

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F510344**

**PATRICIA QUARLES, EMPLOYEE**

**CLAIMANT**

**TARGET CORPORATION,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 22, 2007**

Hearing before Administrative Law Judge Barbara Webb on October 23, 2006, in Little Rock, Pulaski County, Arkansas.

The claimant appeared *pro se*.

The respondents were represented by Mr. Guy Alton Wade, Attorney at Law, Friday, Eldredge & Clark, Little Rock, Arkansas.

A hearing was held on the above-styled claim on October 23, 2006, before Administrative Law Judge Barbara Webb. The claimant was advised that she has the right to an attorney, that the law limits what fee an attorney may charge for representing a claimant, and that she had the right to postpone this hearing in order to obtain representation. Being fully advised of her rights and responsibilities, the claimant nonetheless elected to represent herself. A Pre-hearing Order was filed on May 30, 2006. An initial hearing was held in this case on September 20, 2006. However, at the hearing, claimant requested additional time to obtain certain documents relevant to the issues in the case. The continuance was granted and the case was rescheduled. A second Pre-hearing Order was entered in this case on October 10, 2006. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A

copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record. By agreement of the parties, the stipulations applicable to this claim are as follows:

1. That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. That the employee/employer/carrier relationship existed at all relevant times, including on or about August 9, 2005.
3. That if proven compensable, the claimant earned wages sufficient to entitle her to a temporary total disability rate of \$228.00.

By agreement of the parties, the issues to be litigated are:

1. Whether the claimant sustained a compensable injury on August 9, 2005.
2. Controversion.

The records consists of a one volume transcript of the October 23, 2006 hearing, consisting of the testimony of Patricia Quarles and all documentary evidence consisting of Commission's Exhibit No. 1 (Transcript of September 20, 2006); Claimant's Exhibit No. 1 (Schedule); Claimant's Exhibit No. 2 (Medical records); Claimant's Exhibit No. 3 (Interrogatory Responses); Claimant's Exhibit No. 4 (Answers to Interrogatories); Claimant's Exhibit No. 5 (August 16, 2005 Letter); Claimant's Exhibit No. 6 (Prehearing Order filed May 30, 2006); Claimant's Exhibit No. 7 (October 3, 2006 Letter w/attachments); Claimant's Exhibit No. 8 (August 22, 2005 Letter); Respondents' Exhibit No. 1 ( Form AR-C). In addition, I have blue-

backed a copy of a transcript of the initial hearing held on September 20, 2006, a post-hearing brief submitted by claimant on November 3, 2006, and a post-hearing brief submitted by respondents on November 1, 2006, which are fully incorporated by reference and made a part of the record of this proceeding.

### **FACTUAL BACKGROUND**

\_\_\_\_\_Patricia Quarles is fifty years old (bd. November 29, 1955). She completed high school and five years of college majoring in Social Work and English. She has been employed in various capacities since the age of 14, including working for the Arkansas Democrat-Gazette, teaching a foreign language project at Arkansas Baptist College, and worked at Target three times. In December of 2002, she began working at Target as part of the overnight flow team in the home furnishings and appliances department. Her job duties included unloading pallets of merchandise and physically removing boxes from pallets and restocking shelves. On August 9, 2005, she was putting comforters on a shelf when she felt pain in her lower back, right hip and leg. She explained that as she continued to work, she would feel twinges every once in a while until her leg stiffened such that she couldn't continue to work. She reported the injury to her supervisor. She drove home and called in the next day to let them know she was still stiff and could not work. She attempted to return to work a few days later but was still unable to work. She filled out paperwork and spoke with a nurse. She was referred to a clinic. She was seen by Dr. Eisenach on August 21, 2005, complaining of pain in her right leg. She was evaluated and released to return to light duty work. She returned for follow-up

evaluation with Dr. Eisenach on August 30, 2005, and was prescribed Naproxen and was administered a steroid shot. She was also given instructions for exercises to stop the catches and the radiating pain. After the shot, the pressure on the upper part of her hip was gone, but she continued to experience the twinges that would shoot up her leg. She continued to work and returned to see Dr. Eisenach on September 14, 2005. At that time, the doctor released her to return to full duty work. She explained that she continued the exercises and pain medication and slept on the floor. She worked but continued to perform light duties. She explained that she did not receive the real heavy assignments or pulling work. She continued on the Naproxen on an as needed basis. She left Target in October of 2005. When she ran out of the prescription on Naproxen, she took over-the-counter medication. She explained that she continues to sleep on the floor and take medication when it bothers her. After leaving Target, she worked for Eagle Personnel and was assigned to a temporary job at a call center at the Little Rock airport. She worked at the temporary job from October until December 29, 2005, and made approximately \$5.00 more per hour than her job at Target. She explained that when she had returned to Target, she worked an altered shift. She also explained that during that time, her car broke down and it was hard for her to get to Target. She also drew unemployment benefits during this time, but would have adjustments for the days she worked in the temporary jobs. She testified that the respondents paid all of her medical bills at the clinic.

On cross-examination, the claimant acknowledged that she had graduated from a 12-month program at John Business College. She also worked at Health Scope and Family Dollar. She agreed that the doctor's notes released her back to full duty work on September 15, 2005. Her only medical treatment consisted of the three visits with Dr. Eisenach. She testified that her normal schedule at Target would have been five days instead of the three days consisting of six to seven hour shifts instead of four hour shifts she worked after the injury.

The medical records reflect that Quarles was first evaluated on August 21, 2005. At that time, she complained of pain in her right leg in sciatic fashion noting that it was worse when she sits for a long period of time. The objective findings were "On exam, there is no muscle spasm of her back. She has typical radiation down the right leg in a sciatic fashion." She was diagnosed with HNP with right sciatica and placed on light duty work. She was given a Depo-Medrol shot, instructed on exercises, and prescribed Naprosyn. On August 30, 2005, she was examined again. Dr. Eisenach noted that the claimant has a nice response to the shot and that she was fairly comfortable with very little discomfort in her right leg and lower back. He further noted that there was no palpable muscle spasm. He diagnosed her with resolving HNP with right sciatica and returned her to work with a 25 pound lifting restriction. On September 14, 2005, she was seen again. At that time, the doctor's notes reflect that her back exam was normal and returned her to full-duty work starting September 15, 2006.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. That the employee/employer relationship existed at all relevant times, including August 9, 2005.
3. Claimant has failed to establish by a preponderance of the evidence that she suffered a compensable injury on August 9, 2005.
4. Claimant has failed to establish a compensable injury by medical evidence supported by objective findings.

**DISCUSSION**

The claimant contends that she sustained a compensable injury to her lower back within the course and scope of her employment with respondent employer.

The respondents contend that the claimant did not sustain a compensable injury within the course and scope of her employment; that claimant's complaints are idiopathic and not related to a work injury; and that claimant suffers from a preexisting condition and/or a recurrence for which respondents are not liable.

**I. COMPENSABILITY**

Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury": (a)n 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 in 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 be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). If claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim, and compensation must be denied.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). It is important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985); Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In the instant case, the only evidence offered by claimant that she was hurt while performing employment services at Target was her own testimony. The medical records reflect that she did not immediately seek medical treatment even though the claimant testified that she was unable to return to work for several days

due to the pain. Based on my review of the credible evidence, I find that claimant has failed to establish that she was hurt while performing employment services.

## II. AGGRAVATION/RECURRENCE

Respondents contend the complaints of back pain by the claimant should be considered a continuation and/or recurrence of the claimant's problems from her preexisting conditions.

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).

The test to determine whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is

a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. Guidry v. J & R Eads Const. Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984), Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998), Davis v. Old Dominion Freight Line, Inc. 341 Ark. 751, 20 S.W.3d 326 (2000).

The determination of the credibility of the witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. Cooper v. Hiland Dairy, 69 Ark. App. 200, 11 S.W.3d 5 (2000).

In the instant case, the claimant has testified that she had no prior back or leg problems prior to the incident at work. No medical records or other credible evidence was offered to demonstrate that claimant had suffered from previous back or leg problems. Therefore, respondents' argument must fail.

### III. OBJECTIVE FINDINGS

Respondents contend that there are no "objective findings" as required in order to support compensability of the injury. The claimant bears the burden of proving a compensable injury by a preponderance of the evidence. Smith v. City of Fort Smith, 84 Ark. App. 430, 143 S.W.3d 593 (2004). In addition to proving her injury by a preponderance of the evidence, the claimant must establish the existence of the injury by medical evidence and supported by "objective findings." See Ark. Code Ann. § 11-9-102(4)(D). Objective findings are those that cannot come under the voluntary control of the patient. See Ark. Code Ann. § 11-9-

102(16)(A)(i). The claimant must also prove that there is a causal connection between the work-related accident and the injury. Stevenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). With respect to this proof, the claimant must show that the “major cause” of the injury is the workplace. When making this determination, the claimant does not receive the benefit of the doubt. Ark. Code Ann. § 11-9-704(c)(4)(Supp. 1995); Glencorp Polymer Products v. Landers, 36 Ark. App. 190, 820 S.W.2d 475 (1991). A claim for workers’ compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. Arkansas Department of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991).

In the present case, the claimant has not presented any objective medical findings supporting the existence of a compensable injury as a result of any work performed by the claimant. Although the doctor assessed the claimant with a slipped disc, there were no reports of spasm, swelling, or any other objective findings establishing a compensable injury. In fact, all of the reports reflect normal findings and the assessments are based on subjective complaints within the voluntary control of the claimant. Therefore, I find that the claimant does not establish a compensable injury by medical evidence supported by objective findings.

I would also note in conclusion that even if credible evidence established that the claimant’s injury was compensable, the evidence further demonstrates that all benefits to which claimant would have been entitled have been paid by

respondents. The claimant continued to work after her alleged injury and left her employment with the respondents for other reasons and a job with higher pay. Although claimant testified that she would have worked longer and more shifts prior to the injury, the work schedule records do not reflect that claimant consistently worked the same schedule. It would be mere speculation to determine what days, if any, claimant did not work as a result of the alleged injury. In addition, the medical bills incurred by claimant for the three doctor's visits were paid by the respondents. After the final doctor visit, the claimant was released to full duty work without restriction. There is simply no evidence which would support an award of benefits in addition to those paid by respondents.

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**ORDER**

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

**IT IS SO ORDERED.**

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**HONORABLE BARBARA WEBB**  
**Administrative Law Judge**