

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F603313**

<b>CHRISTINE GIRLINGHOUSE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>NEWTON COUNTY NURSING HOME, EMPLOYER</b>	<b>RESPONDENT</b>
<b>CANNON COCHRAN MANAGEMENT SERVICES, INC., CARRIER/TPA</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 14, 2008**

Hearing before Administrative Law Judge O. Milton Fine II on October 16, 2007, in Harrison, Boone County, Arkansas.

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

Respondents represented by Mr. James A. Arnold II, Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

On October 16, 2007, the above-captioned claim was heard in Harrison, Arkansas. A prehearing conference took place on September 10, 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 another stipulation, they are as follows, 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 on or about January 14, 2006 and at all relevant times.
3. This claim has been controverted in its entirety.

### Issues

At the hearing, Claimant asked that the record reflect that she was reserving all issues not being litigated, including her entitlement to temporary total, permanent partial, and wage loss disability benefits. The parties discussed the issues set forth in Commission Exhibit 1. The following was litigated:

1. Whether Claimant sustained a compensable injury to her legs and back.

### Contentions

#### Claimant:

1. Claimant contends that she sustained a compensable injury on January 14, 2006 which arose out of the course and scope of her employment with Respondent and is entitled to all related workers' compensation benefits.

#### Respondents:

1. Respondents contend that Claimant did not sustain a compensable injury on January 14, 2006 or on any other date while employed by Respondent employer.
2. Without waiving other defenses, Respondents also contend that Claimant failed to give notice of the alleged injury until January 31, 2006 and, therefore, even if the Commission determines Claimant did sustain a compensable injury, Claimant is barred from receiving compensation benefits prior to January 31, 2006.

**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 not proven by a preponderance of the evidence that she sustained compensable injuries to her legs and back.

**PRELIMINARY RULINGS****Constitutionality of the Arkansas Workers' Compensation Act**

Claimant filed on October 9, 2007, a "Motion to Recuse and Notice of Intent to Introduce Evidence at Hearing." 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. The motion and attachments have been blue-backed to the record in this case.

The points raised in the 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.

### **CASE IN CHIEF**

#### **Summary of Evidence**

\_\_\_\_\_Four witnesses testified at the hearing: Claimant; Anna Reynolds, an LPN at Respondent Newton County Nursing Home; Debby Henson, the bookkeeper at the nursing home; and Deborah Spillman, Assistant Director of Nursing at the nursing home.

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 report dated October 4, 2007 regarding an EMG test administered to Claimant; Claimant's Exhibit 2, the transcript of the deposition of Claimant taken August 14, 2006, consisting of 29 individually numbered pages; Claimant's Exhibit 3, a one-page facsimile cover sheet dated February 6, 2006; Claimant's Exhibit 4, a one-page facsimile cover sheet dated February 9, 2006; Claimant's Exhibit 5, a one-page facsimile cover sheet dated February 14, 2006; Respondents' Exhibit No. 1, a compilation of Claimant's medical records, consisting of one index page and nine individually numbered pages; Respondents' Exhibit No. 2, a five-page exhibit consisting of a patient weight log, work schedules and a photograph; and Respondents' Exhibit 3, an Incident/Accident Report for Claimant dated January 31, 2006. Also, as recounted above, Claimant's Motion to Recuse along with the attachments thereto have been blue-backed to the record in this case.

#### **Testimony-Hearing**

While Claimant was the second witness at the hearing, her testimony is being set out first in order to present a factual background for the case.

Christine Girlinghouse. Claimant testified that she is 41 years old and has been a CNA since July 2005. She worked for Respondent Newton County Nursing Home for approximately six to seven months. Prior to being injured in January 2006, she never had any problems with her back. She stated that "SB" (to protect the privacy of this patient and her family, she will only be referred to by her initials in this opinion; her full name is in the transcript) was combative when undergoing things like rectal examinations, and described the incident in question, which she stated occurred around 7:15 a.m., as follows:

On the specific day that I was there, they, the nurse on my shift from 11 to 7 had done a enema to [SB]. When Ms. Anna come in the next morning, as she said, we went to the report. When we come out of the report, Dorothy, myself, and Anna went to [SB's] room. Ms. Anna was a little bit upset because she hadn't had a bowel movement that they expected. They went back, she decided to do a rectal on [SB]. Me and Dorothy picked her up out of the wheelchair. I turned—I was against the wall in the bathroom, I was the one against the bar. When we turned, we, we went to sit her down, and Ms. Anna said to hold her up, she had to do an exam on her. When we were holding her up, Ms. Anna proceeded with the exam and [SB] come forward. She didn't swing at me, she lunged. When she did, I was jolted against the bar that hit me in the left side . . . from just below my ribs to where my back side meets.

Claimant identified page five of Respondents' Exhibit 2 as a reasonable representation of the bathroom where the incident occurred. She placed an "X" on the photograph to show where she was standing. At the time of the examination, according to Claimant, she was facing SB and had her right arm under SB's left arm, helping to hold her over the toilet. SB lunged forward, causing Claimant to strike the bar on the wall. She placed a "Y" on the photograph to show where this took place. The bar hit her just below her back brace.

Claimant testified that the day of the incident, which she was not sure was January 14, she began limping. She mentioned the incident to her sister and to Debby Henson. Henson asked if she needed to fill out an incident report, but Claimant stated she did not

feel hurt badly enough to warrant it. She told Henson that she would go see a doctor if her condition worsened. Claimant stated that she went to the emergency room 24 to 48 hours after the incident when she became unable to stand up or move her left leg; but she later said that she stayed in bed for two days before going to the ER. There, she underwent an x-ray and received a shot of Nubain. It was discovered that she had sciatica. She stated that she called the nursing home and told the night nurse on duty that she was going to the emergency room. Claimant did not recall the name of the nurse "because some of the CNA's and nurses at night I didn't know them that well yet."

According to Claimant, on January 18, 2006 she brought her paperwork from the doctor to the nursing home and spoke with Susan Long, a night nurse. Long told her to put the papers under the door of the office of Debbie Spillman, who handled scheduling. The paperwork stated that Claimant needed to be on light duty for two weeks. Claimant did not return to the nursing home until January 31, 2006, when came to the nursing home for an in-service and spoke with Spillman and Ms. Duncan, the administrator. They filled out the paperwork, had her undergo a urine test, and sent her to Dr. Justice. She was prescribed medications and was sent to physical therapy, which she underwent. However she stopped going to therapy because her car broke down.

Claimant testified that she has not worked anywhere since January 31, 2006, with the exception of two days at a home health care agency, taking medicine to an elderly woman. She stated that she has pain between her lower back and left knee, and sometimes in her right leg as well. She stated that she had not suffered problems since being in a car accident in 1989 and completing physical therapy thereafter. She stated that "I was laid up in the bed for a year and a half. They sent me to physical therapy. I was

fine; within two months I was back to work.” Prior to January 2006 she had temporary pain in her back, but stated that “[t]his is the worst my back has ever been.” The pain is constant, and “moderately uncomfortable.”

When questioned by Respondents, Claimant stated that in addition to the accident described above, she was in another motor vehicle accident while riding in the back seat and underwent chiropractic treatment.

During the incident in question, Claimant was positioned between the toilet and the bar on the wall. When SB lunged forward, Claimant was pushed sideways and struck her left side. After the incident, she began limping immediately, as she was walking out of the restroom. Adams noticed her limping and mentioned it. Claimant told her sister what had occurred as she was leaving the nursing home and her sister was arriving to begin her shift. At first, she stated that she began having pain “[w]ithin that 24 hour period.” She then testified that the pain started as soon as she was injured, a “tingling,” but increased later. Claimant was unable to contact Adams to testify, and her sister was busy with her job and has six kids.

She testified in her deposition that she went to the emergency room on the evening of the same day the injury occurred, which she stated would be consistent with emergency room records that indicate that the onset of the pain had been about one day. The following exchange occurred:

- Q. Okay. Okay. So you’re confident it was 24 hours or less between this incident and when you wound up at the emergency room on January 14<sup>th</sup>?
- A. Yes, sir, with a 24 hour—yes, sir, to the best of my knowledge.

Claimant was scheduled to return to work at 11:00 in the evening the same day she went to the hospital. She worked for nearly two weeks on light duty. When she went to the nursing home for the in-service, SB noticed that she was limping. Claimant stated that she went to the meeting and informed Spillman, and they went to her office and began filling out the workers' compensation paperwork. The first paperwork the nursing home received regarding the incident was Claimant's hospital paperwork, which she brought on January 18, 2006. When shown what was admitted as Respondents' Exhibit 3, she identified it as containing her description of what occurred in the bathroom. "ADLs" referred to "activities of daily living," which Claimant testified would include a rectal examination.

Anna Reynolds. Called by Claimant, Reynolds testified that she knows Claimant. Reynolds is a nurse at Respondent Newton County Nursing Home. She has taken care of SB. Claimant was a CNA at the nursing home. Reynolds stated that she did not recall an incident where she was performing a rectal examination on SB. She did testify, however, that it was part of her responsibilities to perform such examinations if a patient were having trouble having a bowel movement. And she stated that while SB's chart would refresh her recollection, she did not bring this record with her to the hearing. Reynolds testified that while Claimant might have assisted her in such a situation, the two worked different shifts at the nursing home. She stated that she was aware that Claimant was alleging that she injured her neck, but Reynolds did not know what the specific allegation was.

Later, Reynolds testified that Respondents' counsel asked her if she was present when a rectal examination was being performed on SB, and she told him that she did not recall. She then stated that she reviewed the nurses' note in SB's chart for January 14,

2006, the date given her by Respondents' counsel, and that she did not find an entry regarding such an examination taking place. She also found no reference to SB exhibiting combative behavior on that date. Reynolds stated that it was possible that the record of a rectal examination being performed might be in the chart for another date. She was not willing to give an estimate of how many rectal exams she had performed, but stated that it had been "several." Reynolds testified that while most patients do not move quickly or have a spasm while undergoing such an examination, many of them do so.

When questioned by Respondents, Reynolds testified that she has worked at the nursing home for nine years. She first went to work there as a CNA, and then became an LPN after working her way through school. Reynolds is well-acquainted with Claimant; they are distantly related. Reynolds normally worked the day shift, 7:00 a.m. to 3:00 p.m., while Claimant worked the night shift and would be leaving as Reynolds arrived. Reynolds normally arrived at 6:30 a.m., so there was some overlap in the shifts. But Reynolds spent that 30 minutes in meetings, not on the floor. She stated that the night nurse would have performed a rectal examination if one took place at 6:30 a.m., and that Reynolds' involvement at that time would be unusual.

Reynolds testified that to afford a patient privacy, rectal examinations are generally done in the bathroom or if the patient was in bed, there. Again, she stated that she had no recollection of performing a rectal examination of SB in the bathroom at the nursing home while being assisted by Claimant and Dorothy Adams. In fact, she could not recall any specific incident regarding Claimant, Adams and SB. While Adams worked the same shift as Claimant, she has not worked at the nursing home for some time. Reynolds stated that if she had performed a rectal examination, she would have charted it. But there was

not, to her recollection, such an entry for January 14, 2006 in SB's chart. In fact, Reynolds could not recall if she even worked that day. The nursing home keeps records of when its employees have worked there.

While Reynolds could not recall if Claimant had reported an injury to her, she stated that if this had occurred, she would have sent her to the front office to Debbie Spillman or the director of nursing to fill out the appropriate paperwork, which would include an incident report and a first report of injury. A drug screen would be performed, and the employee would be sent to the doctor.

When questioned by me, Reynolds stated that she could not recall anything about SB's chart for January 14, 2006, which she had reviewed. She stated that the purpose of performing a rectal examination is to help a patient have a bowel movement. To deal with constipation, the policy at the nursing home was to administer milk of magnesia on the day shift, a Dulcolax suppository on the evening shift, and (if prior efforts have not been successful) an enema on the night shift. Reynolds stated that the number of personnel required to conduct a rectal examination depends on the patient. With respect to SB, she testified she is the type of patient that would lead Reynolds to ask for help in conducting a rectal examination. This is because "she is the percentage [sic] that would jerk or try to hit . . . she might try to fight you." Reynolds did not recall if SB has dementia, but knew her to be combative. She is in her eighties or nineties, five feet five to six inches, 150 to 160 pounds, and uses a wheelchair.

Debby Henson. Called by Respondents, Henson testified that she is the bookkeeper for Respondent Newton County Nursing Home. She has worked there since 2003. In January 2006, it was her responsibility to handle paperwork regarding accidents

and workers' compensation claims. Henson did not recall Claimant coming to her in mid-January 2006 as she was leaving the nursing home and Henson asking her why she was limping. According to Henson, had Claimant told her that, she would have gotten our a first report of injury form and had Claimant submit a urine specimen. Even if Claimant had told her she was not badly injured and did not want treatment at that time, Henson stated that she would have asked her to sign a release to that effect. In either case, she would have wanted to document what had taken place. Henson stated that she went back and reviewed her records and could not locate such a release from Claimant. She observed Claimant testifying and did not recall her coming to her and telling her that she had hurt herself, but did not want to fill out the paperwork and would go to the doctor if she needed to before returning to work.

Henson's first recollection of something involving Claimant was when Spillman or the administrator came in and told her that they needed to get some paperwork completed on Claimant and obtain a urine specimen from her.

When questioned by Claimant, Henson stated that the day the paperwork was begun, it was late in the evening and it was started in the conference room. She identified Claimant's Exhibits 3-5 as being in her handwriting.

Debbie Spillman. Called by Respondents, Spillman testified that she is the Assistant Director of Nursing for Respondent Newton County Nursing Home. She has worked there for eight years. She was in charge of nurse scheduling during the period at issue. Shown Respondents' Exhibit 2, she identified pages 1-4, respectively, as the weight record for SB, the nurses' schedule from January 8-21, 2006, the 11:00 to 7:00 schedule for the same time frame (with all names but Adams and Claimant redacted) and the 11:00

to 7:00 schedule for CNAs from January 22 to February 4, 2006 (with all names but Claimant redacted). When a "W" on the schedule is circled, according to Spillman, that denotes that the person was scheduled to work, but did not. From a comparison of the schedules, Spillman stated that it shows that the last time that Claimant worked before going to the hospital on January 14, 2006 was from January 11-12 (on the 11:00 to 7:00 shift), and the last day that Claimant, Reynolds and Adams were in the facility at 7:00 a.m. at the same time during this time frame was January 10, 2006.

#### Testimony-Deposition

Christine Girlinghouse. Claimant was deposed on August 14, 2006, and the transcript thereof was admitted as Claimant's Exhibit 2. Therein, she testified that her sister, Sabrina DeVille, also worked at Respondent Newton County Nursing Home as a CNA. Her injury that is the subject of this claim is the only one she ever had at the nursing home. The injury involves her low back and both legs, but her left leg bothers her more than her right.

With regard to previous injuries, Claimant testified that when she was 16 or 17, she was riding in a car with her father when he had an accident. She went to a chiropractor for a short period of time. Also, she was in a car accident 17 to 20 years before, when she was 21 to 22 years old, and her lower back and the area between her shoulder blades was injured. Her legs were not hurt, but they "tingled." The car was totaled. She stated that "[i]t had me to where I couldn't move very well." Claimant underwent cortisone shots and an epidural injection, along with physical therapy, but no surgery, and received treatment from a year to 18 months. She did not work during this period. Thereafter, she experienced no major problems with her back until the accident at the nursing home.

As for the incident at issue, she testified that she and Dorothy Adams were helping Anna Reynolds while she performed a rectal examination on a patient in the bathroom at the nursing home when the patient “kinda got jolted, or she jolted forward, when she did, I got flung against the metal bar in my lower back on my left side.” The bar was used to make the restroom accessible to the handicapped. Claimant did not fall. She stated that she did not feel pain right away, but began to feel tender within the first hour. While leaving the bathroom, Adams asked Claimant why she was limping, and she told her what happened. Claimant stated that his occurred “7 a.m. on the 14<sup>th</sup>, that morning because I work from 11 to 7.” Thereafter, she only worked approximately ten minutes before clocking out. She also mentioned what had happened to her sister and to Debby Henson (who also asked her why she was limping). Henson told her that if she was not okay, she needed to report it. She replied that if she needed to go to the doctor, she would do so before reporting back to work that night.

Claimant testified that “the next morning, I went to the doctor.” Later in her deposition, she stated that she went to the hospital the same day: “I was scheduled to be at work that night and I ended up in the ER instead.” The following exchange occurred:

Q. Okay. So you wound at the emergency room—the injury happened at 7 a.m. on the 14<sup>th</sup>, and you wound up at the emergency room some time that evening?

A. Yes, sir.

She saw Dr. Barbara Ash at the Hospital, who gave her muscle relaxers and pain medication. Claimant stated that she returned to work on light duty on January 17 and worked until January 23. When she saw Dr. Justice, she was taken off work completely. She was referred for physical therapy. Dr. Justice referred her to Dr. Ledbetter, who is an

orthopedic physician. He, in turn, released her with a ten-pound lifting restriction. Her last medical treatment was when she saw the physical therapist in late March or early April of 2006. She has not been injured since the January 2006 accident.

Since leaving the nursing home, Claimant has not worked anywhere. She has not applied for unemployment benefits or for Social Security disability benefits.

### Records

Claimant's Exhibit 1. Claimant on October 4, 2007 underwent electrodiagnostic testing. Her findings were found to be consistent with "[r]adiculopathic processes, with minimal axon loss in the mid lumbar paraspinals, but with marked nerve root irritation/inflammation, involving multiple lumbar and sacral levels, very acute in nature."

Claimant's Exhibits 3-5. These exhibits are three facsimiles sent to Respondent CCMSI from Debby Henson. The first, dated February 6, 2006, reads in pertinent part: "Hey Natalie, We just received these papers from NARMC from when C. Girlinghouse went to the ER. Finally figured out the Date of Incident was January 13, 2006."

The second facsimile, dated February 9, 2006, reads in pertinent part: "I was informed yesterday that Miss Girlinghouse is going to Rehab therapy 2-3 times a week now. She is still off work to date."

The third facsimile, dated February 14, 2006, reads in pertinent part:

Well, I thought I'd better let you know that Christine Girlinghouse reported to us that her urine tested out as having over the limit of cod[ei]ne. I don't have any proof of this but the Administrator said I should tell you guys. Okay?

Respondents' Exhibit 1. The medical records of Claimant in this exhibit reflect that on January 14, 2006, Claimant presented to North Arkansas Regional Medical Center at 10:57 p.m. with a problem that began one day ago when she was "shouved [sic] against [sic]

wall by client.” She had lumbosacral pain with a shooting pain in the right leg but no radicular numbness or tingling. On one hand, Claimant stated that the pain is not made worse with any particular movement, and on the other that symptoms are exacerbated with movement. X-rays showed no evidence of an acute fracture, but mild straightening of the curvature of the lumbar spine. A single dose of Nubain and Phenergan was given. She was diagnosed with sciatica.

An MRI on February 3, 2006 showed possible alteration of bone density of the lumbar vertebral bodies along with multiple levels of spinal stenosis and mild degenerative changes consistent with osteoarthritis and degenerative disc disease. No herniated nucleus pulposus was found.

When she went to physical therapy on February 7, 2006, she presented with a decreased lordotic curve in her lumbar spine and an increased kyphotic curve of her thoracic spine. Claimant stated that “she was lifting a heavy patient when patient suddenly lunged forward knocking her backwards into a wall.”

Claimant went to see Dr. Ledbetter at Ozark Orthopedic Associates on March 21, 2006. She related that she was holding a resident up and was pushed backwards, striking her back on a metal bar, particular on her left side. Claimant presented as being very obese. Dr. Ledbetter noted that her MRI showed degenerative changes with osteoarthritis but no evidence of significant thecal canal impingement and no herniated nucleus pulposus. He assessed her as having a back strain and placed her on Skelaxin. Also, he stated that he could do alternate duty for two weeks and then return to regular duty.

Respondents’ Exhibit 2. According to the weight log for SB, which is part of this exhibit, she weighed 152 lbs. in January 2006. The work schedules described by Debbie

Spillman in her testimony are set forth here. Finally, the last page of the exhibit is a photograph of a bathroom and which Claimant used during her hearing testimony to identify where and how she was struck in the back on January 14, 2006.

Respondents' Exhibit 3. This is an Incident/Accident Report for Claimant. It gives the time of the accident as 7:00 a.m., but the date portion of the form is left blank. The incident is described as follows: "Lifting Resident providing ADL's and was pushed Backwards to bump the Medal [sic] Bar in my Back In Restroom." The form is not signed by Claimant, but is signed by Henson and by Lisa Duncan, Administrator of the nursing home, on January 31, 2006.

## **ADJUDICATION**

### Compensability

Claimant has contended that on or about January 14, 2006 at approximately 7:00 a.m., she sustained a compensable injury to her back and legs as a result of being shoved by a patient, SB, while she and Dorothy Adams were attempting to assist Anna Reynolds in performing a rectal examination on the patient. Respondents, in turn, contend that Claimant did not suffer a compensable injury.

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).

Claimant has testified consistently that this incident happened as recounted above. Moreover, she has stated that she reported the injury to her sister Sabrina DeVille, who also worked at the nursing home, and to Debby Henson the morning that it occurred. Until the hearing, Claimant has stated that this incident definitely occurred on January 14, 2006. However, in her hearing testimony she gave indication that she was not certain of the date. She stated that she went to the emergency room 24 to 48 hours after the incident, when she became unable to stand up or move her left leg; but she later testified that she stayed in bed for two days before going to the ER. Under cross-examination, she reverted to her deposition testimony that it had been less than 24 hours after the incident. The latter would be consistent with her testimony that she supposedly told Henson that she did not need treatment right after the incident, but would go to the doctor if need be before returning to her shift that night. In fact, she was scheduled to work that night but did not, as Respondents’ Exhibit 2 reflects.

Regardless, the evidence shows that Claimant went to the emergency room on the evening of January 14, 2006. Even using the version of her testimony that gave the

longest period between the incident and her going to the hospital, the earliest the accident could have occurred was January 13, 2006. But as Respondents' Exhibit 2 reflects, Claimant did not work the night shift from January 12-13, which would have placed her in the nursing home the morning of the 13<sup>th</sup> from 6:30 to 7:00 a.m. Nor did she work the night shift from January 13-14. Per this exhibit, the last time she would have been at the nursing home in the morning was on January 12. But the schedule in Respondents' Exhibit 2 does not show that Anna Reynolds or Dorothy Adams worked that morning. This is important because Claimant was adamant that Adams and Reynolds were present when the incident occurred. In fact, the closest date to January 14, 2006 when all three would have been there around 7:00 a.m., per the above exhibit and the testimony of Spillman, was January 10, 2006. Hence, this record and Spillman's testimony, which I credit, show that Claimant's version could not be true.

In *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001), the Arkansas Supreme Court held that to be "identifiable by time and place of occurrence," a claimant does not have to "identify the precise time and numerical date upon which an accidental injury occurred. Instead, the statute only requires that the claimant prove that the occurrence of the injury is capable of being identified." However, the court was quick to add that the Commission could take into account the inability of a claimant to specify the date of the alleged accident in weighing the credibility of the evidence. *Id.*

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.*

I find that Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury in that she has not shown that her injury was caused by a specific incident identifiable by time and place of occurrence, nor has she shown a causal connection between her injury and her place of employment.

This is the case not only because of the impossibility of Claimant's time line of events, but of the questionable nature of the balance of her testimony. No one corroborated Claimant's testimony. While Reynolds' almost complete inability to recall anything of substance on the stand makes her own credibility open to question, the fact remains that she did not recall performing a rectal examination of SB with the aid of Claimant, and she testified that such a scenario would have been unusual because it would had to have happened soon after she arrived for her day shift and shortly before Claimant departed at the end of her shift. Adams, Claimant's alleged fellow CNA in the bathroom, was not called to testify. Nor was Claimant's sister, to whom she allegedly spoke about the incident before leaving the facility that morning. Claimant also testified that she spoke with Henson that morning about being injured; but Henson, contrary to Claimant's version, did not recall being approached by her as she was leaving the nursing home in mid-January 2006 and her asking Claimant why she was limping.

For me to conclude that Claimant sustained a compensable injury on or about January 14, 2006, in light of the evidence before me, would require that I engage in a substantial amount of speculation and conjecture. But such cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979).

**CONCLUSION**

Claimant bears the burden of proving by a preponderance of the evidence that her alleged injury is compensable. She has been unable to do this. Therefore, his claim must be, and hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Administrative Law Judge