming an injury on the job had occurred was on October 10, 2005.

On cross-examination, Ms. Applewhite agreed that an injured employee may obtain forms from the nurse's station and complete them when injured. In addition to this, she admitted the employee should also call the company nurse. She denied being aware that the claimant had called the company nurse on August 29, 2005. Ms. Applewhite testified that she does not recall the claimant talking to her in August of 2005 about having hurt herself while transferring a patient. According to Ms. Applewhite, after filling out the paperwork, the claimant asked if she remembered her coming and telling her, but she honestly did not remember it, nor did she know anything about her call to the company nurse.

On redirect examination, Ms. Applewhite also testified the first time the claimant came to her wanting to complete any type of report was on October 10, 2005.

Christine Fletcher, an administrative assistant for the respondent was called as a witness. According to Ms. Fletcher, she actually hires and interviews people for positions. She admitted to having hired the claimant, who she testified worked as head CNA in August of 2005. Ms. Fletcher testified that during orientation, she instructs new CNA's to report an injury to their charge nurse. As to the claimant's injury of June 20, 2003, Ms.

Fletcher admitted the claimant told her about her injury the next day, and stated that she had reported it. Ms. Fletcher stated she asked the claimant if she wanted to go to the doctor but she said, "no," and that was the end of it.

Ms. Fletcher testified:

Q. Okay, did you later learn that she had gone to a doctor with regard to back complaints before August of 2005?

A. She went to Boston Mountain, yes.

Q. Did you have a conversation with her after she had gone to Boston Mountain?

A. Yes.

Q. What did she tell you at that point?

A. I said, "What did the doctor tell you?" And she said, "It was just old age." She kinda laughed when she said it. I said, "Well, what are they going to do?" She said, "They put me on some pain medicine."

Ms. Fletcher testified that the claimant did not ever indicate to her she had injured her back in August of 2005. According to Ms. Fletcher, she did not become aware the claimant was complaining of back problem relating to an incident in August of 2005 until being advised by the respondent's counsel, which would have been at some point in 2006.

On cross-examination, Ms. Fletcher reported that if the claimant called the company nurse on August 29, 2005, she would not be aware of it, nor was it necessary for the claimant to report her injury to her, except for scheduling purposes.

Lisa Swafford, director of administrative services and human resources for the respondent also gave testimony. She admitted that the claimant did tell her in August (2005) that she had injured her back in 2003 and it was bothering her again and she needed to be seen. According to Ms. Swafford, she advised the claimant that she did not believe they would go back that far. Ms. Swafford testified she asked the claimant a couple of times if she had re-injured herself or done something else and she told her "no," and she stated she felt it all stemmed back to the 2003 injury. She admitted to talking to the claimant before she made her call to the company nurse.

Ms. Swafford essentially testified that based on the evidence of record, the claimant called the company nurse on August 29, 2005 at 12:18 and reported her injury. However, Ms. Swafford later testified that she could not recall if she talked to the claimant immediately before her call, but she believed that it was that day. According to Ms. Swafford, she was not aware that the claimant was claiming an August 2005 event until sometime in October, as prior to this the claimant had related her problems back to the June of 2003 event. On

cross-examination, Ms. Swafford again testified she could not recall the exact date of her conversation with the claimant pertaining to the statute of limitations. She again testified the claimant told her multiple times she had not hurt herself lately.

On re-direct, Ms. Swafford testified she believed that her conversation with the claimant in August of 2005 took place before the call (claimant's to the company nurse), after which she got documentation wherein an event in June of 2003 was attributed as the cause of the claimant's back problems.

The claimant has a prior history of back problems. On January 21, 1994, the claimant sought treatment from Dr. Robert Dickins as a result of having hurt her back while transferring a patient at work on December 22, 1993. The claimant reported an onset of pain in her back, but primarily in her right buttock. The pain radiated from her buttock down into her posterior thigh to about the knee. Dr. Dickins noted that the claimant had symptoms which could suggest nerve root compression; however she did not have the physical findings to correlate with that diagnosis at present. Therefore, he ordered a course of physical therapy treatment, to be done three times a week for two weeks, and he took her off work.

The claimant returned to see Dr. Dickins on February 7, 1994. She reported having done considerably better with physical therapy and that she was planning to return to work, however three days prior to seeing Dr. Dickins she noted her pain had returned. Therefore, additional continued conservative management was indicated. Hence, additional physical therapy was ordered, and it was recommended she stay off work at least until February 21,

1994.

Dr. Dickins referred the claimant to Dr. Barry Baskin, who saw the claimant on April 20, 1994. He noted that the claimant had undergone an MRI of the lumbar spine and that Dr. Dickins had reviewed it and it was basically negative. After examining the claimant, Dr. Baskin assessed the claimant as having sustained a "low back strain," for which he recommended additional conservative treatment and a functional capacity assessment.

On May 30, 1994, Dr. Baskin declared maximum medical improvement and released the claimant back to full duty work effective the following day.

A review of the record shows that the claimant reported having injured her back on June 20, 2003, while working for the respondent, as she transferred a patient from the bed to a wheelchair. However, the claimant's 2003 injury did not require any medical treatment.

The claimant sought treatment for her current back problems on August 24, 2005 from the Boston Mountain Rural Health Center, Incorporated under the administration of a nurse practitioner, Virginia Sayner. Nurse Sayner reported, "Roxianne is 46-year-old here today with lower back pain. She works at the hospital and does a lot of pulling and lifting. Legs ache at night..." On physical examination, the claimant was found to have tenderness along the para spinal muscles, mainly on the right. Nurse Sayner

assessed the claimant as having "lumbar strain," for which conservative measures were discussed. The claimant was taken off work for one day and encouraged to use the back brace when lifting.

X-rays taken on the lumbar spine on August 24, 2005, which revealed the following findings.

AP and lateral views of the lumbar spine demonstrate mild straightening of the normal lumbar lordosis. No evidence for displaced fracture or dislocation. Mild degenerative changes in the lower lumbar spine noted.

On August 29, 2005, the claimant contacted the Company Nurse via an 800 number to report she had injured her back. According to the triage description, the claimant was initially injured in June of 2003. This report also reflects that the claimant's injury had occurred about a week ago, which would have been August 22, 2005.

The claimant was seen on September 1, 2005, by Dr. Barry Carroll for complaints of lower back pain. His assessment was "low back pain with radiation into both legs, worse in right than left, distribution is more along the L4-L5 distribution in the right foot where she is describing numbness." As a result, the claimant was set up for an MRI on September 7, 2005.

An MRI of the lumbar spine was performed on September 7, 2005, with the following impression:

IMPRESSION: Right paracentral/lateral disc protrusion extending into the neuroforamen and touching and

displacing the right L4 nerve root. There is moderate right neuroforaminal narrowing due to the disc bulge/protrusion. Otherwise unremarkable MRI of the lumbar spine.

On September 22, 2005, the claimant was seen by Dr. Barry Carroll at the Boston Mountain Rural Health Center due to reported complaints of pain that radiated into both legs with the pain being worse in the right leg than the left. The claimant also complained of tingling of the right foot, and numbness into the her right foot, which was more along the L4-L5 distribution. Dr. Carroll's assessment was, "anxiety; low back pain with radiation into both leg, worse in right than left, distribution in more along the L4-L5 distribution in the right foot where she is describing numbness, and an abnormal mammogram."

The claimant filed a Form AR-N on October 7, 2005. In this form the claimant reported having injured her back on August 24, 2005, and to having reported the incident to her employer on August 29, 2005 at 9:00 a.m.

A Supervisor's Accident Investigation Report was completed on October 10, 2005, by Ms. Kennedy. In this report, she states that the claimant injured her back on September 24, 2005, while lifting and lowering residents.

On October 26, 2005, the claimant underwent a lumbar myelogram, which revealed a mild disc bulge at L4-5 on the crosstable lateral. The CT scan was taken on that date with the following impression:

1. There is a broad-based disc bulge at L4-L5 but there is a focal lateral herniation at L4-L5 with the disc herniation extending into and beyond the neural foramen on the right side. This disc protrusion appears to be touching and displacing the exiting right L4 nerve root.

2. There is a mild right paracentral disc bulge at L5-S1 of uncertain significance.

The claimant saw Dr. Mahmood Ahmad on August 1, 2006 for evaluation of low back pain. He diagnosed the claimant with postlaminectomy syndrome, lumbar disc disease with myelopathy and lumbosacral spondylosis. On August 4, 2006, the claimant underwent an L5-S1 transforaminal nerve root injection at the Arkansas Surgical Hospital, which provided some relief as noted in Dr. Ahmad in his progress notes of September 1, 2006.

The claimant continued to treat with Dr. Ahmad. On November 15, 2006, he noted that the claimant had been cleared psychologically for spinal cord stimulation, as she had failed interventional injection treatments. His assessment was "postlaminectomy syndrome."

The last treatment of record shows that the claimant saw Dr. Ahmad on January 6, 2007. At which point, he noted that the claimant was continuing under medication management, which included life-long use of Class II or III opioid therapy with very high risk of physical dependence. He noted that he had again discussed spinal cord stimulation.

In the present matter, the first issue for determination is

whether the claimant's alleged August 24, 2005 low back injury is a recurrence of her June 20, 2003 low injury. In Maverick Transp. V. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000), the Arkansas Court of Appeals discussed the difference between an aggravation and a recurrence as it relates to workers' compensation law. The Court stated:

An aggravation is a new injury resulting from an independent incident. Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. Weldon v. Pierce Bros. Constr., 54 Ark. App. 344, 925 S.W.2d 179 (1996). Only where it is found that a second episode has resulted from an independent intervening cause is liability imposed upon the second carrier.

Id. at 130, 10 S.W.3d at 468. An aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998). After careful consideration of all the evidence, I find that there is insufficient evidence to support a finding that the claimant suffered a recurrence of her June 20, 2003 injury. Although the claimant reported her June 20, 2003 back injury, there is no documented evidence she ever missed any time from work due to this injury, nor did she receive any medical treatment for the 2003

injury. The claimant specifically testified that between 2003 and 2005, she did not suffer any back problems, nor did she see a doctor during this time period. Hence, the preponderance of the evidence shows that the claimant was essentially pain free and without back difficulties until her most recent back problems.

The next issue of consideration is essentially whether the claimant suffered an aggravation of a preexisting condition or a new injury on August 24, 2005.

As previously noted, an aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998). Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D).

The credibility of witnesses and the weight to be given to their testimony are matters solely within the province of the Commission. Ringier America v. Combs, 41 Ark. App. 47, 849 S.W.2d

1 (1993).

In my opinion, a review of the evidence demonstrates that the claimant did not prove by a preponderance of the credible evidence that she sustained an aggravation of a preexisting condition or a new injury on August 24, 2005.

The claimant alleges she injured her back on August 24, 2005, while transferring a patient. Although the claimant testified she reported this incident to Ms. Kennedy, she did not recall the claimant having reported the incident to her. Ms. Kennedy essentially testified she was not made aware of the claimant's claim of an August 2005 back injury until October 10, 2005, at which point she completed paperwork pertaining to this alleged injury. When the claimant sought treatment for this injury on August 24, 2005 from Boston Mountain Rural Health Center under the direction of Nurse Sayner, there is absolutely no mention of a specific lifting incident having occurred on that day with a patient. When the claimant called the company nurse on August 29, 2005, she related her current back problems to her 2003 injury. Although the claimant discussed her current back problems with Ms. Swafford, she specifically testified that the claimant did not ever indicate to her that she had injured her back in August of 2005 until in October of 2005. According to Ms. Fletcher, she spoke to the claimant after she had gone to Boston Mountain, and she stated that the doctor had told her "it was just old age," and

given her some medicine. Ms. Fletcher testified she was not made aware the claimant was claiming a August 2005 injury until some time in 2006, at which point she was made aware of this by the respondent's counsel. In addition to this, Ms. Swafford credibly testified that the claimant came to her some time in August of 2005 and reported that she had back problems as a result of her 2003 injury and at no time did she report having injured herself recently although she asked her several times if she had injured herself recently, but she denied having done so. Ms. Swafford testified she was not made aware of the claimant's claim for a 2005 injury until some time in October of 2005. The claimant admitted that she did not tell Ms. Swafford that she had injured her back in August of 2005 until after she had gotten her September 7, 2005 MRI results. Based on the evidence of record, it is clearly demonstrated that the claimant did not relate her current back problems to an incident in August of 2005, until after she got the results of the September 7, 2005 MRI. In comparing the claimant's testimony to the preponderance of the evidence, I find that the claimant has not presented credible evidence that she sustained an aggravation of a preexisting condition or a new back injury arising out of her employment with the respondent on August 24, 2005.

Therefore, having found that the claimant failed to prove by a preponderance of the evidence that she suffered a compensable

back injury, I further find that the claimant is not entitled to any reasonable and necessary medical treatment for her current back problems, nor is she entitled to temporary total disability compensation for this condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed on August 24, 2005, and at all other relevant times.
3. The preponderance of the evidence fails to show that the claimant suffered a recurrence of her June 20, 2003 back injury.
4. The claimant failed to prove by a preponderance of the evidence she suffered an aggravation of a preexisting condition or a new injury to her back on August 24, 2005 during and in the course of her employment with the respondent.

ORDER

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

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml