

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F700646**

ANGELA LINN, EMPLOYEE	CLAIMANT
ARKANSAS DEPARTMENT OF HEALTH, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, INSURANCE CARRIER	RESPONDENT

**OPINION FILED MARCH 5, 2008**

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on February 25, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by The Honorable J. Mark White, Attorney at Law, Bryant, Arkansas.

The respondents were represented by The Honorable Richard Smith, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on February 25, 2008, in Little Rock, Arkansas. A Prehearing Order was previously entered in this case on December 11, 2007.

The following stipulations were submitted by the parties, either pursuant to the Prehearing Order or at the start of the hearing, and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including January 11, 2007.

3. At the time of the hearing, the parties will stipulate to the appropriate compensation rates. (At the time of the hearing, the parties stipulated that the claimant's compensation rates for both temporary total disability and permanent partial disability is \$110.00).

4. The claimant sustained a compensable low back injury on January 11, 2007.

5. The claimant was granted a one-time change of physician to treat with Dr. Carl Covey.

6. The respondents have controverted the claimant's entitlement to additional medical treatment.

7. At the time of the hearing, the parties stipulated that the respondents paid for the claimant's first visit with Dr. Covey, the EMG study, and the August 24<sup>th</sup> visit, but have controverted all subsequent medical benefits.

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Additional medical treatment.
2. Temporary total disability compensation from March 1, 2007, until a date yet to be determined.
3. Attorney's fees.

The claimant contends that she was an employee of the respondent/employer on January 11, 2007, on which date she sustained a compensable injury to her low back; that she is

entitled to additional temporary total disability benefits from March 1, 2007, through to a date yet to be determined; that she remains in her healing period and totally incapacitated from earning wages; that additional medical treatment as recommended by Dr. Carl Covey is reasonably necessary in connection with her compensable injury; and that she is entitled to the maximum attorney's fees.

The respondents contend that they have paid all benefits to which claimant has been shown to be entitled.

The documentary evidence in this case consists of the Commission's Prehearing Order of December 11, 2007, the claimant's Response to the Prehearing Questionnaire and attachments, and the respondents' Response to the Prehearing Questionnaire and attachments, which were all marked as Commission's Exhibit No. 1. The claimant's Hearing Exhibit Index has been marked as Claimant's Exhibit No. 1. The respondents' Index of Exhibits has been marked as Respondents' Exhibit No. 1. The respondents' letter from Dr. James Adametz of October 16, 2007, has been marked as Respondents' Exhibit No. 2.

The following witnesses testified at the hearing: the claimant and Jason Linn.

### **DISCUSSION**

The claimant, age 24 (7/1/83), sustained an admittedly compensable injury to her low back on January 11, 2007, while

working for the respondent-employer. She has a high school education, and is a certified nursing assistant. The claimant gave a brief history of her prior work experience, which included job duties as a life skills trainer for mentally challenged individual and a mortgage customer service representative.

With respect to her injury, the claimant admitted she first sought treatment from Cowherd Medical Clinic on January 17, 2007. At that time, the claimant admitted she was having spasms in her back. The claimant further admitted to being prescribed Flexeril, Lortab, and Aleve for her injury. According to the claimant, over the next two weeks, her symptoms remained the same after taking these medications.

She testified that upon her return to the clinic on January 23, 2007, the doctor did not release her to return to work. The claimant admitted to undergoing an MRI on January 24<sup>th</sup>, which showed two herniated disks in her back. She denied that the doctor's office asked her to return to the clinic after the MRI had been performed.

With respect to the functional capacity evaluation performed on February 21<sup>st</sup> (2007), the claimant gave the following testimony:

A. Some of it was -- some of it was easy, some of it was hard. I mean versus, you know, lifting twenty-five pounds to putting a peg in a hole. Well, I mean, the person who does it -- I don't remember his name -- but when he first met me in the waiting room, he introduced himself to me and I introduced myself to him. We went back into the little room and he said now if there is anything -- this is quote -- if there is anything that

you cannot do or you don't think you should do, please let me know and we'll move on to something else. And we went through a series of things of hand movements, and he asked me to lift twenty-five pounds off the floor. And I said I don't think I need to do that. I said I probably can do that, but I'm not taking the risk of doing that because I've just now been able to get up and walk properly. And so he -- I seen him pull the peg out of the weight, move it up and down, and stick it right back in the twenty-five pound lift. I mean, I don't know -- I wasn't going to argue with him. So I went ahead and done it to the best of my ability.

Q. All right. And you say that he -- you said that you couldn't lift it, he removed the peg, and put it back in the twenty-five?

A. Put it back in the same twenty-five pound level.

Q. Do you think he was trying to trick you?

A. Well, yeah.

Q. Okay.

A. I mean -- I mean, it would have been different if I said I can't lift that. But I didn't. I said I don't think I should lift that. It wasn't -- you know, it wasn't a statement of saying I can't. It was a statement of saying I don't think I should for the safety of my body, considering we don't really know what's wrong with it at this point.

Q. Did you lift it anyway?

A. Yes. I wasn't going to argue with him.

Q. Did you take this exam seriously?

A. Yes, absolutely.

Q. Okay.

According to the claimant, after she completed the functional capacity exam, her benefits were discontinued not long after that, around March 1<sup>st</sup>. The claimant testified that Ms. Muriel Hicks

advised that her benefits had been terminated due to the functional capacity test.

The claimant admitted to filing for a change of physician to treat with Dr. Carl Covey, which was granted by the Commission. She admitted to first seeing Dr. Covey on July 25, 2007, who put her on some different medication. According to the claimant, with the different medication, there was improvement in her condition with respect to the amount of movement she could do and her energy level. As of the date of the hearing, the claimant was not on this medication, because she has been unable to go back to the doctor.

She admitted to returning to Dr. Covey's office on August 24<sup>th</sup>, who at that point recommended that she undergo three lumbar epidural steroid injections. The claimant admitted to seeing Dr. Covey's nurse during this visit. The claimant also explained why this medical record indicates she has pain going down the "right leg," while most records up to that point indicates pain going down her "left leg." According to the claimant, when the nurse inquired which leg it was, she asked, "Is it the right leg or the left leg," and the claimant responded, "right," as in it's the left leg, right. Not right leg," as she misunderstood her. The claimant testified she started thinking after the nurse left the room, so she went out and found her and told her it was the right leg. According to the claimant, the nurse admitted she had in fact written down the right leg.

The claimant testified that her condition has changed drastically since she stopped taking the medication. According to the claimant, she is having spasms again, and her energy level has dropped completely. The claimant testified that since January 2007, her pain and symptoms are better and her spasms are not as often. The claimant further testified that her left leg still hurts a lot of the time, as she does not know if it is getting better or if she is just getting "used to it," as it never goes away, she just has to work through it.

The claimant denied ever being examined by Dr. James Adametz or having talked to him. She also denied any prior problems or spasms with her back before her January 11, 2007, accident. The claimant also denied having previously taken any prescription medication for her back.

On cross examination, the claimant admitted to being told initially that her MRI had not shown anything. The claimant further admitted to having given this information to her employer because they had asked that she call them with the MRI results.

With respect to the functional capacity evaluation, the claimant testified that she actually lifted the twenty-five (25) pounds, and she denied that there were any tasks that she refused to perform. The claimant admitted that the results of this exam demonstrated that she did not make maximal effort, and that this was the basis for her being discharged by the respondent/employer.

The claimant did not recall having told anyone in a personnel or supervisory capacity that she did not want to return to work at that time. According to the claimant, she would like to go back to work, but she is unable to do so because her body is not right with respect to her lower back and her left leg, as she continues with pain.

The claimant testified that she typically gets up around 6:00 in the morning and gets her five year-old ready for school. She puts her on the bus around 6:45 a.m., and she has a three year-old at home with her. According to the claimant, her three year-old wants to get down in floor and play, but she is unable to do so. Instead, they watch a movie. The claimant testified she has other responsibilities at home, as she might stand up and wash a few dishes and she has to cook. She further testified she has to make herself do that, but some days are better than others.

On redirect examination, the claimant agreed that when she went to Cowherd Medical Clinic, they told her to stay off work, and that no other doctor has told her to return to work. She denied that any person from the Department of Health or Public Employee Claims Division ever contacted her and told her they have light duty work available for her within her restrictions, nor have they called and asked if there is some position she could do there. The claimant testified she would not accept light duty work if offered it.

On redirect examination, the claimant explained she would not accept light duty work because it would have meant putting her body in jeopardy, and that is unacceptable to her, as her life is her children. The claimant admitted she would have returned to light duty work, if back in August, the respondents had continued to allow her to treat with Dr. Covey.

On further recross examination, the claimant denied having been returned to light duty by Dr. Cowherd or any other physician.

Upon being questioned by the Commission, the claimant essentially testified that her accident happened while mopping the floor of a client's home. According to the claimant, she felt a little pull in her back, and really just disregarded it, as she did not think it was anything major, but it became a little bit more painful. As a result, she explained to the client that she might have pulled a muscle, and since she was almost done, she left and went home.

The claimant's husband, Jason Linn, also testified during the hearing. He admitted he would corroborate everything the claimant had said so far. He further admitted that the claimant is now unable to play with their children as she had done before, and is not as outgoing as she was before due to her back hurting. Mr. Linn denied having observed any of these changes in the claimant before the January 11, 2007 incident.

On cross examination Mr. Linn testified that he works for

Dayco Construction, as an iron worker. He admitted he leaves home around six every morning, and he usually returns back home around four. According to Mr. Linn, his wife's parents live right next door, so his wife is never alone.

A review of the medical evidence of record demonstrates that the claimant first sought treatment for her compensable back injury on January 17, 2007, at the clinic of Dr. Robert Cowherd, due to back pain which presented the prior Thursday while cleaning a client's home. At that time, claimant complained of pain in her lower back that went down her left buttock and leg. Nurse Practitioner Jennifer Jenkins prescribed Aleve, Lortab, and Flexeril for her symptoms. She also directed the claimant not to return to work until her next recheck on January 24, 2007.

The claimant returned to Cowherd Family Medical Center on January 23, 2007, due to complaints of an aching back and sciatic pain, running down her left leg only. She also complained of her toe being numb. The claimant was therefore recommended for an MRI of the back.

On January 24, 2007, the claimant underwent an MRI of the lumbar spine without contrast, with the following impression:

Very small central disc herniation at L4-L5 and L5-S1 causing no definite effect upon the neural elements. Correlation with symptomatology is recommended.

Nurse Jenkins reported on January 26, 2007, that the claimant was contacted directly on that same date with information

concerning x-ray results done on January 24, 2007. She wrote, "All results were normal MRI of the lumbar and sacral spine."

The claimant underwent a functional capacity evaluation on February 8, 2007, at the Functioning Testing Centers, in Mountain Home. The test results of this evaluation indicate that the claimant gave an unreliable effort, with 40 of 56 consistency measures within expected limits. However, the evaluator concluded overall that the claimant demonstrated the ability to perform work at least at the light classification of work as defined by the U.S. Department of Labor.

On March 7, 2007, Muriel Hicks, the Claims Determination Manager, for the Public Employee Claims Division wrote to Dr. Cowherd requesting information concerning the claimant. Dr. Cowherd reported having last seen the claimant on January 23, 2007. He stated that it was "unknown" as to whether the claimant had reached maximum medical improvement for her January 11, 2007, injury. With respect to any permanent restrictions, as a result of her compensable injury, Dr. Cowherd wrote, "Due to Ms Linn's unreliable effort there is no way of assessing her current functional limitations."

The claimant underwent initial evaluation with Dr. Carl Covey on July 25, 2007. His assessment was "persistent LLE pain with physical exam consistent with radiculitis," for which he recommended an EMG of the lower extremities.

An EMG was conducted on August 1, 2007, with the following interpretation:

1. ABNORMAL study.
2. There was electrodiagnostic evidence of moderate and chronic left>right L4-S1 polyradiculopathy vs central spinal stenosis. No further localization was possible.
3. There was no electrodiagnostic evidence of plexopathy or myopathy.
4. Results discussed with patient.

The claimant returned to Dr. Covey's office on August 24, 2007. He noted that the claimant does have nerve damage in her bilateral lower extremities. The claimant reported that the pain was more in her right leg than the left (the claimant clarified this at the hearing, as it should reflect that the pain is more in her left leg). His assessment was "lumb radiculitis," for which a series of three lumbar epidural steroid injections were recommended upon her return in one month.

On August 30, 2007, Dr. Covey responded to a questionnaire from the claimant's attorney, which was dated August 28, 2007. He provided in pertinent part, the following information to Dr. Covey:

I represent Angela Linn in her claim for workers' compensation benefits. She called me today and said you need a request from me to outline her work restrictions.

At the time she was injured, Ms. Linn worked as a personal care aide. Every day she would visit the homes of 4 or 5 clients and assist them with personal needs (bathing, dressing, cooking, etc.) And household chores (mopping, vacuum, laundry, dish washing, etc.). Her job required frequent bending, stooping, reaching, standing, and lifting up to 100 lbs or more when

lifting a patient. In particular, one of the clients she visited daily was a paraplegic, weighing approx. 135 pounds, whom she had to lift daily to help him dress and maneuver.

Based on this information, Dr. Covey reported that it was reasonable for the claimant to be off work from March 2007 until July 2, 2007. He further reported that from July 2, 2007, until her visit of today (August 2007), it was reasonable for the claimant to be off work from her job. He also reported that he had not released the claimant to return to her old job.

On October 16, 2007, Dr. James R. Adametz wrote the following:

**RECORDS REVIEW:**

I have reviewed Ms. Linn's file and reviewed her MRI scan. On the MRI scan she has degenerative disc disease at L4-L5 and L5-S1 associated with bulging discs, which are central in location and small. They do not cause any nerve root compression. I do not see anything that looks like a surgical lesion on this scan.

She had an EMG that was somewhat abnormal, but really nonspecific, and I do not think this is significant.

I do feel like she has reached Maximum Medical Benefit at this point. Dr. Covey is treating her with pain medication. I believe I would leave that up to him.

The best I can tell her current symptoms are probably a combination of degenerative disease and possibly her January 11<sup>th</sup> injury. I would not recommend any additional medical treatment.

**ADJUDICATION**

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 he 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 for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W. 3d 1 (2000).

The claimant essentially asserts that she is entitled to additional medical treatment for her compensable low back injury, of January 11, 2007, as recommended by Dr. Covey during her last visit with him on August 24, 2007, as it appears the respondents have controverted her entitlement to additional medical treatment as of the date of said visit.

On the basis of the record as a whole, I find that the claimant has established by a preponderance of the evidence, that the treatment (the series of lumbar epidural steroid injections and medication regimen) recommended by Dr. Covey is reasonably necessary to treat the compensable low back injury received by the claimant during the January 11, 2007 incident.

Specifically, the claimant credibly testified that she had not had any prior problems with her back before the January 2007 incident. She also essentially testified that the medication prescribed by Dr. Covey significantly reduced her symptoms, and increased her mobility and energy level. During the claimant's last visit with Dr. Covey on August 24, 2007, he noted that the EMG

of the claimant's lower extremities demonstrated nerve damage in both of her lower extremities. At this time, Dr. Covey continued the claimant on a medication regimen, which added Hydrocodone, and he recommended she return for follow-up care within one month for the administration of a series of three lumbar epidural steroid injections. His assessment was "lumb radiculitis." Both the MRI and EMG demonstrated abnormalities are consistent with her complaints, as the MRI of January 24, 2007, demonstrated very small central disc herniations at L4-5 and L5-S1 and the EMG study of August 2007, revealed that there was electrodiagnostic evidence of moderate and chronic left greater than right L4-S1 polyradiculopathy vs central spinal stenosis. The aforementioned physical damage clearly had its beginning in the compensable injury of January 11, 2007, as this is corroborated by all of the medical evidence and the testimony elicited from the claimant and her husband at the hearing.

Therefore, considering the continuous and consistent nature of the claimant's symptoms since her compensable injury, the fact that she had no prior back problems, in light of Dr. Covey's above cited assessment and conclusions, there being no evidence that the claimant's current back problems resulted from some other cause, and pursuant to the aforementioned abnormalities revealed on the MRI and the EMG, I find that under these circumstances, the medical treatment recommended to the claimant by Dr. Covey, is reasonably necessary in connection with her compensable injury. I further find that said treatments have a reasonable expectation

of accomplishing the purpose for which they are intended. As a result, pursuant to the provisions of Arkansas Code Ann. §11-9-508, the respondents are liable for the medical treatment recommended by Dr. Covey.

The next issue concerns the claimant's entitlement to additional temporary total disability compensation. Although the respondents paid some temporary total disability compensation to the claimant for her compensable injury of January 11, 2007, these benefits were terminated on or about March 1, 2007. Therefore, the claimant asserts her entitlement to these benefits from said date, until a date yet to be determined.

An injured employee is entitled to temporary total disability compensation during the time that she is 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).

After review of the all of the evidence in this matter, I find that the claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability compensation from March 1, 2007, and continuing to a date yet to be determined. Specifically, on January 17, 2007, Nurse Jenkins directed the claimant to refrain from working. Since this time, neither Nurse Jenkins or her treating physician, Dr. Covey, has directed the claimant to return to work. The claimant underwent an MRI on January 24, 2007, which revealed very small central disc

herinations at L4-5 and L5-S1. The claimant also had an abnormal EMG study of the lower extremities on August 1, 2007, which revealed nerve damage. The claimant's treating physician, Dr. Covey essentially opined on August 30, 2007, that it was reasonable for the claimant to be off work from March 2007 until her August 2007 visit. He also reported that he had not released the claimant to return to her old job. The testimony elicited from the claimant demonstrates that since the date of her compensable injury, she has continued with debilitating pain and related symptoms due to her compensable injury. In addition to this, as of the date of claimant's last visit with Dr. Covey's office, which was on August 24, 2007, he had recommended additional conservative medical treatment for the claimant's compensable injury, which included, but was not limited to lumbar epidural steroid injections. However, due to the respondents' refusal to pay for this treatment, the claimant has not been able to obtain this recommended care. Moreover, there is no indication that the claimant has ever reached the end of her healing period, nor is there any evidence that she has been able to engage in any gainful employment since January 17, 2007.

In summary, I find that the claimant has proven that she entered her healing period from the effects of her compensable injury of January 11, 2007, and has continued to remain within this healing period thereafter. She has further proven that beginning on January 17, 2007, and continuing until some date yet to be determined, she has been rendered totally disabled from performing

all forms of gainful employment as a result of the effects of her compensable injury. The claimant has therefore satisfied all of the statutory requirements for her entitlement to temporary total disability compensation, beginning on March 1, 2007, and continuing through to a date yet to be determined.

While I recognize that the Dr. Adametz has pronounced that the claimant was at maximum medical improvement, and opined he would not recommend any additional treatment other than what is already being done, minimal weight has been attached to his opinion considering the claimant's treating physician has opined to the contrary, the fact that he has not had the opportunity to examine the claimant or even talk to her, given the abnormalities on the MRI and EMG study, and in light of the testimony elicited from the claimant during the hearing concerning her daily living activities, physical restrictions, and current symptoms relating to her compensable injury.

I am also aware that the functional capacity evaluation performed in February 2007, demonstrates that the claimant gave an unreliable effort on this evaluation, and the examiner found that the claimant was capable of performing light duty work. However, during the hearing, the testimony elicited from the claimant demonstrates that she attempted to do everything that was asked of her during this evaluation. I am persuaded that this testimony is credible in light of the fact that at the time of, and even after this evaluation the claimant had not been released to return to work by any of her treating physicians and given the

abnormalities on the MRI and the EMG study. Furthermore, all of the medical evidence clearly demonstrates that at the time of said evaluation, the claimant remained within her healing period from the effects of her compensable injury of January 11, 2007, as the claimant's injury had occurred less than some thirty (30) days prior to this exam. Under these circumstances, I find it conceivable that the claimant's test results would be unreliable or inconsistent. In addition to this, the claimant denied having ever been offered any light duty work by the respondents. Instead, it appears the respondents discharged the claimant due to the unreliable results of the functional capacity evaluation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including January 11, 2007.
3. The claimant's compensation rates for both temporary total disability and permanent partial disability is \$110.00.
4. The claimant sustained a compensable low back injury on January 11, 2007.
5. The claimant was granted a one-time change of physician by the Commission to treat with Dr. Carl Covey.
6. The respondents paid for the claimant's first visit with Dr. Covey, the EMG study, and the August 24<sup>th</sup> visit, but have controverted all subsequent medical benefits.
7. The claimant proved by a preponderance of the evidence her entitlement to additional medical treatment from Dr. Carl Covey, for her compensable

back injury of January 11, 2007, which includes, the three lumbar epidural steroid injections and medication regimen.

8. The claimant proved by a preponderance of the evidence her entitlement to additional temporary total disability compensation from March 1, 2007, and continuing through to a date yet to be determined.
9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the indemnity benefits awarded herein.

**AWARD**

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

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

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

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

All other issues are expressly reserved.

**IT IS SO ORDERED.**

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

CH/ml