

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F607504

JOY D. BRUCE, EMPLOYEE

CLAIMANT

ATLIS IN HOME CARE, INC., EMPLOYER

RESPONDENT

**COMMERCE & INDUSTRY INSURANCE COMPANY,
C/O AIG CLAIMS SERVICE, CARRIER/TPA**

RESPONDENT

OPINION FILED JANUARY 31, 2008

Hearing before Administrative Law Judge O. Milton Fine II on November 7, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 7, 2007, the above-captioned claim was heard in Mountain Home, Arkansas. A pre-hearing conference took place on April 23, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. With the addition of three at the hearing, they are the following five, which I accept:

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

2. The employee/employer/carrier relationship existed at all relevant times, including November 28, 2005.
3. Claimant gave notice of her alleged injury on November 28, 2005.
4. The initial medical treatment of Claimant's alleged injury was authorized and paid for by Respondents.
5. If called, Jeff Bruce, the husband of Claimant, and her in-laws, Ben and Wilma Bruce, would corroborate the testimony of Claimant.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. With the addition of an issue concerning the constitutionality of the Arkansas Workers' Compensation Act and the withdrawal of the issues concerning notice and entitlement to a credit, the following remained to be litigated:

1. Whether the Arkansas Workers' Compensation Act is constitutional.
2. Whether Claimant sustained a compensable injury.
3. Whether Claimant is entitled to reasonable and necessary medical care.

Contentions

Respondents withdrew their contention concerning notice and added one concerning the medical benefits they have allegedly paid for Claimant. Thus, the contentions read as follows:

Claimant:

1. Claimant contends that she sustained a compensable injury and that she is entitled to all related benefits.

Respondents:

1. Respondents contend that Claimant did not suffer a compensable injury on or about November 28, 2005.
2. Respondents paid the following on behalf of Claimant: \$388.85 for her visits to Dr. Langston, \$100.00 for a visit to the Baxter Regional Hospital emergency room; and \$47.16 for medication from Sullivan Pharmacy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Arkansas Workers' Compensation Act is constitutional.
4. Claimant has proven by a preponderance of the evidence that she sustained a compensable injury in the form of a back strain that was a temporary aggravation of her preexisting condition.
5. Claimant is entitled to reasonable and necessary medical care through December 21, 2005, when the temporary aggravation had unquestionably resolved and she was released by Dr. Tom Langston.

CASE IN CHIEF

Summary of Evidence

_____ Two witnesses testified at the hearing: Claimant and Lula Belle Matlock. As noted above, it was stipulated and accepted that if called, Jeff, Ben and Wilma Bruce would have corroborated Claimant's testimony.

In addition to the pre-hearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit No. 1, a compilation of her medical records, consisting of one index page and 20 individually numbered pages thereafter; Respondents' Exhibit No. 1, a compilation of Claimant's medical records, consisting of a two index pages and 35 individually numbered pages thereafter; and Respondents' Exhibit 2, non-medical records including a payroll journal for Respondent Atlis, a list of job duties performed for a patient, an invoice from Family Doctors Clinic, and a statement from Mountain Home Emergency Group. In addition, Claimant's October 31, 2007 motion to recuse plus attachments, consisting of 381 pages, and Respondents' two-page response thereto, have been blue-backed to the record.

Testimony

Joy Dennis Bruce. Claimant testified that she is 49 and has a GED. She went to work for Respondent Atlis in September 2005, where her job as an in-house personal care aide was to take care of patients and their house. Her position required that she "transfer" patients, which she described as follows:

It's like, like to give people a bath, put them in the bathtub. Like the lady I was taking care of when I hurt my back, she was in a wheelchair and I was getting her off the bathtub, chair in the bathtub. And when I turned with her, my back popped three times before I got her in the wheelchair.

Claimant stated that she immediately went and called Lula Belle Matlock at Respondent Atlis. Matlock asked if Claimant wanted to go home, and she told her no because she had only one day left of her regular four-day work stint. Matlock then told her to take it easy. With the exception of taking her patient to the restroom and placing her back in her chair, Claimant did nothing else that day. Later, when Claimant could not get out of bed, she called Matlock. She asked Claimant not to file for workers' compensation because it would make their premiums go up. Respondent Atlis paid her medical bills directly.

In describing her symptoms after the incident, Claimant stated that in addition to popping, she experienced tingling in her right leg and pain shooting down it as well.

Thereafter, she was seen by Drs. Langston, Gaston and Williams and was ultimately diagnosed with disc bulges. Dr. Langston gave her a ten-pound lifting restriction, but Claimant and Matlock agreed that she could not return to work because Respondent Atlis had no positions requiring zero lifting. Dr. Williams continues to treat her. However, she has not undergone surgery. Claimant stated that prior to the injury at issue, she never had any back problems that kept her from working for a substantial period of time. She has been awarded Social Security disability benefits. Claimant described her current condition as

Pain day in and day out. I can't do, I'm not, I'm not active like I used to do. I don't, I can't go horseback riding. I don't go to the lake and go swimming. I don't go out in the boat. I don't do anything like I used to. I stay at home.

Her pain has gotten worse, is moderate to severe, sharp, continuous, and is in her lower back and down her right leg. To treat her symptoms, she takes Soma (three per day) and a generic form of Hydrocodone (two per day). She stated that she did not take

medications for her back previously for a substantial period of time. The pain has caused her to lose approximately 20 pounds because of depression and loss of appetite.

Claimant testified that she has suffered in the past from a “floating rib,” but that it is different from the injury at issue in that, *inter alia*, the latter is more painful. She admitted that she has had other back problems, but that they have been temporary.

When questioned by Respondents, Claimant testified that the basis for her Social Security disability is “the lower, the lower lumbar, degenerative disc disease, and my knees.”

With respect to her previous back injury, she stated that a rib head broke loose from her spine in the early 1990s. She did not recall going to Baxter Regional Hospital on October 4, 1998 and indicating she had twisted suddenly in the night and had pain in her upper back. Nor did she recall returning in November 5, 1998 with complaints of lower back pain. She did remember being treated in July 2001 for neck and upper back pain as a result of a fall while playing basketball. While she treated with a chiropractor in April 2002, she did not recall marking a diagram indicating that she had pain and tingling in her right leg. Claimant initially denied seeing Dr. Charles Smith in October 2003 and indicating that she had muscle spasms beginning in her thoracic spine for 15 years; she explained that there is another “Joy Bruce” in the area. However, she admitted that her Social Security number was on the record in question. While she denied telling Dr. Smith that her spasms became worse after her son had popped her back, she admitted that she had a son. She did recall going to Baxter Regional in April 2006 and telling them that her lumbar pain was old but that her neck pain was new.

Claimant testified that the September MRI, two years after her alleged injury, was the only one she has undergone for her back. She stated that she was aware that Dr. Langston opined that more than 50 percent of her symptoms were degenerative in nature.

When asked by me to identify pages 4-6 of Respondents' Exhibit 2, Claimant testified that the schedule reflects that the last day she worked was December 4, 2005. The other initials thereafter on the schedule are not hers.

Lula Belle Matlock. Called by Claimant, Matlock testified that during the period at issue, she worked as the care giver supervisor for Respondent Atlis. She denied asking Claimant not to file for workers' compensation. While she admitted that Atlis paid directly for Claimant's care, she stated that this was done because Claimant had no money and needed help right then. She did not know whether the Respondent carrier had ever been notified about this.

Matlock stated that Claimant had been honest in her dealings with her. She had been able to meet the physical requirements of her job, and Matlock did not observe her having any problems. However, Claimant did complain at times that her back bothered her and that she could not do a lot of lifting because of her back. This occurred when she was working at the home of another patient. Claimant did not miss time because of her back, though. Her job required some lifting, in helping to transfer patients.

When questioned by Respondents, Matlock reiterated that she told her that Atlis would take care of her bills because she had no money and no medical insurance. To her knowledge, Atlis paid those bills.

When questioned by me, Matlock stated that in-home patients such as the one Claimant was helping are somewhat ambulatory and would not be a "total lift."

RecordsClaimant's Exhibit 1 and Respondents' Exhibit 1

The medical records of Claimant that were introduced at the November 7, 2007 hearing and are part of Claimant's Exhibit 1 and/or Respondents' Exhibit 1 reflect the following:

Pre-incident. She presented to Dr. William Ford on September 25, 1985 with, *inter alia*, low back pain. She was assessed as having a right ovarian cyst. On March 26, 1990, she presented to Dr. William Landrum with pain in her spine that radiated into her left side. Her x-rays showed only minor degenerative changes in the thoracic spine.

On October 4, 1998 she presented to the emergency room at Baxter Regional Hospital with pain in her right upper back as a result of twisting suddenly. She was assessed as having muscle strain in her right upper back. MRIs taken of her cervical, thoracic and lumbar spine on October 17, 1998 were all normal. Her lumbar MRI and x-ray did show a mild rotoscoliosis, but it was unchanged when compared to a film taken in 1995.

Claimant was diagnosed as having lumbar strain on November 6, 1998 after presenting to Baxter Regional Hospital with severe lower lumbar pain. Following a fall on July 13, 2001, she presented with neck and back pain.

She saw a chiropractor on April 25, 2002 and presented with back pain as a result of a "rib head out on [right] side" and complained of a sharp burning pain, along with numbness and tingling. Claimant underwent two adjustments to her thoracic spine.

Claimant returned to the emergency room on October 2, 2003 and presented with "15 years of intermittent muscle spasms, and begins [*sic*] in her thoracic spine." After her

son popped her back, she had more spasms. She had some paraspinous spasms in the thoracic area.

Post-incident. On December 6, 2005, Claimant presented to Dr. Tom Langston with low back pain and tingling down her right leg she stated was caused by assisting a “non-weight bearing“ patient “out of [tub].” Her record notes the following finding: “Muscle spasm: right lumbar paraspinous muscles.” An x-ray showed traction spurs and disc space narrowing at L3-4 and L4-5 with marked narrowing at L5-S1. She was assessed as having acute low back pain, given a shot of Depomedrol, prescribed Carisoprodol and Propoxacet, and given a 20-pound lifting restriction with no lifting, twisting or bending at the waist for 10 days.

She returned to Dr. Langston on December 14, 2005, complaining of worsening pain. She stated that the pain was exacerbated with weight on her right leg, but that her numbness and radicular pain had improved. The record for this visit contains the following note:

After I remarked that it would be unusual for a back injury to present with weight bearing pain on the right leg, she did change her complaint such that she had less leg pain than last week?? I tried to clarify this and she restated that her leg pain was much improved but then contradicted herself that she was unable to even get around her house enough to pick up and the clutter was getting bothersome. Joy has been mostly lying on the bed, playing fetch with her cat.

Langston then added:

We had a long discussion about the possibility of her simply filing for comp benefits and that’s certainly within her rights. At this point with her history of prior injuries, negative straight leg raising, no paraspinous muscle spasm, and dege[ne]rative disease on her X-ray, I’d be inclined to say more than 50% of her symptoms at present are degenerative in nature and not the result of an acute injury. I would give her the benefit of the doubt and continue her period of rest and observation but if she fails to improve within

an appropriate time period, the likelihood of this being an acute injury is diminished further.

Claimant returned to Dr. Langston on December 21, 2005 and reported no improvement. He noted no muscle spasm and stated that "I can't explain her pain on the basis of strain, her radicular symptoms are all resolved at this point." Dr. Langston opined that while Claimant was applying for disability, he did not believe that "the minor strain she had working at [A]tlis" would cause her to be disabled. He stated that she is unable to sit or stand longer than 30 minutes without a break, or walk farther than 800 yards continuously. His recommendation was for treatment "aimed at the chronic underlying problem at this point and not continued muscle relaxers or narcotic analgesics." He further opined that Claimant "is likely to have exacerbations without significant provocation (as with Atlis) and require missing work periodically due to pain" Dr. Langston discharged her with a ten-pound lifting, pushing, pulling and carrying restriction plus no twisting or bending at the waist more than once an hour.

The record reflects that Claimant contacted Dr. Langston's office again on February 10, 2006, seeking additional pain medication. This was refused.

Claimant then treated with Dr. Caleb Gaston on February 10, 2006. She complained of low back pain, but had a normal gait and presented with no objective findings. He gave her Darvocet and Soma with no refills. She returned on March 10, 2006 and was assessed as having chronic back pain. Dr. Gaston renewed her Soma and Darvocet prescriptions but added that "These are the last three months."

Claimant went to the emergency room again on April 8, 2006 with low back pain and tingling in her leg. Her patient history reflects that her back pain is secondary to

degenerative joint disease. She was diagnosed by Dr. Melissa Quevillon as having degenerative disc disease and chronic back pain and was given Toradol and Ultram, which she reported helped her feel significantly better.

She returned to Dr. Gaston on June 9, 2006, still complaining of low back pain. She called in on June 29, 2006 and stated that the pain was getting worse and wanted something to help the sciatica pain in her right leg.

On September 6, 2007, Claimant underwent MRIs of her lumbar and thoracic spine. The lumbar MRI showed a slight loss of the normal lordotic curvature. In addition, there were minimal posterior disc bulges at L4-5 and L5-S1 without significant central canal stenosis or neural foraminal compromise. The thoracic MRI was unremarkable.

Respondents' Exhibit 2

The payroll journal from Respondent Atlis reflects that a "Joy Dye" was paid through December 2, 2005. The care records for an Atlis patient, (whom I will refer to by her initials to protect her privacy), "J.D.," shows that Claimant last cared for her on December 4, 2005.

There are also bills from Family Doctors Clinic, P.A. (dated December 22, 2005) and Mountain Home Emergency Group (dated January 12, 2006) reflecting that bills for Claimant in the amounts of \$388.85 and \$100.00, respectively, have been paid.

ADJUDICATION

A. Constitutionality

Claimant filed on October 31, 2007, a "Motion to Recuse and Notice of Intent to Introduce Evidence at Hearing," along with correspondence and numerous attachments. Therein, she argued, *inter alia*, that the provisions of the Arkansas Workers' Compensation Act that provide for the establishment of administrative law judges are unconstitutional.

Respondents filed a response thereto on October 31 as well. These pleadings, attachments and correspondence have been blue-backed to the record in this case.

The points raised in Claimant's motion are identical to those considered and rejected by the Arkansas Court of Appeals in *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, ___ S.W.3d ___ (Ark. Ct. App. 2007), *pet. for rev. denied*, No. O7-268 (Ark. May 3, 2007). Claimant has not sought to distinguish *Long* or to argue that it should be modified or overruled. Hence, the Act is constitutional, and Claimant's motion is denied.

B. Compensability

Claimant has argued that she sustained a compensable injury. Respondents deny that Claimant sustained an injury within the course and scope of her employment with Respondent Atlis.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . 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) (Repl. 2002). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind."

Id. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

As stipulated by the parties, Claimant reported that she had sustained an injury on November 28, 2005. Claimant testified that while helping a home health patient from a chair in the bath tub to her wheel chair, she experienced popping and pain in her low back. She stated that she reported this to Lula Belle Matlock at Atlis, who asked her if she wished to go home. When Claimant elected to stay on the job, Matlock allegedly told her to take it easy. Claimant testified that she also suffered pain and tingling in her right leg as a result of her injury. Matlock testified that Atlis offered to help Claimant with her medical bills. She did not dispute Claimant's account of their conversation on November 28. The record reflects that Claimant's last date at work was December 4, 2005

On December 6, 2005, eight days after the alleged injury and two days after she last worked at Atlis, Claimant presented to Dr. Tom Langston with low back pain and tingling down her right leg she told him was due to assisting a non-weight bearing patient out of a bath tub. Dr. Langston's notes show that he found right lumbar paraspinous muscle spasms.

Muscle spasms can constitute objective medical findings. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000); *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999). I find that the medical evidence, supported by objective findings, shows that Claimant sustained an injury to her low back in the form of strain.

To show that her back injury arose out of her employment, Claimant must show that a causal connection existed between the injury and her job. *Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs “in the course of employment” when it occurs “within the time and space boundaries of the employment, while the employee is carrying out the employer’s purpose or advancing the employer’s interests directly or indirectly.” *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997); *Pilgrims Pride Corp. v. Caldarera*, 54 Ark. App. 92, 923 S.W.2d 290 (1996). See *Sartor, supra*.

Claimant’s testimony and the statements she made to medical personnel contemporaneously with her injury show that she suffered this injury while working as a home health aide at a patient’s residence for Respondent Atlis. Both she and Matlock testified that patients such as “JD,” the patient she was helping that day, required some assistance in tasks such as transferring to and from, for instance, a wheelchair, bed, bath tub or commode.

The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself

within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). Based on the evidence before me, I find that the injury manifested itself within a reasonable time following the November 28, 2005 incident. In sum, Claimant has met her burden of proof that she incurred a compensable injury to her low back in the form of strain. However, as discussed more fully *infra*, I also find that this injury was only a temporary aggravation of a preexisting condition.

C. Reasonable and Necessary Medical Care

Claimant contends that she is entitled to reasonable and necessary medical treatment for her compensable injury. Arkansas Code Annotated Section 11-9-508(a) (Repl. 2002) provides that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As shown above, Claimant suffered a compensable injury in the form of low back strain, as shown by the evidence findings on December 6, 2005 of spasm in her right lumbar paraspinous muscles. She was assessed as having low back pain. Dr. Langston gave Claimant an intramuscular injection of Demerol, prescribed Carisoprodol and Propoxacet, and gave her a 20-pound lifting restriction with no lifting, twisting or bending at the waist for 10 days.

When she came back to Dr. Langston on December 14, 2005, she complained of worsening pain, but stated that her numbness and radicular pain had improved. She also said that her pain became worse by placing weight on her right leg. However, when Dr. Langston pointed out that this would be unusual, she reversed course and stated that her leg pain had improved, even after repeated inquiries. He noted in the record that he found "no paraspinous muscle spasm" Langston stated that based on, *inter alia*, a lack of spasm, along with her history of previous back injuries and the presence of degenerative disease on her x-ray, he was "inclined" to stated that more than half her symptoms were not the result of an acute condition. Nevertheless, he elected to give her "the benefit of the doubt" and continued her on rest and observation.

When she returned on December 21, 2005, Dr. Langston still found no muscle spasm and noted that he could not attribute the pain she was complaining of to her "minor strain" she suffered at work. He added that her radicular symptoms had resolved and that her remaining problem was chronic. Langston released her with restrictions that he attributed to her chronic condition and not to an acute injury.

In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examining medical opinions concerning causation:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, *Wal-Mart v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this evidence should pass muster. See, *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

After consideration, I credit Dr. Langston's findings. It is worthy of mention that Claimant did not have any objective findings when examined by Dr. Gaston on February 10, 2006, less than three weeks after Langston released her.

I note that Claimant's September 6, 2007 lumbar MRI showed a slight straightening of her lordotic curve. But this was not present on the x-ray taken shortly after she suffered her injury, nearly two years prior. It would thus require speculation and conjecture on my part to attribute her September 2007 symptoms to a minor strain in November 2005 that had long since resolved. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979).

I thus find that Claimant's compensable strain was only a temporary aggravation of her pre-existing condition, which unquestionably resolved by December 21, 2005. See *Jordan v. Home Depot, Inc.*, 2007 AWCC 70, Claim No. F504518 (Full Commission Opinion filed June 27, 2007). After reviewing the medical records in evidence, I find that all her treatment through that date was reasonable and necessary for the treatment of the compensable strain. Hence, Respondents are liable for her documented treatment through December 21, 2005.

CONCLUSION

Respondents are directed to pay benefits in accordance with the findings of fact set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809. See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge