

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F613036**

DONNA G. LAMBERT, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., CARRIER	RESPONDENT

**OPINION FILED JULY 1, 2008**

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on April 28, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by The Honorable Terence Jensen, Attorney at Law, Benton, Arkansas.

The respondents were represented by The Honorable Tod Bassett, Attorney at Law, Fayetteville, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on April 28, 2008, in Little Rock, Arkansas. A Prehearing Order was entered in this case on February 21, 2008. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

The following stipulations were submitted by the parties either during the prehearing conference or at the time of the hearing, these are hereby accepted.

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

2. The employee-employer relationship existed at all relevant times, including November 24, 2006.

3. The claimant's compensation rates are \$155.00 for temporary total disability compensation, and \$155.00 for permanent partial disability compensation.

4. The claim has been controverted in its entirety for purposes of attorney's fees.

5. All other issues are reserved.

### **ISSUES**

The parties agreed to litigate the following issues:

1. Compensability of the claimant's alleged low back injury.
2. Reasonable and necessary medical treatment previously received and future medical treatment.
3. Temporary total disability from November 27, 2006, to a date yet to be determined.
4. Controverted attorney's fee.

### **CONTENTIONS**

The claimant's contentions are set forth in the claimant's response to the prehearing questionnaire, these contentions are hereby incorporated herein by reference.

The respondents' contentions are set forth in the respondents' amended response to the prehearing questionnaire, these are hereby incorporated herein by reference.

The documentary evidence submitted in this case consists of

the Commission's Prehearing Order of February 21, 2008, the claimant's Response to the Prehearing Questionnaire, and the respondents' Amended Response to the Prehearing Questionnaire, as these have all been marked as Commission's Exhibit No. 1.

Radiology Associate's Notice of Lien of April 20, 2007, has been blue-backed and marked as Commission's Exhibit No. 2, as it is incorporated herein by reference. The claimant's Medical Packet was marked as Claimant's Exhibit No. 1. The Respondents' Medical Packet was marked as Respondents' Exhibit No. 1. The April 9, 2008 report of Dr. Shane McAlister was marked as Respondents' Exhibit No. 2.

The following witness testified at the hearing: the claimant.

### **DISCUSSION**

The claimant, age 47 (12/19/60), worked at the respondent employer's location in Chenal on Highway 10. Upon hire, the claimant worked in the receiving area and was later transferred to the meat department. According to the claimant, she was working in this department when her asserted back injury of November 24, 2006, occurred. The claimant testified that she was required to unload pallets of meat products, as these boxes weighed anywhere from 35 to 50 pounds. The claimant further testified that she was required to put the meat on a cart and take it out and put it on the meat wall, out where customers shopped.

Specifically, the claimant testified:

Q. Now on November 24, 2006, the date of your injury, tell me what happened when you were injured.

A. I had just came off of break, and I walked into the meat department, and there's some double doors. I walked in there, and there was three pallets. There was two full pallets on either end of the freezer or cooler. And then there was one right in the middle that we had been working off of. And we had it down, there was just maybe one or two boxes high. And we had worked it down that far. I went to step over it. You couldn't get around any other way. The meat cooler's pretty compacted in there. And I stepped my right foot over a wooden pallet. And as I attempted to lift my left foot over, my left foot caught in the wooden pallet. And from there I just fell over to my right side on the concrete floor.

Q. So you were stepping over a pallet?

A. Yes.

Q. You were actually unloading that pallet, is that what you were doing?

A. I was going to get to the other side of it so that I could take those products that was left on the pallet and load it on my cart.

Q. And when you said you were stepping over the pallet, how wide is the pallet that you're stepping over?

A. I was stepping over the corner of it, and it's probably about a 4x4 pallet I think maybe is what the standard pallets are.

Q. And you actually got your foot caught in the pallet?

A. Yes. Inside the middle of it. It's kind of a two, I don't know if you -- the wooden pallets that have slats.

Q. The wood slats?

A. Yes.

Q. And there's spaces between the slats?

A. Yes. And my foot got caught in between there.

Q. So you were standing up, and you fell to the concrete floor?

A. Yes.

Q. And did you fall on any particular side? Where did you hit?

A. On my right side.

Q. Right side?

A. Yes.

Q. All right. Now was there anybody from Wal-Mart, co-employees or anything of that nature around you?

A. Yes. Paul Wichard was in there. He was actually standing right where, I fell at his feet....

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Q. Now after you fell and everything, did you have any pain or any problems, physical problems or anything at that point in time?

A. At that point I didn't feel like I was hurt.

Q. And what did you do after you fell?

A. I got up and began to load the cart to take it out and put out on the floor.

Q. Okay. And at what time did you begin to feel that you might be hurt?

A. It was within 10 or 15 minutes.

Q. Okay.

A. And I started, my foot started hurting and burning real bad.

Q. Which foot?

A. My right foot on the inside.

According to the claimant, she was not able to walk very well at that point, as she began to limp. The claimant testified that as soon as she noticed the shooting pain, she went to Greg York, an assistant manager, and reported her pain to him and another manager in the store, named Justin. The claimant testified that Mr. York told her to come with him, to fill out an incident report, and they did so.

She testified she returned to work, but her pain grew worse, so she went back to Mr. York, and he told her to go talk to Brian, who was a manager or supervisor over the fresh produce and meat section. The claimant further testified that she told them she probably needed to see a doctor. She next went in to see Louann, the personnel manager, who told her she probably did not need to go at that time. She suggested that maybe the claimant should go home and rest and see if it got better because they may not pay.

The claimant admitted to going home, which was a 30-minute drive from Wal-Mart. According to the claimant, by the time she got home, her husband had to come outside to the truck and help her in the house because she was having more trouble with her foot and leg. The claimant testified that her pain was like lightening bolts, and shocking, with sharp pain down her leg.

According to the claimant, she later called Justin and asked to go to the doctor, but he was unable to leave because there were no other managers on duty at that time. The claimant testified

that she got to see a doctor, as Justin gave her permission to go see a doctor, and he went with her to Baptist Hospital, which was on November 26<sup>th</sup>. The claimant admitted to being given muscle relaxers and pain pills for her symptoms. After this visit, the claimant testified she was told by Louann to go see the company doctor at Concentra. According to the claimant, she was given a Toradol shot, a steroid shot, some prescription medications, and set up for some physical therapy treatment, there at the clinic. The claimant testified she only underwent two physical therapy treatments because she later learned from Joe that her claim had been denied.

Since this time, the claimant testified that she has been unable to seek medical care because she does not have the money to go see another doctor, except for her family doctor, Dr. Watson. She admitted to seeing him on December 1, 2006. At which point, he gave her a prescription for a muscle relaxer and put her on steroids by mouth. The claimant further testified that when she saw Dr. Watson, she was having trouble walking, a lot of pain in her lower back down her leg and down to her foot, as it never left. She essentially admitted to seeing Dr. Watson again on December 7, 2006, and on April 5, 2007. According to the claimant, she did not see Dr. Watson again until April 5, 2007, because she did not have the money, as she had to borrow the money from family and friends to pay.

The claimant admitted to subsequently going to UAMS on April 30, 2007, in an attempt to get medical help. She testified that she also went to the emergency room of Saline Memorial on December 15, 2006. According to the claimant, these medical bills have not been paid.

She admitted to undergoing an MRI on October 10, 2007 as a result of seeing Dr. Currie on Channel 4, who conducted a free evaluation and sent her for the MRI. The claimant testified she was unable to get the treatments he recommended because they were \$7,500.00. According to the claimant, she next saw Dr. Kirk in March of 2008, as he works with the free clinic in Benton, as they agreed to see her for \$90.00, as she was able to get the \$90.00 to pay this.

With respect to her symptoms, the claimant testified that her symptoms are now in her lower back and spine, her right hip, and on the inside of her right foot. The claimant agreed that her symptoms have been continuous and about the same as they were a week or two following the accident. She rated her level of pain to be at an eight.

The claimant denied having worked since her injury. According to claimant, she was told by Brian (the meat department's manager), Greg York, and Justin to stay home. She admitted that all of these people work in a management capacity for the respondent-employer.

The claimant testified that she does not believe that she is

able to work at this point in time. The claimant testified she is unable to do work around the house, as her sons and a friend assist with these duties. The claimant testified she is limited in her ability to walk, as she is able to walk only 50 to a 100 feet. She also testified that sitting hurts her, and she cannot stand up over 15 or 20 minutes. The claimant admits to taking Flexeril, which was prescribed by Dr. Watson as of the date of the hearing.

On cross examination, the claimant denied any prior problems with lower back pain and pain down her right leg before this incident. However, the claimant admitted that medical records from November 21, 1989 were correct wherein it was indicated that she had been in a car accident where she injured her left shoulder, neck, and low back pain. She did not recall any leg pain, but testified she would not dispute her family physician's medical records. The claimant admitted to settling the claim out of court.

The claimant did not recall having an MRI of the low back in 1992, nor did she recall having complained of low back pain and right leg pain. According to the claimant she experienced back pain for two to four months after the incident. The claimant was also questioned about notes of July 21, 1992 from her family doctor wherein she complained of low back pain and right leg pain. However, she did not remember this, nor having undergone an MRI of the low back in 1992.

She admitted a prior work injury while working at Timber Ridge Ranch on April 6, 1998. She denied any low back pain as a result of the incident. The claimant essentially admitted to filing this as "a medical only claim." She admitted to leaving her employment with Timber Ranch because her upper back and neck were hurting.

The claimant also admitted to a work-related injury to the upper back while working for Lake Catherine Shoe factory in 2004 and 2005. According to the claimant, they paid only her medical bills.

She admitted that within two weeks (September 26, 2006), of going to work for the respondent-employer, she sought treatment from her family doctor and he prescribed a number of different anti-inflammatory pills to control her body pain. She admitted to having pain in her shoulders, elbows, and various parts of her body as a result of working in the meat department.

She denied having filed for unemployment benefits after her claim against Wal-Mart was denied, but she did admit to filing for Social Security Disability benefits, which was pending as of the date of the hearing.

With respect to the incident, the claimant admitted that all of her complaints are of the right foot, ankle, and right side and back, nothing on the left. The claimant denied having lifted a couch, which is indicated in the medical records.

The claimant admitted to having undergone an IME on February

21, 2008, at the request of the respondents, with Dr. Brent Sprinkle. She admitted to seeing Dr. Kirk about a month later on March 11, 2008.

On redirect examination, the claimant denied any problems six years prior to her accident. The claimant denied having experienced any type of prior back pain to degree that she now has as a result of the work-related incident.

A review of the medical records demonstrates that the claimant underwent x-rays of the back on November 26, 2006, at Baptist Health Center, Little Rock. X-rays of the back were taken with the following impression: "Mild degenerative disc disease and moderate facet arthritis at L5-S1. Otherwise negative exam."

On that same date, the claimant underwent a right lower extremity venous ultrasound, with the following impression, "Normal venous Doppler of right lower extremity."

Dr. Joseph Farmer of Baptist Health Medical Center, the claimant's attending physician reported the following on November 26, 2006.

**HISTORY OF PRESENT ILLNESS:**

This is a 45-year-old female who fell at work at Wal-Mart. She said she tripped over a pallet, landing on her back. She complains of severe pain in the low back and pain which radiates down the right leg to about the foot. She complains of some paresthesias and burning feelings in her feet, also. She says it hurts when she goes to the bathroom and strains, and this intensifies her back pain. She has no prior history of back problems.

**PHYSICAL EXAMINATION:**

BACK: There is tenderness in the right sacroiliac notch.

Straight leg raising test is positive on the right at 30. She has pain on performed Patrick maneuver.

**EXTREMITIES:** Examination of the right lower leg reveals some tenderness over the right calf.

Dr. Farmer's impression was "degenerative disk disease, acute exacerbation," for which he prescribed Lortab and Flexeril. He also directed the claimant to follow-up with the Work Injury Clinic there the following week.

On November 27, 2006, the claimant was seen at the Concentra Health Centers under the care of Dr. Scott Carle. He reported, in pertinent part:

**CHIEF COMPLAINT:**

Patient is a 45 year old female employee of Walmart/Cantrell who complains about her leg which was injured on 11/24/2006 11:00:00 AM.

**PATIENT STATEMENT:**

Patient states: "I was stepping over the corner of a pallet, my left foot was caught in the pallet and I fell on my right side hurting my leg, back and foot."

He directed the claimant to refrain from working for the remainder of her shift. He placed the claimant on sedentary job classification and directed her to use crutches as needed. Dr. Carle noted that the claimant's anticipated date of maximum medical improvement was December 11, 2006. Also, the claimant underwent two physical therapy treatments at Concentra per orders from Dr. Carle.

Dr. Carle reported on November 29, 2006 that he did not observe any discoloration or bruise on the claimant's hip or

buttock during her November 27, 2006, visit with him despite his diagnosis of contusion of the hip and buttock.

On December 1, 2006, the claimant underwent evaluation with Dr. Kirk Watson. He reported the following subjective complaints

**S:** 45-year-old white female who was working at the Wal-Mart, I think in Chenal in West Little Rock. She fell on or about the 24<sup>th</sup> of November, apparently stepped into a wooden pallet that was on the floor and got a foot caught and tripped and fell, straining her right side of the body, both upper and lower. She's been to see physicians and I think Concentra does and has actually received corticosteroid injection and Toradol, by her report. Despite this, she continues to have pain which radiates from the right SI joint area down through the buttocks, the back of the leg, to the level of her foot. Her upper extremities are, I think, feeling better at this time but this leg continues to bother her.

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**BACK:** Her spine is in the midline. She is really nontender in the paraspinal lumbar musculature. The iliac crests are nontender.

He also reported, "I think this woman has still got sciatica from the rotational strain. She's probably got some swelling in the musculature around the nerve." He placed the claimant on Prednisone and took her off work over the next seven days, from December 1, 2006 until December 8, 2006.

The claimant saw Dr. Kirk Watson on December 7, 2006, primarily due to problems unrelated to her compensable injury, but she also had continued complaints of right hip pain as a result of her November 24<sup>th</sup> workplace fall.

On December 15, 2006, the claimant sought treatment from

Saline Memorial Hospital due to complaints of back pain as a result of her fall at work. At that time, she underwent x-rays, namely, AP Pelvis, sacrum two views, and lumbosacral spine series, five views, with the following impressions:

Lumbosacral impression, "Arthritic changes at L5-S1 facet, the disc space at L5-S1 appears congenitally mildly to moderately narrowed;" Sacrum impression, "negative sacrum;" and AP pelvis impression, was "essentially negative AP pelvis other than mild arthritic change in the lower spine."

On April 5, 2007, the claimant saw Dr. Watson due to continued complaints of back pain. He reported the following concerning the physical examination of her back, "Spine is in the midline. There is pain to palpation in the low lumbar regions but not a great deal of spasm at this time. SI joint areas are minimally tender bilaterally." His assessment was "Low back pain with some right leg radiculopathy. She probably needs imaging studies done to assess the disc disease here."

On April 30, 2007, the claimant was seen at the emergency room of UAMS due to complaints of back pain and right leg pain. Notes indicate that the claimant had a history of back pain due to a fall last November and that she had been carrying a couch that day which resulted in her symptoms. While at UAMS, the claimant underwent x-rays, specifically an AP lateral of the lumbar spine was taken on May 1, 2007, with the following impression, "Degenerative changes

seen in the lower lumbar spine."

An MRI of the lumbar spine was performed on October 1, 2007 with the following impression:

1. 6 cystic structure associated with the right L4 nerve root which may represent a nerve root sleeve cyst, however, an avulsion cannot be completely excluded and clinical correlation is recommended with the patient's radiculopathy.
2. Other degenerative changes as detailed above.

Dr. Watson reported on November 7, 2007, the following responses pursuant to the questions set forth in a questionnaire from the claimant's attorney:

1. During your treatment of Ms. Lambert following her injury of November 24, 2006, have there been any objective findings which support a back or spinal injury such as muscle spasms?

Yes X \_\_\_\_\_ No \_\_\_\_\_

- \_\_\_\_\_ 2. If you observed objective findings in Ms. Lambert following her injury of November 24, 2006, please set forth what objective findings were present.

Pain to palpation (R) Sacroiliac, glutelas and hamstrings. Muscular spasms in these muscles palpated.

- \_\_\_\_\_ 3. As a result of Ms. Lambert's injury of November 24, 2006, was she treated with muscle relaxers and/or anti-inflammatories?

Yes X \_\_\_\_\_ No \_\_\_\_\_

4. If Ms. Lambert was treated with muscle relaxers or anti-inflammatory please state what muscle relaxers and/or anti-inflammatory medication she was prescribed.

Mobic anti Inflammatory prior to injury.

Prednisone (Cortisone) after injury Flexeril (MS)

5. Does Ms. Lambert remain in her healing period and need continued medical care as a result of her November 24, 2006 injury?

Yes X No \_\_\_\_\_

- \_\_\_\_\_ 6. What work restrictions, if any, would you place on Ms. Lambert as a result of her November 24, 2006 injury?

\_\_\_\_\_ NOT WORKING \_\_\_\_\_

On February 21, 2008, the claimant underwent an independent medical evaluation with Dr. Brent Sprinkle at the request of the respondents. Specifically, the respondents' most significant question was asked regarding the MRI scan from October 10, 2007, and the 6 mm area of high signal associated with right L4 nerve root, which was felt to represent a nerve root sleeve cyst, as they wanted to know his thoughts on this nerve root sleeve cyst with respect to causation. Dr. Sprinkle reported, in pertinent part: "...Nerve root sleeve cysts or areas of ectasia are frequently seen and are frequently benign chronic findings." He further stated that it was his opinion within a reasonable degree of medical certainty that this nerve root sleeve cyst was preexisting. He further noted that the more likely explanation at this point appears that there was a muscular soft tissue strain injury to her low back and buttocks muscle that should have resolved and has been he thinks reasonably adequately treated. According to Dr. Sprinkle, the pattern of the claimant's complaints

that day was a bit more extensive and in new areas than what was consistent with her previous injury. He wrote, "Therefore the major component of her current complaints on this visit today, I think, are more likely related to any current aggravations of her degenerative disk disease or potentially even new developments or her new pathology that is not specifically related to her fall injury." Dr. Sprinkle recommended that the claimant undergo an EMG and a repeat MRI. However, he noted that the original work injury alone was not enough to justify these diagnostic recommendations.

Dr. Marvin Kirk reported, in pertinent part, the following on March 11, 2008:

**SUBJECTIVE:**

This patient fell at Wal-Mart meat department in November 2006. She stumbled over a wood pallet, landing on the right side on her right hip. She did not think much of it for 15 to 20 minutes and her right hip and ankle started hurting her. The pain was a sharp knife-like pain. She first went to the emergency room and the emergency room doctor said that she had sciatica. She then went to the Workmen's Comp doctor who gave her a cortisone shot, which was just a shot into the hip, not in any specific areas for inflammation. They told her she had sciatica and then wrote a report that she did not have anything. She then saw Dr. Kirk Watson in town and he agreed that she had sciatica because she had decreased reflex in the right ankle. She was then sent to Dr. Sprinkle, a neurologist in North Little Rock who examined her, looked at the MRI that was ordered by a chiropractor in Conway and said there was nothing wrong with her. Her symptoms today have not changed since the initial injury and that is, she has pain in the low back and it radiates down to her right ankle. She has a burning pain in her heel and has a hard time sometimes putting on her shoe because of the pain and discomfort. She cannot lift her leg more than 110 degrees without pain. Her pain level is 7 on scale 1 to 10, 10 being the worst possible pain.

She can walk 50 feet, which is from my office examining room to her car, but then she has to sit because of the pain. She cannot stand long enough to do the kitchen dishes and she is able to do very little of her housework. Her husband who is disabled, has to help her in the house. Her sleeping is very poor because of the pain. She can sit on one spot for about 10 to 15 minutes then she must move around. She also relates that she is having burning pain in her feet and on examination, she has reduced vibratory sensation in the right foot and light touch sensation in the right foot and hypoesthesia in the right foot.

Her past history, she had never had any back injuries. She would have back pain, which was an ache that would be relieved by ibuprofen, but it never limited her ability to work. She works in the meat market and moves 30 to 50 pounds boxes of meat all day long and never had any problems.

**OBJECTIVE:**

On physical examination, she weights 258 pounds. She has gained 58 pounds since the accident in 2006. She has tenderness at L2 and sciatic notch tenderness. She can bend down anteriorly full. Her reflexes are 1+ in the knees and 0 in the right ankle and 1+ in the left ankle. She has pain in the low back and sciatic notch with straight leg raising and tenderness in her sciatic notch. She has hypoesthesia along the L2-L3 nerve root.

**DIAGNOSIS:**

1. Herniated disc with sciatica.
2. Early neuropathy in her foot.

**ADDENDUM:** I recommended this lady needs to see a pain doctor who put cortisone shot in to her spinal column. This is not a surgical problem at this point, but is a medical problem that has not been addressed.

On April 2, 2008, Dr. Kirk reported that as of the date of his examination (March 11, 2008) of the claimant, she was not at maximum medical improvement for her November 24, 2006 back injury and he reported that he felt that the claimant was in need of

additional treatment for this injury. He further opined that the claimant was not able to return to work and recommended restrictions which included but was not limited to, no lifting, pushing, pulling or standing more than 30 per time period, and a five pound lifting restriction.

#### **ADJUDICATION**

The claimant has asserted a compensable injury to her back as a result of a November 24, 2006 incident, wherein she slipped and fell on her right side injuring her low back.

"Compensable injury" means an accidental injury causing 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. Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The claimant must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has met her burden of proving by a preponderance of the credible evidence that she sustained a compensable injury to her back as a result of tripping and falling while at work on November 24, 2006.

Specifically, the claimant gave a credible account of the

incident and her testimony is corroborated by all the medical records. She also testified that she fell at the feet of Mr. Paul Wichard. The claimant further testified that within 10 to 15 minutes, her foot starting hurting and burning. Therefore, she went to Mr. York and reported her injury. According to the claimant, she was instructed by management to go home and rest. Subsequently, the claimant sought treatment for her back condition per directives from management at Baptist and Concentra.

There are objective findings establishing this injury in the form of "spasms," as cited by Dr. Watson. In addition to this, an MRI of October 2007, revealed a 6mm cystic structure associated with the right L4 nerve root, which may represent a nerve root sleeve cyst. While I recognize that this cystic structure was more likely than not a preexisting condition, and that the claimant suffered prior back problems, considering that the claimant had not suffered any back-related symptoms in the last six years, as her testimony and the medical evidence of record demonstrate that she was asymptomatic prior to going to work for the employer-respondent, I think it is more probable than not that the claimant suffered a compensable aggravation of her preexisting condition. It is well settled in workers' compensation law that the employer takes the claimant as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Heritage Baptist Temple v. Robinson, 82 Ark. App. 460, 120 S.W. 3d 150 (2003).

Therefore, based on all of the foregoing, I find that the

claimant has met her burden of proving by a preponderance of the evidence that she sustained a compensable injury to her back on November 24, 2006, during and in the course of her employment with the respondent-employer.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact to be determined by the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the instant matter, I find that the claimant proved by a preponderance of the evidence that all the medical treatment of record for her compensable back injury was reasonable and necessary in relation to the injury received by her. Specifically, all of the medical treatment of record for her back was geared toward evaluating, diagnosing, and treating the claimant's compensable back injury, including the lien filed by Radiology Associates, as no objection has been filed by either party to this lien. Moreover, based on the expert opinions of Drs. Watson, Kirk, and even Sprinkle (See recommendations/discussion above), I also find that the claimant is entitled to future reasonable and necessary medical treatment deemed appropriate to further evaluate, diagnose

and treat the claimant's compensable back injury pursuant to Ark. Code Ann. § 11-9-508(a). Therefore, the respondents are liable for the treatment of record for the claimant's back injury, and all future reasonable and necessary treatment in relation to the claimant's injury.

The claimant also contends that she is entitled temporary total disability compensation from November 27, 2006, to a date yet to be determined for her compensable back injury. The claimant's injury is an unscheduled injury. In order to be entitled to temporary total disability compensation for her injury, the claimant has the burden of proving by a preponderance of the evidence that she has remained within her healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981).

The claimant first sought treatment for her compensable injury on November 26, 2006 at Baptist Medical Center. On November 27, 2006, Dr. Carle placed the claimant on light-duty work and opined that she should be at maximum medical improvement on December 11, 2006. The claimant was directed by Dr. Watson to refrain from working from December 1, 2006, until December 8, 2006. The claimant essentially testified that management told her to stay home until she was well. The claimant credibly testified that she has been unable to work since her injury. Drs. Watson, Kirk, and

Sprinkle (while I realize that he has opined that the work injury alone is not enough to justify additional testings) have all recommended additional treatment for the claimant's symptoms. At the time of the hearing, the claimant essentially testified she has continued in debilitating pain and symptoms since her work-related incident. A claimant who has been released to light-duty work but has not returned to work may be entitled to temporary total disability benefits where insufficient evidence exists that the claimant has the capacity to earn the same or any part of the wages he was receiving at the time of the injury. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981).

Based on the foregoing evidence, I find that the claimant has proved by a preponderance of the evidence that she is entitled to temporary total disability from November 27, 2006, until a date yet to be determined.

The parties stipulated that the claim has been controverted in its entirety. Pursuant to this stipulation, I therefore find that the claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded to the claimant pursuant to Ark. Code Ann. § 11-9-715.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all

relevant times, including November 24, 2006.

3. The claimant's compensation rates are \$155.00 for temporary total disability, and \$155.00 for permanent partial disability.
4. The claim has been controverted in its entirety for purposes of attorney's fees.
5. The claimant proved by a preponderance of the credible evidence that she sustained a compensable injury to her low back while working for the respondent-employer on November 24, 2006
6. The claimant proved by a preponderance of the evidence her entitlement to all the medical treatment of record, as well as her entitlement to future reasonable and necessary treatment for her compensable back injury.
7. The claimant proved her entitlement to temporary total disability compensation from November 27, 2006, to a date yet to be determined.
8. The claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715.
9. All other issues are reserved.

#### **AWARD**

The respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth in this Opinion.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits, pursuant to Ark. Code Ann. § 11-9-715.

All benefits herein awarded which have heretofore accrued are payable in lump sum without discount.

This award herein awarded shall bear the maximum legal interest rate until paid.

The claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein, one-half of which is to be paid the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715.

All other benefits are reserved under the Act.

**IT IS SO ORDERED.**

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**CHANDRA HICKS**  
**Administrative Law Judge**

**CH/ml**