**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F207899 (06/24/02)**

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| **PATRICIA AYCOCK, EMPLOYEE** | **CLAIMANT** |
| **QUAPAW QUARTER NURSING CENTER, EMPLOYER** | **RESPONDENT** |
| **PACIFIC EMPLOYERS INSURANCE, CARRIER** | **RESPONDENT** |

**OPINION FILED JUNE 24, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 21, 2008, at Little Rock, Puluski County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

## STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits. On March 13, 2008, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Patricia Aycock, the claimant, Robert Aycock, and Mertis Valley, coupled with the April 25, 2007, deposition of the claimant and the November 28, 2007, deposition of Dr. Kenneth A. Martin, along with medical reports and other documents comprise

the record in this claim.

## DISCUSSION

Patricia Aycock, the claimant, with a date of birth of March 18, 1954, is a high school graduate. After high school claimant attended Capitol City College and earned a nursing certificate. Claimant later obtain a CNA license thereafter.

The testimony of the claimant reflects that she commenced working at Briarwood Nursing Home in 1998 as a nursing assistant. Claimant maintains that the owners of Briarwood Nursing Home also owned Quapaw Quarter Nursing Center. The claimant was transferred to Quapaw Quarter Nursing Center during the rebuilding of Briarwood Nursing Home.

The testimony in the record reflects that the claimant performed the same job duties at Quapaw Quarter Nursing Center as she performed at Briarwood Nursing Home. Claimant confirmed that her husband transported her to work. Claimant estimates that she had worked at the Quapaw Quarter Nursing Center approximately a one month and a half prior to the June 24, 2002, accident.

Claimant asserts that on June 24, 2002, she sustained a slip and fall within the course and scope of her employment which resulted in injuries to her back. In describing the mechanics of the June 24, 2002, accident, the claimant testified:

> It was like 11:30, and my relief, the lady that went before me, she hadn't come back, so I went looking for her, and I didn't ever find her, so I went to - - one of my co-workers was down the hall, and I went to walk down and Hall C, and in the process of walking down Hall C, I fell. (T. 39).

The testimony of the claimant reflects that she required assistance getting up off the floor following her accidental fall:

> It was a lady named - - I don't know her last name. Her name was Judy, Nurse Judy, and this Scott, he worked with the books, and I don't know the next person. She was like in the third office from where I fell. (T. 41-42).

After getting up off the floor, following the accidental fall, claimant testified:

> Well, me and my friend went out there and sat on the back for a little while, then we came back and went to the dining room, and I had told her that I was hurting, and she informed me to go get a - - one of them incident report, and me and her both filled it out. (T. 42).

The claimant testified that she obtained the incident report from the office of respondent-employer, and that after completing it she turned it in to Scott in the office. The testimony of the claimant reflects that after completing and turning in the incident report she sit in the dining room, in pain, and waited for her husband. Claimant did not perform any further work duties following the accidental fall.

In describing her injuries growing out of the accidental fall, claimant testified that she injured her knee and lower back. Claimant's testimony reflects that she had a procedure performed on her knee under the care of Dr. Kenneth Martin, however the knee still lock up on her every now and again.

The testimony of the claimant reflects that her job duties as a nursing assistant in the employment of respondent-employer consisted of all patient care; lifting patients and assisting them in taking baths, feeding, and helping them walk. Claimant testified that she was able to perform her job without any restrictions or limitation prior to the June 24,2002, accident.

Claimant testified that her schedule period to go to lunch was 11:30 a.m. The testimony in the record reflects that the claimant clocked-in each morning when reporting for work; however the claimant was not required to clock out and in during her lunch break. Claimant had

a thirty (30) minute period for lunch. Claimant noted that she could not go on her lunch break until her relief had return from her lunch break. Claimant insist that she had not gone to lunch at the time of the June 24, 2002, accidental fall.

During cross-examination claimant testified that she currently lives at 79 Dartmouth Drive, in Little Rock and has so resided for six to seven years. The residence is a two-story structure with the bedrooms being located on the second floor. Claimant testified that following her June 24, 2002, accident, he husband prepared a bed for her on the first floor until she got better.

The testimony of the claimant reflects that during her employment for respondent-employer she worked five day a week from 7:00 a.m. until 3:00 p.m. Claimant was provided two fifteen (15) minute breaks in addition to the thirty (30) minute lunch break. The testimony of the claimant reflects that she was not paid for time of her breaks.

In describing the physical lay-out of the work facility, the testimony of the claimant reflects the she entered through the front entrance onto Hallway C; and that just inside of the door is the location where you clock in. The testimony of the claimant reflects that as a CNA in the employment of respondent-employer she was assigned a particular hallway each day and cared for patients/residents of that particular hallway. Typically, there were two (2) people assigned to each hallway.

Claimant testified that on the day of her accidental fall, she was one of three (3) people assigned to Hallway G, however one of the ladies did baths. Because of the third employee's responsibility of drawing baths, there were only two employees on the hallway and during the lunch period. Hallway G was not the site of the claimant's accidental fall. Claimant testified that

the patients/residents of the facility take their lunch at 12:00 noon, and it is the responsibility of the CNA assigned to the hallway to help the residents/patient get to the dining room

The testimony of the claimant reflects that at approximately 11:15 a.m. she and Ms. Valley, who was assigned to work on a different hallway, discussed going to lunch together. Claimant testified that they had talked about going to McDonald's or Ms. Valley's house to eat lunch.

The claimant's testimony reflects that during the course of the day she talked to her supervisor about leaving for lunch and the fact that her replacement had not returned. Claimant acknowledged that when her replacement failed to return by 11:30 a.m. she went around and looked for her. Claimant concedes that she returned to talk to her supervisor when she did not find her replacement. Claimant acknowledged that her supervisor told her that if she bought the patients/residents from her hallway to the dining room then she could go ahead and leave for lunch. Claimant testified that she did in fact take all of the patients/residents from her hallway to the dining room where all her charges were secured, at which time she went to lunch. (T. 55).

The testimony of the claimant reflects that after securing her patients/residents in the dining room, she left to go to lunch. Claimant testified that as she was preceding down Hallway C, with Ms. Valley waiting at the doorway ahead of her, when she suffered the accidental slip and fall. Claimant concedes that she was heading toward the doorway which exits the facility when she fell. Claimant acknowledged that had she not fallen she would continued walking right down Hallway C and out the door to lunch. The testimony of the claimant reflects that following her fall, and being assisted off of the floor, she continued on and took what was left of her break.

The testimony of the claimant reflects that when she fell during the June 24, 2002,

accident she landed on her right knee. Claimant maintains that when she obtained medical treatment on June 25, 2002, following the accident she told the doctor how the accident occurred. Claimant has no recollection of having a head congestion, cough and/or sore throat for which she sought medical treatment along with complaints of her injury growing out of the accident on June 25, 2002. In terms of her medical treatment claimant responded regarding medical records reflecting treatment by Dr. Ebel on June 25, 2002, "I think that's when I went for my knee, I believe". (T. 58).

Claimant maintains that she received medical treatment between the June 25, 2002, initial visit to Dr. Ebel and a July 10, 2002, visit to Dr. Cooper. Further, claimant testified that she talked to Dr. Cooper about how her knee was doing at the time of the July 10, 2002, visit. Claimant noted that she informed the doctor that she had slipped and falling at work, resulting in bruised knee. Claimant denies that she told Dr. Cooper that her knee had been improving until the night before the visit when felt a pop in her back when she twisted at home.

Claimant acknowledged that she was seen by Dr. Patricia Moss-Vickers in either late 2003 or early 2004, and that during a February 12, 2004, visit she relayed complaints regarding both her knees. Claimant testified that she was unaware of the presence of arthritis in both her knees until the June 24, 2002, accident. The testimony of the claimant reflects that she had symptoms of locking and swelling in her right knee but not her left knee. Claimant acknowledged that she blacked out several days prior to a February 26, 2004, visit to Dr. Moss-Vickers, however denied that she relayed complaints of falling and hurting her right shoulder, right knee or having a swollen right side lower back. Claimant asserts that while she blacked out, she did not fall. Claimant maintains that the symptoms of right shoulder pain, right knee

pain and swelling in the right side of her lower back were attributable to the June 24, 2002, accident.

Claimant acknowledged that the arthritis in her knees produced severe pain at times which made it difficult for her to climb steps. Further, the claimant testified that she took prescription pain medication because of the problems with her knees. Claimant acknowledged being referred by Dr. Moss-Vickers to Dr. Tad Pruitt for her knee complaints.

The testimony of the claimant reflects that she treated with Dr. Krishnan for her complaint of back pain. Claimant attributes her back complaints to the June 24, 2002, fall at work (T. 62). Claimant concedes that during her deposition she responded that she had no idea what caused her back problems. The testimony of the claimant reflects that when she attempted to increase her physical activities in accordance with the recommendation of Dr. Krishnan she experienced an increase in her back pain which required a September 29, 2004, emergency visit to Dr. Krishnan for treatment. (T. 63-64). Claimant denies that she was scrubbing the floors and a lot of vacuuming, and that the same bought on the need for the return medical visit for treatment.

The claimant acknowledged that following the September 29, 2004, visit to Dr. Krishnan she sought treatment under the care of Dr. Kenneth Martin for complaints associated with her knee. Dr. Martin performed surgery on the knee which the claimant "helped a little bit", however still has pain.

Claimant testified that she is now receiving social security disability benefits. Regarding any efforts to return to the employment of respondent following the June 24, 2002, accidental fall claimant testified:

> Well, I had went back that ten days light duty at the time, and she told me they didn't have no light duty, so she sent me back home. (T. 65).

Claimant testified that at the expiration of the ten days she did not report back to respondent-employer because she was not in any shape to go back. Claimant's testimony reflects that she returned to respondent-employer a couple of times. Further, claimant acknowledged testifying during her deposition that if there was a job that would allow her to sit or stand as needed she thought she could to it.

Robert Louis Aycock, the claimant's husband of five (5) years, is a disabled veteran of the Vietnam war. The testimony of Mr. Aycock reflects that he and the claimant were married on April 1, 2002. Mr. Aycock maintains that at the time of his marriage to the claimant she did not suffer from any physical complaints or limitations. Mr. Aycock testified that he carried the claimant her lunch almost every day when she worked at Briarwood Nursing Home.

When the claimant was transferred to Quapaw Quarter Nursing Center her hours were from 7:00 a.m. until 3:00 p.m. The testimony of Mr. Aycock reflects that because the claimant does not drive he transported her to work each morning and pick her up at the end of her shift. Mr. Aycock testified that he dropped the claimant off at work on June 24, 2002, as ususal and that he returned to pick her up at 3:00 p.m. Mr. Aycock's testimony reflects that when he returned to pick the claimant up at 3:00 p.m. she told him about the work-related incident, which serves as the basis for the present claim:

> Yes, sir. I had to go inside the building which was unusual. She did not come out as usual when I would drive to the front, so when I went inside there was a room there that had sofas and seats for the patients, and I wen in and she was sitting there and her face was all swollen red as if she had been crying, and I asked her what was wrong, and she

explained to me that - -

> Yes, sir. Well, when I saw her swollen face and red eyes, I asked her what was wrong, and that's when she related to me that she had fallen and she - - even at that time, she was having trouble getting up, so I pulled her up and assisted her to the vehicle. (T. 12-13).

The testimony of Mr. Aycock reflects that after he dropped the claimant off at work on the morning of June 24,2002, he had gone to either a workshop or funeral, during which time he had turned his cell phone off. As a consequence of the afore the claimant was unable to reach Mr. Aycock. Claimant relayed that she had been hurting all day since the fall and just wanted to go home and lay down when asked by her husband if she wanted to go the doctor.

Mr. Aycock asserts that after arriving home he assisted the claimant upstairs and helped her to bed. Mr. Aycock testified that the following morning, June 25, 2002, the claimant was unable to get up and out of bed without assistance. Mr. Aycock asserts that when he asked the claimant if she wanted to go the emergency room claimant relayed that she did not have insurance and was doubtful if she would be seen. Mr. Aycock testified that the claimant had been seeing a doctor at the St. Vincent Clinic. Mr. Aycock took the claimant to the clinic, where she was seen and prescribed medication. Mr. Aycock maintains that he was instructed to the take the claimant home and let her rest by medical personnel at the St Vincent Family Clinic.

Mr. Aycock testified that he called the respondent-employer and spoke to the head nurse, Judy, following the claimant's June 25, 2002, visit to the clinic. During the conversation with the supervisor, Mr. Aycock testified that he inform same that the claimant was sore, was taking medication, and would not be in for work that day. Mr. Aycock estimates that after approximately a month the claimant was released to return to light duty work, however when she

reported for same there was none available. The claimant never again worked at the respondent-employer or any place else.

The testimony of Mr. Aycock reflects that every since the June 24, 2002, accident the claimant has been limited in her ability to perform her usual routine. Regarding the mechanics of the claimant's accidental fall, as relayed to him, Mr. Aycock testified:

> Yes, sir. She expressed that she was walking down the hall. It was lunchtime and she was preparing to go to lunch, and her relief had not come back from lunch. So she was walking down the hallway to try to find the person that was to relieve her for lunch so that she could go to lunch. (T. 15).

The claimant attributed the fall to some liquid on the floor.

In addition to medical treatment at the St. Vincent Family Clinic, the testimony of Mr. Aycock reflects that the claimant has also received medical treatment for complaints growing out of the June 24, 2002, accident at the Arkansas Primary Care Clinic and that she has been seen by Dr. Kenneth Martin.

During cross-examination, Mr. Aycock conceded that his information regarding the claimant's June 24, 2002, accident is derived from his conversation with the claimant. Further, that he has no independent knowledge as to whether the claimant was walking out the door to lunch at the time of the accident, or whether she was looking for her replacement, or whether she was doing something else.

Mr. Aycock testified that he assisted the claimant in completing the Form AR-C in her claim for workers' compensation benefits. The form was completed on July 23, 2002. Mr. Aycock maintains that at the time the form was completed the claimant was taking "strong medication" and he was attempting to write in the information according to what he could

understand what she was saying. Mr. Aycock's testimony reflects that while the Form AR-C contains the claimant's signature, the description of the accident is in his handwriting. In completing the information of the Form AR-C Mr. Aycock testified:

> I paraphrased it for the amount of space I had. I believe I paraphrased it which I usually do, if you'll allow me, for my wife because her English is not that clear. (T. 21).

Mr. Aycock explained that the claimant is "tied-tongued and speaks more like a Creole". (T. 21). The form recites that the claimant's injury was sustained going on her lunch break.

In explaining the absence of searching for her replacement at the time of the accident, the testimony of Mr. Aycock reflects:

> No, sir, because she explained to me that was part of the preparing for lunch break, going on lunch break meant finding her replacement as well. (T. 22).

Mr. Aycock acknowledged that he and the claimant secured the services of an attorney for representation in both the workers' compensation matter and a civil lawsuit based on the same fall of June 24, 2002. The civil lawsuit was filed June 22, 2005. Mr. Aycock asserts that the suit was filed at the last minute by the attorney after he had sit on it for almost three (3) years. Mr. Aycock testified that after receipt of a copy of the filed civil complaint, that neither he nor claimant contacted the attorney in an effort to clarify the description of the accident. The civil lawsuit reflects that the claimant was on her lunch break at the time of the June 24, 2002, accidental fall which injured her back.

Mr. Aycock acknowledged being present at the time of the claimant's deposition, and that the claimant responded during same that she was walking out the door to go to lunch at the time of her accidental fall on June 24, 2002. Mr. Aycock added, regarding the afore:

> Yes, sir, after you kept twisting the question several ways, she did make that mistake, sir. (T. 27).

Mr. Aycock's testimony reflects that since his marriage to the claimant he has been the individual to take to the claimant to her various medical appointments. Regarding the changes in medical doctors to treat the claimant since the June 24, 2002, accident, Mr. Aycock testified:

> Basically, with the St. Vincent's Clinic, the doctors was prescribing pills, and she was in constant pain. Since Dr. Lewis had been one of the doctors that the VA had sent me to to examine because of my leg injuries which affected my back, I thought he might be a good doctor, so I suggested to her she go there. When we were there, she filled out the papers, workmen's comp. She was released from Dr. Lewis because workmen's comp would not pay and they refused to see her, so they suggested going to - - who at that time was Mrs. Moss who is now Mrs. Vickers. Upon visiting with Mrs. Vickers, Mrs. Vickers consistently stated that shw did not understand what my wife was saying.
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> * * *
>
> With Dr. Vickers I tried that and she did not want to hear what was being said. Dr. Lewis listened.
>
> Dr. Vickers did not. Dr. Vickers had several complaints and did several things, and she finally told my wife to see the doctor that she's now with and that's Shakir who she is very happy with, Dr. Mohammad Shakir. (T. 29-30).

Mr. Aycock acknowledged assisting in completing the patient intake document for the claimant at the office of Dr. Kirshnan on July 17, 2006, and concedes that the document noted that the claimant fell at work going to lunch.

Mr. Aycock took the claimant to the St. Vincent Family Clinic on June 25, 2002, for treatment of her complaints growing out of the June 24, 2002, accident. Mr. Aycock testified that he was not present in the examining room at the time the claimant talked to Dr. Ebel about the circumstances of her accident. Likewise, Mr. Aycock testified that he was not present at the

time of the claimant July 2002, examination by Dr. Cooper at the St. Vincent Family Clinic. Mr. Aycock testified he had no knowledge of the claimant twisting her back at home, feeling a pop in the mid back and ongoing problem since, as reflected in the office notes of Dr. Cooper.

Mertis Valley, a current employee of Good Shepherd Nursing Home, testified on behalf of the claim. Ms. Valley's testimony reflects that she, like the claimant, was employed as a CNA at Briarwood Nursing Home and got transferred to Quapaw Quarter Nursing Home. Ms. Valley worked with the claimant at Briarwood and Quapaw.

Ms. Valley's testimony reflects that she worked the 7:00 a.m.-3:00 p.m. shift, as did the claimant. Ms. Valley was at work in June 2002, and witnessed the claimant's accidental fall. In describing the mechanics of the accident, Ms. Valley testified:

> Well, we were preparing to get ready to go to lunch and we had to have a relief person before you can leave the floor, and she was looking for her relief person and I was, you know, telling her, you know, "Did you find your relief person?" She was like, "Not yet." So she was going into a room and came out and went into another one, that's when she slipped and fell and I asked her, I said, "Girl, are you okay," because of the way she hit, it was so hard, and some of the administrative people came out and, you know, we all ran down to her to see could we assist her in getting up. (T. 68-69).

Regarding the claimant's work activities the remainder of the day following the accidental fall, Ms. Valley testified:

> Well, it was like light duty like because, I mean, she really couldn't do anything because the pain would like come and go, come and go, and it was, you know - - (T. 69).

During cross-examination, Ms. Valley testified that Marlene is the nickname that the claimant called her. Ms. Valley's testimony reflects that she first met the claimant in late 2000. Ms. Valley acknowledged that she and the claimant became friends "at our jobs". Of the

occasions when they, she and the claimant, talked and decided to eat lunch together, Ms. Valley testified:

> Yeah, I mean, most of the time we try to bring us something to eat and so some of the times we'll just go to a close place or go to a fast food, whatever is close, like we'll go to McDonald's or we go to a store or we could go to my house because my house was closer to the nursing home. (T. 71).

On the day of the accident, the testimony reflects that the claimant and Ms. Valley had arranged to each lunch together. Ms. Valley noted that their 30-minute lunch break occurred about the same time. At 11:30 a.m., Ms. Valley, who worked on a different hallway than the claimant, left to go meet the claimant. The testimony of Ms. Valley reflects:

> And the area I was - - I said, "You ready?" She said, "Well, I got to find the person that's going to relieve me," and I said, "Well, you know how they're real strict about you 30 minutes, they want you to take you 30 minutes and come back." (T. 72).

Ms. Valley's testimony reflects that she was waiting "middleways of the hallway" where the claimant was located. Ms. Valley testified that between the time she asked the claimant if she was ready to go to lunch and the time that she waited for the claimant, the claimant was going in and out of different rooms calling for her relief.

Ms. Valley's testimony reflects that she has no knowledge of any conversation that the claimant may have had with her supervisor regarding leaving the patients in the dining room:

> No. You have to have a relief. That's the only thing that they drilled into our head. Your patients, if they're in the dining room, they're your responsibility. If they're in their room, they're your responsibility until you can get a relief person. (T. 73-74).

Ms. Valley had no knowledge of a third person working the same floor with the claimant on the day of the accident. Ms. Valley responded that the only person she was aware that the claimant

was looking for was her relief person. Ms. Valley testified that at the time of the claimant's fall, the claimant was coming out of a room looking for her relief person. Ms. Valley concluded:

> No, I can't disagree with her [claimant's] testimony because, like I say, when I heard her, she was looking for her relief person. She kept staying (saying), "I'm looking for my relief person." (T. 75).

Ms. Valley estimates that approximately ten (10) minutes of her thirty (30) minutes lunch break were consumed as the claimant looked for her relief person. (T. 76).

The medical in the record reflects that the claimant was seen on June 25, 2002, at the St. Vincent Family Clinic by Dr. Ebel. The clinic note of the afore visit reflects a history of the claimant having fallen on the June 24, 2002, and bumped her right knee. With respect to the right knee, the clinic note reflects findings of "a small area of crythema over the inferior aspect of the patella" and "mildly tender". The claimant's knee complaint was assessed as a right knee contusion. (CX. #1, p. 8).

The claimant was again seen at the St. Vincent Family Clinic on July 10, 2002. Claimant was seen by Dr. Cooper during the July 10, 2002, visit. The clinic note regarding the afore visit reflects, in pertinent part:

> Ms. Adcock is here today complaining of some right sided mid and low back pain. She says she slipped and fell at work last week and bruised her right knee. She was seen by Dr. Ebel and says that just as that was beginning to improve, she twisted last evening and felt a pop in the mid back. She's had some pain and discomfort since. She denies any past history of back problems.
>
> *     *     *
>
> Examination of the back reveals some mild right sided discomfort to palpation along the right perithoracic musculature and the perilumbar musculature. She complains of subjective radiational pain in the right thigh, but neurologically remains intact.

*   *   *

> 1. Flexeril 10 mg 1 po tid for spasm along with Vioxx 25 mg daily. I've given her a work statement recommending light duty over the next few days. No lifting over 25 pounds. Moist heat applications. (CX. #1, p. 9).

On July 16, 2002, the claimant initiated treatment at Arkansas Primary Care Clinic for back complaints growing out of the June 24, 2002, accidental fall. The claimant was treated by Dr. Lewis at Arkansas Primary Care Clinic, who diagnosed her complaint as a back sprain, and prescribed medications (Darvocet and Soma), and rehab. The claimant was seen by Dr. Lewis on three (3) separate occasions, with the last visit being July 30, 2002. The progress note relative to the claimant's July 30, 2002, visit reflects complaints of pain radiating into the hip. On July 30, 2002, Dr. Lewis diagnosed the claimant's complaint as back pain with radiculopathy. The July 30, 2002, progress note also reflect that an MRI was scheduled for the claimant with Permier MRI relative to her low back on July 31, 2002, at 8:30 a.m. (CX. #1, p. 11-14).

There is evidence in the record to reflect that following the claimant's medical treatment by Dr. Lewis at Arkansas Primary Care Clinic, she was seen by Dr. Inge Carter. Dr. Carter referred the claimant to Dr. Reginald J. Rutherford for a neurological consultation. The claimant was seen by Dr. Rutherford on March 10, 2003. The consultation report of the March 10, 2003, evaluation of the claimant reflects, in pertinent part:

> Ms. Aycock reports that she fell at work in June of 2002. Since that time she has noted low back pain, bilateral leg pain, leg cramps, tingling in the legs and intermittent weakness of the legs. She has undergone MRI study of the lumbar spine which was performed in February of this year. This reveals degenerative change at L3/4 and L4/5 with an annular tear at 4/5 and lateral recessed stenosis at 4/5. On direct questioning, Ms. Aycock has not undergone a bone scan or electrodiagnostic testing. . . .

*      *      *

> Ms. Aycock's examination is normal. By history she sustained a lumbar strain pattern injury. Her MRI study of the lumbar spine demonstrates degenerative change at L3/4 and L4/5 accompanied by an annular tear at L4/5 and lateral recessed stenosis at L4/5. Further diagnostic testing will be arranged to comprise a total body scan and EMG/Nerve Conduction Study both lower extremities. Ms. Aycock will be seen in follow up upon completion of the above studies. (CX. #1, p. 15-17).

The claimant was again seen by Dr. Rutherford on April 1, 2003, in follow-up to the March 10, 2003, evaluation. The April 1, 2003, clinic note reflects, in pertinent part:

> . . . Her bone scan reveals mild scoliosis and mild arthritic change in the feet. There is nothing identified in lumbar spine on total body bone scan or SPECT imaging. Ms. Aycock's EMG/Nerve Conduction Study is normal. There is no evidence to suggest lumbar radiculopathy, lumbo-sacral plexophy or peripheral neuropathy. Ms. Aycock's complaints are felt attributable to mechanical back pain. She will be treated with Celebrex 200 mg twice per day. . . . Clinical follow up will be scheduled for one month from present. (CX. #1, p. 19).

The claimant was seen in follow up by Dr. Rutherford on May 1, 2003. The claimant's medical treatment, which included Clebrex, remained the same. (CX. #1, p. 24). When seen in follow up by Dr. Rutherford on June 30, 2003, the clinic note of the claimant disclosed:

> . . . She reports Celebrex to be of benefit pertaining to lessened low back pain. She continues to experience pain in spite of medication. This is accompanied by cramping of her legs. Celebrex at this juncture is well tolerated. This will be continued to which Amitriptyline will be added. Dose of Amitriptyline will be restricted to 25 mg at bedtime. Dose of Celebrex is 200 mg twice per day. Blood work will be drawn today for CBC, differential, platelet count, electrolytes, BUN, creatinine and liver profile. Clinical follow up will be scheduled for one month from present. (CX. #1, p. 26).

When the claimant was seen by Dr. Rutherford on July 28, 2003, the result of the blood work was revealed, which included mild anemia. The Celebrex was discontinued. Claimant reported

that the Amitriptyline was helpful with regard to the chronic pain in the low back and both legs. (CX. #1, p. 27).

During an October 7, 2003, visit to Dr. Moss-Vickers at Christ Health Primary Care Clinic the claimant relayed complaints of swelling and a knot on her right hip as well as pain up in the shoulder. The 2000 work-related fall on the right hip and low back pain noted in the claimant's history. (CX. #1, p. 33). The claimant underwent another MRI on October 14, 2003, pursuant to the recommendation of Dr. Moss-Vickers. (CX. #1, p. 34-35). The claimant also underwent diagnostic testing relative to her right knee complaint on October 15, 2003, which noted a trace suprapatellar effusion along with mild degenerative changes. (CX. #1, p. 37).

The claimant was referred by Dr. Moss-Vickers to pain management with Dr. Michael Stone on January 12, 2004. On February 3, 2004, claimant received an epidural steroid injection relative to complaints of low back and right knee pain. (CX. #1, p. 41-44). During a April 1, 2004, visit, Dr. Moss-Vickers referred the claimant to a rheumatologist ant to pain management relative to her complaints of pain and swelling in both knees along with right hip pain. (CX. #1, p. 48).

On April 9, 2004, the claimant was seen by Dr. Tad C. Pruitt at OrthoArkansas, pursuant to referral by Dr. Moss-Vickers for an evaluation of swelling and pain in the right knee. (CX. #1, p. 49). The claimant underwent a MRI of the right knee on April 14, 2004, pursuant to the direction of Dr. Pruitt, which disclosed minimal joint effusion. (CX. #1, p. 50).

Pursuant to the pain management recommendation of Dr. Moss-Vickers the claimant was seen by Dr. Sunder Krishnan on April 14, 2004. The April 14, 2004, report of Dr. Krishnan reflects, in pertinent part:

Thank you ver much for providing me the opportunity to participate in Ms. Aycock's health care. Unfortunately it does appear that she has a a disk protrusion at L3/4. She had an epidural steroid injection that gave her about four week relief. I think we should go ahead and complete the series of injections. I have also requested to get a copy of her MRI film so that I can formally review them. Tentatively she is scheduled for her injection next week at St. Vincent's Rehabilitation Hospital. . .

* * *

Her back pain she describes as being moderately to extremely severe in in nature, an aching, constant pain. The pain is primarily situated in her lower back. She does get some extension into her right hip and buttock region. Occasionally she gets tingling and numbness of her lower extremities and also voices weakness in her back. Her symptoms have been getting worse over the last year and are typically exacerbated by walking, exercise, bending, squatting, kneeling, stair climbing and alleviated to a minor extent by heat and elevation. She reports that she has had physical therapy and she also states that she had an epidural steroid injection performed several weeks ago at St. Vincent's. The epidural steroid injection helped her for about three weeks. She has no other pain complaints at today's visit.

* * *

MUSCULOSKELETAL: Decreased range of motion of the LS spine. Inspection of the back reveals some paraspinal muscle spasm and facet tenderness bilaterally on deep palpation. No sacroiliac tenderness noted. Range of motion hips bilaterally within normal limits and non-painful.

* * *

TREATMENT PLAN:
I had a discussion with Patricia concerning her various treatment options. She had one ESI and that helped her. I would like to complete another epidural steroid injection and see how she is doing. Hopefully we will be able to get her back pain symptoms under better control. As mentioned above Dr. Pruitt will focus on her knee. (T. 52-54).

On April 22, 2004, the claimant underwent the ESI, and another one on May 13, 2004, under the care of Dr. Krishnan.

The claimant was seen in follow up by Dr. Krishnan on June 28, 2004. The clinic note

relative to the afore visit reflects, in pertinent part:

> SUBJECTIVE: Patricia is here for a follow up visit. She had two more translaminar epidural steroid injections and she was actually making excellent progress up until about 10 days ago when she started to notice recurrent pain. At this point in time her pain is rather significant in her low back. Her low back to leg pain ratio is about 80-90% low back and 10-20% lower extremities. Her knee pain has improved with some intraarticular knee injections. Her pain is typically exacerbated by sitting, coughing, sneezing, axial weight bearing, forward bending. . . . All in all the total of three injections have not done her a whole lot of good. She is wondering what the next step is in her health care.
>
> * * *
>
> TREATMENT PLAN: At this point in time I had a lengthy discussion with Patricia and her husband today. She has tried conservative management with epidural steroid injections. She has undergone extensive physical therapy and has tried a variety of anti-inflammatory medications. She still voices significant axial low back pain complaints. She has changes at L3/4 and L4/5. The patient would like her symptoms addressed more aggressively. I did discuss with her the role of provocative lumbar diskography in her health care including the full risks, complications and benefits. She is fully aware that if she has multilevel advances internal disk derangement there may be nothing I can afford to her in the form of interventional pain management and a surgical consultation for her spinal fusion may be recommended. I also actually offered to get the patient in to see a surgeon if she wanted to discuss surgical alternatives prior to have the diskogram done but the patient informed me that she would rather have the diskogram done to find out exactly which disk is painful and go based on that. We will go ahead and schedule the patient for the diskogram next week in the office. (CX. #1, p. 67).

On July 6, 2004, the claimant underwent a CT lumbar discogram at Premier MRI & Imaging of Little Rock. (CX. #1, p. 68-69). A July 6, 2004, Procedure Note of Dr. Krishnan relative to the claimant reflects post-procedural diagnoses of internal disk derangement at L3/4 and transitional anatomy with partial sacralization of the L5 segment. (CX. #1, p. 70-71).

Pursuant to July 21, 2004, follow up visit with Dr. Krishnan, in which the results of the

post-provocative lumbar diskography were reviewed and discussed, claimant elected to proceed with percutaneous diskectomy. (CX. #1, p. 73-74). On August 19, 2004, the claimant underwent a percutaneous discectomy at L3-4 for a right sided contained HNP under the care of Dr. Krishnan. (CX. #1, p. 76-78). A Chart Note of August 26, 2004, of Dr. Krishnan relative to the claimant reflects that the claimant relayed noticing significant improvement as well as a significant reduction of her right lower extremity radicular pain. (CX. #1, p. 80). During a September 29, 2004, follow-up visit, the claimant was encouraged to "take it easy" with respect to her physical activities by Dr. Krishnan. (CX. #1, p. 83).

The medical reflects that the claimant was seen in follow-up by Dr. Krishnan on November 8, 2004. The clinic note regarding the November 8, 2004, visit reflects, in pertinent part:

> SUBJECTIVE: Ms. Aycock is here for a follow up visit. She is about a little over two and a half months status post her diskectomy. All in all she rates that her pain is 50% to 60% better. She still does have episodes of low back pain and pain extending into the right hip and buttock region but the day to day pain that she was suffering from prior to having the diskectomy done has significantly improved. . . Unfortunately she is still having quite a bit of right sided knee pain and the abnormal gait that she has as a result of the knee pain is afflicting her as well. She voices no new complaints at today's visit.
>
> * * *
>
> TREATMENT PLAN: I have encouraged her to continue with her day to day back exercise regimen. We have giver her some samples of Ultracet in the past. She voices no side effects from that and requested a prescription for that today. . . As far as her right knee pain goes, she requests an evaluation with a knee specialist. I recommend Kenneth Martin, M.D. We will facilitate a referral for this. (CX. #1, p. 85).

On December 6, 2004, the claimant was evaluated by Dr. Kenneth A. Martin pursuant to

the above referral to Dr. Krishnan. The December 6, 2004, report of Dr. Martin reflects, in pertinent part:

> Ms. Aycock is a 50 year old female seen today for evaluation of her right knee. She states that in June of 2002 she fell on the right knee at work at a nursing home. She was seen by Dr. Pruitt and he told her that she had bruising on the knee. She states that she has muscle spasms, and she was sent to PT for three weeks. She states that the therapy helped some. She still has some buckling and locking symptoms in the knee. She has pain with walking, stair climbing. She has been taking no medication for the knee. She had an injection 6 months ago which helped a little.
>
> **EXAMINATION:** The right knee is tender over the lateral joint line and the medial joint line. Patella mobility is normal with no retinacular contraction. Patella compression test is negative. Q angle is normal. The lateral retinaculum is not excessively tight. Ther is a plica medially. There is no varus or valgus deformity. Crepitance is absent. There is a 1+ effusion. . . .
>
> * * *
>
> **IMPRESSION:** Plica right knee
>
> **PLAN:** Right knee arthroscopy. The risks and benefits of the procedure were explained. (CX. #1, p. 86).

The claimant underwent the arthroscopy, arthroscopic partial synovectomy, and lateral retinacular release under the care of Dr. Martin on January 27, 2005. (CX. #1, p. 91-92).

The medical records of Dr. Krishnan reflects that the claimant was referred to Dr. Edward Saer for a surgical consultation regarding her lumbar disk displacement. A February 15, 2006, clinic note of Dr. Krishnan reflects, regarding the claimant:

> SUBJECTIVE: Patricia is seen in clinical follow up. She had a surgical consultation with Dr. Edward Saer. I reviewed his notes. At this point in time he has advised against surgery. Unfortunately Ms. Aycock is still having quite a bit of back pain. She states that the pain is primarily in her right lower back. Her and her husband were wondering if there is anything

else that can be tried to help alleviate her discomfort.

* * *

**ASSESSMENT:** Lumbosacral spondylosis.

**TREATMENT PLAN:** I had a lengthy discussion with Patricia and her husband today. She does have evidence of facet arthropathy. Certainly we can go ahead and try some diagnostic facet medial branch nerve injections. If she obtains good relief for the duration of local anesthetic we can consider facet rhizotomies. . . . . She is fully aware that these interventions are being offered to her as a form of symptom reduction. In no way, shape or form am I reversing her existing disease process. If she gets great relief with the diagnostic facet medial branch nerves we will proceed with rhizotomies. Efficacy of rhizotomies can last from 6-18 months and I informed her generally 80% of the patients who have a successful diagnostic injection do well with rhizotomies. She would like to proceed. We will go ahead and get her on the schedule next week. (CX. #1, p. 101).

On February 21, 2006, and March 14, 2006, the claimant underwent fluoroscopically guided right L1, L2, L3, L4 facet medial branch nerve injections. (CX. #1, p. 102-105).

The claimant was seen in follow up by Dr. Krishnan on April 17, 2006. The clinic note relative to the afore visit reflects, in pertinent part:

SUBJECTIVE: Ms. Aycock is seen in clinical follow up. She underwent facet rhizotomies about four and a half weeks ago. She informs me today that she did well for the first two weeks but subsequently her pain has returned. She is utilizing the Ultracet one orally bid for the management of chronic pain. That seems to be helping. She voices no new complaints at today's visit.

* * *

ASSESSMENT:

1. Lumbosacral spondylosis.
2. Status post-diskectomy.

TREATMENT PLAN: I had a discussion with the Aycocks today. Unfortunately it appears that she has fallen into the 15% of patients that do not respond favorably after a successful diagnostic injection. At this

> point in time I do not feel further injection treatments are going to help her. We will continue her medication management. She is in agreement. I will see her back in three months or sooner if required. (CX. #1, p. 107).

The medical in the record reflects that the claimant underwent a lumbar ESI on August 29, 2006, and another one on November 3, 2006, under the care of Dr. Krishnan to address her low back pain. (CX. #1, p. 111-114). The last medical in the record evidencing treatment of the claimant by Dr. Krishnan was a August 15, 2007, clinic note. (RX. #1, p. 50).

The record reflects responses from both Dr. Puritt and Dr. Krishnan regarding inquiries from respondents relative to the nexus of the medical treatment to the claimant's asserted June 2002 accidental fall at work. (RX. #1, p 44-45; 60). During the course of his November 28, 2007, deposition Dr. Kenneth A. Martin was also questioned regarding the nexus of the claimant's right knee complaint, for which he performed surgery, and the June 2002, accidental fall at work. Dr. Martin was provided access to the claimant's medical record under the care of Dr. Moss-Vickers, which noted a February 24, 2004, visit and an episode of blacking out and falling at home. In response to the report as well as the results of his findings during the surgical procedure, Dr. Martin testified:

> On the surface, that would be true, but then, I can't tell for sure what would have caused it. She could have had a problem in 2002 that was minimally symptomatic or just didn't affect her activities too much, and then another fall exacerbated that. It's just really hard to tell. I just don't know for sure. (RX #3, p. 21).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

**FINDINGS**

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

2. On June 24, 2002, the relationship of employee-employer-carrier existed among the parties.

3. On June 24, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of $225.00/$169.00, for temporary total/permanent partial disability.

4. On June 24, 2002, the claimant sustained an injury arising out of and in the course of her employment, in that the claimant was performing employment services at the time of the accidental slip and fall resulting in her injuries.

5. The claimant was temporarily totally disabled for the period commencing June 25, 2002, and continuing through April 17, 2006.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of June 24, 2002.

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

## CONCLUSIONS

The claimant asserts that while within the course and scope of her employment as CNA with respondent-employer on June 24, 2002, she suffered an accidental fall resulting in an injury which required medical treatment and rendered her totally incapacitated from engaging in gainful employment. Respondents deny that the claimant was performing employment services at the time of the injury alleged; that the claimant's back and knee problems, disability and need for treatment were cause by subsequent intervening injuries sustained outside of work. Additionally, respondents maintain that the claimant's back problem is the product of preexisting degenerative disc disease.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A)(i) (Repl. 2002). Should the claimant fail to establish by a preponderance of the evidence any of the requirement for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics,*56 Ark. App. 126, 938 S.W.2d (1997).

*Employment Services*

Respondents maintain that the claimant was not performing employment services at the time of the June 24, 2002, accidental fall which serves as the basis for the present claim. The claimant and Ms. Mertis Valley, a co-worker, provided credible and undisputed testimony regarding the responsibilities and duties of CNA's in the employment of respondent-employer. Among the afore, CNA was not permitted to leave for the thirty (30) minute lunch break until the CNA's replacement was present. In the instant claim, the claimant had arranged to go to lunch with Ms. Valley. Both the claimant and Ms. Valley were scheduled to go to lunch at 11:30 a.m. When 11:30 a..m. arrived, the claimant's replacement had not returned. Ms. Valley had

proceeded to an area near the exit after having informed the claimant of her presence.

The credible evidence reflects that the claimant was searching for and calling out for her replacement at the time of the accidental slip and fall. The claimant's accident fall was witnessed by Ms. Valley. The testimony in the record reflects that administrative and supervisory personnel of respondent-employer were in close proximity of the claimant at the time of her fall such that they came to her assistance before the claimant could get up off the floor. The evidence preponderates that the claimant was not on her lunch break at the time of her accidental fall.

A compensable injury does not include an injury which was inflicted upon the employee at a time when employment services were not being performed. Ark. Code Ann. §11-9-102 (4)(B)(iii). An employee is performing employment services when the employee is doing something that is generally required by his or her employer. The test as to whether the injury of an employee occurred within the time and space boundaries of the employment is when the employee is carrying out the employer's purpose or advancing the employer's interest directly or indirectly. *Texarkana School District v. Conner,* __ Ark.__, __ S.W.3d__ (May 8, 2008); *White v. Georgia-Pacific Corp.,* 339 Ark. 474, 6 S.W.3d 98 (1999). The evidence preponderates that at the time the claimant suffered her accidental fall on June 24, 2002, she was performing employment services.

*Temporary Total Disability Benefits*

The credible testimony of the claimant and Ms. Valley reflects that at the time of the claimant's accidental fall on June 24, 2002, she sustained a severe/hard impact on the surface to her right side, including her right knee. The claimant required assistance getting off of the floor. While the claimant remained at work the remainder of her shift on June 24,2002, she did not

engage in any strenuous or demanding physical activities. The testimony of the claimant's husband corroborate that of the claimant regarding her physical restrictions and limitations when he arrived to pick her up at work at the conclusion of her shift of June 24, 2002.

The medical evidence reflects that the claimant relayed a history of her June 24, 2002, work-related accidental fall at the time she sought treatment in connection with same on June 25, 2002, at St. Vincent Family Clinic. The medical records detail the presence of objective findings evidencing the June 24, 2002, injury to the claimant's right knee. Thereafter, the medical evidence reflects that the claimant has been under active medical treatment of physicians for complaints growing out of the June 24, 2002, injury. Further, diagnostic studies have disclosed the presence of injuries to the claimant's lumbar discs. Claimant has been provided epidual steroid injections relative to the disc injuries.

The claimant has also undergone surgery relative to her right knee injury, which was sustained in the June 24, 2002, accidental fall. While the respondents have asserted as an independent intervening event the entry in the February 26, 2004, clinic note of Dr. Patricia Moss-Vickers, of the claimant having blacked out three to four days earlier, fallen and hurt her right shoulder and right knee, and that the same should sever any liability relative to the claimant's right knee complaint growing out of the June 24, 2002, work-related accidental fall, the same is not persuasive. The medical in the record reflects that prior to the claimant's February 26, 2004, visit to Dr. Moss-Vickers, she had been previously seen by her on February 12, 2004, during which time she noted a sensation of her knee locking up on her.

Temporary total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *Georgia-Pacific Corp., v. Carter,*62 Ark. App. 162, 969

S.W.2d 677 (1998). In the instant claim, the claimant sustained injuries to both her low back and right knee as a result of the June 24, 2002, work-related accidental fall. The evidence reflects that when the claimant informed supervisory personnel of respondent-employer of a light duty release, which was furnished following a visit to the St. Vincent Family Clinic, she was not provide work within the restrictions.

The claimant was last seen by Dr. Martin relative to her compensable right knee injury on February 23, 2005. The claimant continued to receive active medical treatment under the care of Dr. Sunder Krishnan subsequent to April 17, 2006. However, it was during the April 17, 2006, visit that Dr. Krishnan opined that injection treatments would not help her, although the continued her medication management. Indeed, the claimant was seen by Dr. Krishnan for her diagnosed lumbar disk displacement and received two additional LESI's.

The healing period is defined as that period for healing of an injury resulting from an accident. When the underlying conditions causing the disability stabilizes, and no further treatment will improve the injury, the healing period has ended. *Carroll General Hospital v. Green,* 54 Ark. App. 102, 923 S.W.2d 878 (1996). The evidence in the record preponderates that the claimant reached the end of her healing period, and corresponding entitlement to temporary total disability benefits, on or about April 17, 2006, as a result of her June 24, 2002, compensable injuries. Respondents have controverted this claim in its entirety.

*Medical Benefits*

Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. Whether a medical procedure or device is reasonable and necessary is a question of fact to be decided by the

Commission. *Air Compressor Equipment v. Sword,* 69 Ark. App. 162, 11 S.W.3d 1 (2000). While the record in the present claim reflects an extensive history of the claimant's medical treatment, the overwhelming majority of it relates to medical treatment in connection with compensable injuries growing out of the June 24, 2002, work-related accidental fall. The evidence reflects that the claimant has seen a number of physicians for medical treatment in connection with the injuries growing out of the June 24, 2002, accidental fall. The medical treatment geared toward the claimant's low back and right knee complaints is reasonably necessary in connection with the compensable injury, and respondents are liable for the payment of same, along with the associated medical milage.

*Credit Pursuant to Ark. Code Ann. §11-9-411*

Respondents contend that they are entitled to credit for disability payments made to the claimant at the rate of $500.00, per week for one year beginning October 7, 2002, from Ozark National Life Insurance. During the course of her deposition, the claimant testified that she purchased a policy for her son when he was ten (10) years old. The record does not reflects the presence of the policy to determine the nature of the payments that the claimant received. As a consequence of the afore it is impossible to determine whether the payments made to the claimant by Ozark National Life Insurance Company were pursuant to any of the plans enunciated in Ark. Code Ann. §11-9-411 (a). See *Dollarway School District v. Lovelace,* 90 Ark. App. 145, 204 S.W.3d 64 (2005); *Looney v. Sears Roebuck Company,* 236 Ark. 868, 1371 S.W.2d 6 (1963); *Varnell v. Union Carbide,* 29 Ark. App. 185, 779 S.W.2d 543 (1989); *Norman v. North Hills Service, Inc.,* 2005 AWCC 232, Claim No. F408828 (Full Commission Opinion filed November 21, 2005.). Respondents have failed to establish that the claimant received

payment pursuant to the provision of Ark. Code Ann. §11-9-411 (a) such that they would be entitled to credit for same.

**AWARD**

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of $225.00, for the period commencing June 25, 2002, and continuing through April 17, 2006, as a result of the claimant's compensable injury of June 24, 2002. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonably necessary medical, hospital, nursing and other apparatus expenses growing out of and in connection with the claimant's compensable injuries growing out of the June 24, 2002, work-related accidental fall, to include medical related milage.

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

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

____________________________________________
**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**