

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F604026**

**JANICE L. SIMS, EMPLOYEE**

**CLAIMANT**

**NORTHWEST ARKANSAS ECONOMIC  
DEVELOPMENT DISTRICT, INC., EMPLOYER**

**RESPONDENT**

**LIBERTY MUTUAL INSURANCE CO., CARRIER/TPA**

**RESPONDENT**

**OPINION FILED SEPTEMBER 18, 2008**

Hearing before Administrative Law Judge O. Milton Fine II on June 25, 2008, in Mountain Home, Baxter County, Arkansas.

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

Respondents represented by Mr. Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On June 25, 2008, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on March 10, 2008. 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. Claimant and Respondents added an additional stipulation concerning controversion, resulting in the following three, which I accept:

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

2. The employee/employer/carrier relationship existed on October 1, 2003, when Claimant sustained a gradual onset injury.
3. Respondents have controverted all additional benefits.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Claimant withdrew the issue concerning the constitutionality of the Arkansas Workers' Compensation Act, and specified that the issues regarding Claimant's entitlement to temporary total disability benefits, permanent total disability benefits, permanent partial disability benefits and vocational rehabilitation, along with the valuation of her average weekly wage, were being reserved. The following issues were litigated:

#### Claimant:

1. Whether Claimant sustained compensable gradual onset injuries to her right hand, bladder, rectum, and neck.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.

#### Respondents:

1. Whether this claim is barred by the statute of limitations.
2. Whether and to what extent notice was provided.

### Contentions

The respective contentions of the parties are as follows:

#### Claimant:

1. Claimant contends that she sustained compensable injuries arising out of the course and scope of her employment with the Respondent and that she is entitled to all related workers' compensation benefits.

Respondents:

1. Respondents contend that the Claimant allegedly injured her uterus and rectum on October 1, 2003. No claim for benefits was filed until April 17, 2006. The statute of limitations bars any benefit. The neck claim due to a gradual injury was not filed until January 8, 2008. The Claimant's last day of employment was January 25, 2005. The statute of limitations bars any benefit. No notice of a work-related condition was received by the employer.

**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 Claimant/witness and to observe his 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 this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that she sustained compensable injuries to her rectum, bladder, neck and right hand.
4. Because of the above finding, the remaining issues are moot and will not be addressed.

**CASE IN CHIEF**

Summary of Evidence

\_\_\_\_\_The witnesses at the hearing were Claimant, Brenda Huckabee, Tim Russell, Joan Statler, and Kaye Curtis.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit 1, a compilation of Claimant's medical records, consisting of two index pages and 47 numbered pages thereafter; Claimant's Exhibit 2, a Form AR-N dated May 2, 2006 and a letter dated May 10, 2006, consisting of two pages; and Respondents' Exhibit 1, a letter from Claimant's counsel dated January 8, 2008, plus two Forms AR-C dated April 10, 2006 and June 22, 2006, respectively, consisting of three pages.

### Testimony

Brenda Huckabee. Called by Claimant, Huckabee testified that she worked with Claimant at the Van Matre Senior Center, which is part of Respondent Northwest Arkansas Economic Development District (hereinafter "NWAEDD"), for three years, and the two are still friends. She stated that Claimant began as the assistant manager in the kitchen, and became manager when her predecessor suddenly resigned. Huckabee said that Claimant was a very hard worker. Her kitchen staff prepared around 500 meals per day, and that most of her staff were generally incapable of fully performing their duties, because of age or lack of mental capacity. She asserted that Claimant prepared the meals essentially on her own. Huckabee described Claimant's job as requiring rapid, repetitive, continuous labor with her hands, along with heavy lifting. Some boxes contained six ten-pound cans. She did not observe Claimant to have any physical problems when she first came to work for NWAEDD; in fact, she described her as a "work horse."

According to her testimony, Claimant first starting having difficulties with her back, bladder, legs and wrists about a year before she was allegedly fired, which she stated occurred on January 25, 2005 when Joan Statler refused her request for medical leave to have surgery. She used bands on her wrists. Claimant complained that lifting was causing

her to experience urinary incontinence. On one occasion, she cried and stated that she was “raw” in her genital area. When asked about neck problems, Huckabee stated that she was unaware of this, but did “know that she was hurting all over.”

When questioned by Respondents, Huckabee admitted that she was terminated by NWAEDD in February 2006. She attributed it to her refusal to lift 36-pound milk crates or to work in the Meals on Wheels program. Her testimony was that she developed a back condition at work, but that she never filed a workers’ compensation claim. She stated that October 2003 could have been the time when Claimant’s problems developed. Huckabee at first stated that she became aware of her bladder problem in June or July of 2004, but then stated that it was “[e]ven before that.” She did not know that this particular problem preceded her employment there, but stated that Claimant told her that her “bladder was about to fall out” due to lifting at work. While she knew that Claimant had developed problems with her back and legs, she did not file an incident report for her in her capacity as Program Assistant because the falls Claimant allegedly had did not occur on a day when Huckabee was in the facility. While she knew that Claimant had hurt her back and had fallen a couple of times, she is not aware of what part of the back was injured or when it occurred. Huckabee was not specifically aware of her having neck problems.

Tim Russell. Called by Claimant, Russell stated that Claimant and he used to work together at EZ Mart. The two began as friends and ultimately lived together for eight years. They separated two weeks before the hearing. The job there required that they unload trucks and stock merchandise. She was one of the better workers there. He testified that prior to her going to work for NWAEDD, she was “very healthy,” and had no physical problems that kept her from working. Claimant and he led active lives, and were physically intimate.

He stated that for awhile after she went to work for NWAEDD, everything was fine. Then, she began to complain of female problems and trouble with her wrists, neck and back. Russell described these problems as “real gradual, but . . . within working there.” Her neck and back problems began in 2003, developed gradually, and became much worse. She could not lift anything heavier than a gallon of milk. She developed “female problems,” putting an end to their intimacy.

Russell stated that he dropped her off work at NWAEDD at 5:00 or 6:00 a.m., depending on what she was going to prepare.

On cross-examination, he testified that Claimant’s bladder problems began in 2003, but did not predate her employment at NWAEDD. By November 2004, she was using around 20 feminine pads per day. Russell purchased them for her. He stated that the problem, and the pad use, developed gradually.

With respect to her other alleged problems, Russell testified that Claimant’s neck was injured in a fall in 2004 and that she sought treatment in that year. She began having right arm difficulties in mid-to-late 2004, and saw a doctor about the condition. He first stated that Claimant worked nowhere after leaving NWAEDD, but then stated that she cooked at Outlook Pointe for a period of months. While there, he passed out and fall to the floor. However, her neck injury occurred prior to that time. He felt that she was not capable of returning to work after leaving NWAEDD, and did not know the circumstances of her departure from that job.

Joan Statler. Called by Claimant, Statler testified that she is the center director of the Van Matre Senior Center. She did not bring Claimant’s employee file with her to the hearing because her subpoena did not so indicate. Statler stated that Claimant first came

to work at NWAEDD as a kitchen helper, but did not recall the date. She characterized her as a good worker when she started there and a good worker when she was promoted to kitchen manager. The job required that she perform manual labor as well as supervise her staff. She worked eight hours a day.

As to the lifting requirements of the job, Statler stated that a certain amount of heavy lifting was involved, but that Claimant "never had to lift as much as she lifted." She lifted cases of cans instead of the cans individually, and refused to use anything but a whole steam table pan.

Statler disputed Huckabee's description of the kitchen support staff, and stated that she had an able assistant cook named Dean and two kitchen helpers whose names she could not recall, along with two volunteers and a custodian that she agreed was not a good worker.

She denied that Claimant was terminated from NWAEDD. She stated that she gave Claimant leave request forms and told her to fill them out when she was ready to have her surgery. Claimant told her that her daughter had lost her baby the night before, and Statler remarked that it was for the best. She stated that Claimant left, and then returned to state that she was leaving. Statler told her to think about it, but she did not change her mind.

With respect to Claimant's female problems, Statler testified that a few months before she left NWAEDD, Claimant told her in the restroom one morning about her raw and incontinent condition. On another occasion, Claimant mentioned that she was raw and that it was somehow Statler's fault. Statler added that other employees had told her of Claimant's condition. Claimant never mentioned having trouble with her neck or rectum.

Under questioning from Respondents, Claimant confirmed that her subpoena did not mention bringing any documents to the hearing. She stated that once Claimant became the manager of the kitchen, Statler was the one to whom she should have reported a work-related injury. At the time Claimant told her about her bladder problem, it apparently had been occurring for some time. Claimant stated that she had already used three pads that morning, and Statler responded that she had no idea of the problem. Statler testified that Claimant never came to her and told her that she had been hurt on the job and wanted to file a workers' compensation claim. Claimant never informed her that she had injured her neck, back, rectum or right hand. She continued to work until January 25, 2005. Statler believed that Claimant thereafter attempted to get her job back, but she told her that it was out of her hands.

Statler stated that Claimant reported two injuries while employed at NWAEDD. One was a fall on ice that she did not report until three days later. Statler filled out an incident report. The other concerned a burn. Although Statler told her to see a doctor, Claimant declined and stated that she was fine.

When Claimant questioned her further, Statler testified that she did not use a Form AR-N to report Claimant's the incidents discussed above. She stated that she had never seen the two forms before that comprise Claimant's Exhibit 2.

Under questioning from me, Statler clarified that on the second occasion that she and Claimant discussed her incontinency problem, Claimant did not say outright that it was Statler's fault. Rather, she spoke in an "accusatory tone" about it. Statler stated that the restroom conversation occurred prior to the one in her office, and that the two were not close in time to each other. With respect to Claimant's actions on January 25, 2005,

Statler stated that she believed they were triggered by her comments about Claimant's daughter losing her baby. She also stated that Claimant was upset because Statler refused to allow to use sick leave to cover a court appearance.

Janice Sims. Claimant testified that prior to going to work for NWAEDD, she had been a convenience store clerk throughout her working career. She went to work as a kitchen helper until she became the kitchen manager when the previous holder of that job was fired. Claimant was in this position for approximately three years, serving around 500 meals per day.

Her testimony was that she began having bladder trouble in October 2004, and that it became worse over time. She admitted that she originally alleged that the problem began in October 2003. In explaining this, she stated: "And I called the Commission down there and told them that I had the wrong date, and I wanted it changed because I, and they did whatever they did." Claimant denied that she told Dr. Linda Teal that she had had the bladder problem "for years." She testified that the problem "gradually started out me sneezing or coughing and wetting my pants." Under prompting from her attorney, she hastened to add that it occurred after she had been lifting.

Claimant stated that the kitchen manager position required heavy lifting. She characterized one co-worker as "weigh[ing] maybe 80 pounds," another as "a drunk," one as sickly due to dental problems, and yet another as mentally handicapped. The only other employee she mentioned was the person who helped prepare meals in the morning and performed janitorial work the rest of the day. Claimant disputed Russell's testimony concerning her hours, stating that she actually was to arrive at work at 5:00 a.m., but sometimes went in from 4:00 to 4:30.

With respect to her back and neck, she stated that while “it was a gradual onslaught [sic],” she attributed her problems in these areas to two falls she suffered while working at NWAEDD. The first was in February 2004. While attempted to help Joyce Kasinger, Claimant slipped on the ice and slid underneath a van. She stated that this hurt her tailbone and low back. On another occasion, she was walking across a grate in front of a shed while retrieving Meals on Wheels cartons when her left leg slipped and caused Claimant to twist her lower back. However, Claimant is not alleging a compensable injury to her lower back. As for her neck, she attributed neck problems to lifting.

She alleged that she developed carpal tunnel syndrome due to her job requiring rapid and repetitive motion with her hands. Claimant used ice cream scoops to serve food to 500 people per day. She also claimed to have chopped cabbage rapidly and repetitively. Claimant wears a brace on her right wrist that was prescribed by Drs. Hodges and Knox.

Claimant testified that she first saw Dr. Linda Teal for her female problems, while she was still at NWAEDD. She next saw Dr. Clinton Cook, and he performed bladder surgery on her. But he passed away. She also saw Dr. John TerKeurst about this area. Claimant stated that after two surgeries, her condition has not improved. Her testimony was that she had more than the two conversations with Statler that Statler recounted on the stand. She stated that she informed Statler on January 25, 2005 that she was going to use her tax refund to pay for her bladder surgery. When asked why she did not seek to have Respondents pay for it, Claimant stated that Statler never acknowledged that NWAEDD has workers’ compensation coverage. But she admitted that the workers’ compensation information was posted in the workplace, albeit in a dark corner of the mop

room. She stated that she never asked if her problems were covered because the previous supervisor had informed her that she was not allowed to speak with Statler.

Under questioning from Respondents, Claimant testified that Dr. Teal was wrong in noting that as of November 3, 2004, she had had the bladder problem for years. By that time, she had worn pads for about a year. She also denied telling Teal that no particular activity exacerbates her symptoms. Claimant stated that the condition “was a gradual onset from ‘03, but then, I finally made it to the doctor in ‘04. Because in ‘03 it hadn’t got to the point yet that I was literally just standing up and the water running down my legs.” Asked about the significance of October 2003, she stated that was “probably when I was explaining to Joan that I was having these problems.” That was when she knew the problem began. However, she also testified that it was January 2004 when the bladder condition started. She agreed that laughing, sneezing and coughing, as well as lifting, bending and twisting, can cause her to have an incontinency episode.

As for Dr. TerKeurst, a urologist, Claimant admitted telling him on February 3, 2005 that she had a two-year history of progressive incontinence. Asked why she had told Teal and TerKeurst that the problem had been occurring for more than two years, she stated: “Well, I was working. I was working there, sir, with the onset. I never stopped work because I had this problem. I couldn’t stop work. I was raising a child.” Shown the Form C she signed that bore a date of accident of October 2003, Claimant explained “[t]hat was when the gradual onset of it started. It didn’t progressively get worse until ‘04 when, I mean my bladder had completely, and my rectum had completely fallen out.” But she explained that her decision to amend the date of injury to October 2004 was because the earlier date was a mistake.

Claimant at first testified that her failure to mention her back, neck and hand on this form or the Form AR-N, despite the fact that they were allegedly bothering her at the time and that she thought it was because of her employment, was due to the pain she was suffering at the time. However, she quickly changed her answer to state that she did not know why she omitted the information from the form. Later, she testified that the omission was due to her greater concern about her bladder and rectum.

Regarding her neck and back and the two falls she mentioned in her testimony on direct, she stated: "I didn't say that they were the cause of it. I said that they possibly could be the cause of it." She added that the problems did not arise until she had the falls and performed heavy lifting at work. Claimant stated that she passed out and fell at while working at Outlook Pointe after leaving NWAEDD but prior to undergoing an MRI. But stated stated that her supervisor caught her and helped her slide to the floor. While she claimed her neck injury occurred in February 2004, she made no claim for it until January 24, 2008.

Kaye Curtis. Called by Respondents, Curtis testified that she has been the Director of Senior Services for NWAEDD for 30 years. Claimant was employed at the Van Matre Senior Center, which is part of NWAEDD. Curtis stated that she is in charge of workers' compensation claims for the center. She testified that Claimant never submitted to her a claim for any of the injuries she is alleging occurred, and that the first time she even heard of the injuries was when the carrier contacted her.

Under questioning from Claimant, Curtis stated that while she is over a six-county district, she visited Van Matre. Every time she did so, she made a point to go into the kitchen and speak with the staff. She could not remember having any conversation with

Claimant on any topic. It is the job of the center director to take down any information concerning a workers' compensation claim and to report it to Curtis. However, she provided Claimant with a letter of hire for her kitchen manager position that gave her the contact information for Curtis' Harrison office, including the personnel department. Curtis could not remember Claimant calling and asking her who the company doctor was. She denied that the workers' compensation information at Van Matre was posted in a broom closet.

When questioned by me, Curtis clarified that the letter of hire itself does not contact the personnel information; an enclosure had the information. Statler would have given Claimant an orientation session on personnel policies and information.

#### Records-Medical

Claimant's Exhibit 1. The medical records of Claimant that were introduced at the hearing and are part of Claimant's Exhibit 1 reflect that on November 3, 2004, Claimant presented to Dr. Linda Teal with a complaint of a constant loss of urine. She stated that she loses urine when coughing, sneezing and straining, and also spontaneously. No particular activity exacerbates the condition. Claimant stated that she has had the problem "for years," but that it has gradually worsened within the past six months. Claimant had undergone a hysterectomy, with removal of her cervix and uterus. Her pelvic examination showed only a first degree cystocele with dropping of the urethrovesical junction. Her sphincter tone was found to be good. Teal assessed Claimant as having a symptomatic cystocele with mixed urinary incontinence. She was treated with Detrol and reported on December 1, 2004 that she had an excellent response to the medication. However, she

reported on December 6, 2004 that the Detrol was no longer working, and her dosage was doubled.

Claimant presented to Dr. John Terkeurst on February 3, 2005 with a two-year history of incontinence. Her history reflects that she has had this problem for two and one-half years. Terkeurst assessed her as having a cystocele with profound stress incontinence. She underwent a rigid cystoscopy that showed a symptomatic grade 3 cystocele with definite stress incontinence. She was fitted for a pessary. Because Claimant began to experience problems with the pessary falling out, Dr. Teal advised that surgery was the only option. Claimant stated on March 7, 2005 that she would could when she decides to have the surgery.

Claimant went to Dr. Russell Webb on March 17, 2006 and complained of urinary incontinence. She had a visible vaginal vault prolapse that worsens with coughing. She was assessed as having a vaginal vault and bladder neck prolapse, along with urinary incontinence. When she returned on March 20, 2006, she reported having a hysterectomy and single-sided oophorectomy 20 years before. Webb found her to have a Class III-IV vaginal vault prolapse and referred her to Dr. Clinton Cook for surgical repair. A CT scan of the pelvis taken the same day found no issues with her bowel, but some vaginal vault prolapse. Dr. Cook performed an anterior and posterior colporrhaphy on April 6, 2006. His pre-and post-operative diagnoses were symptomatic pelvic relaxation and stress urinary incontinence.

Claimant presented to Dr. Michael Hodges on April 25, 2006, complaining of right shoulder pain and right hand numbness. On April 28, she stated that she had a burning

and aching sensation in her right bicep and tricep, and that she cannot use her right arm. A May 4, 2006 nerve conduction study showed her to have right carpal tunnel syndrome.

When Claimant saw Dr. Thomas Knox on July 3, 2006, she reported having had surgery for a rectal prolapse. For her carpal tunnel syndrome, he stated that he would proceed with a carpal tunnel injection and functional splinting. His July 17, 2006 examination reflects that he found a small ganglion cyst on the volar side of her right wrist. Knox wrote that he recommended a second opinion by Dr. Varela before he would consider a carpal tunnel release.

Claimant underwent an MRI of her cervical spine on January 2, 2007. The test showed a central disc herniation at C5-6 and an osteophyte on the left at C3-4. She saw Dr. Terry Green on January 16, 2007, and stated that she injured herself in February 2004 while working at Van Matre. Claimant complained of pain in her neck, right side, across the shoulder and down the right arm, occasional numbness in the wrist area, weakness and numbness in the hand, left hip pain and left groin pain. She attributed all of her maladies to lifting 80 to 90 pounds on the job, along with standing and twisting. Green noted that the MRI revealed a prominent central disc protrusion and collapse of the disc at C5-6 and spinal cord impingement. The cervical x-ray showed collapse of the C5-6 disc and slight subluxation at C5 on C6. He gave her diagnoses of cervical spondylosis C5-6 and disc herniation, along with right carpal tunnel syndrome. Green recommended that an anterior cervical discectomy and arthrodesis be considered, along with a nerve conduction velocity study of the right upper extremity.

Claimant returned to Dr. Webb on February 6, 2007 for a collagen injection into the bladder neck. She was given the diagnosis of intrinsic sphincter deficiency. On February 16, 2007, Webb wrote a letter that reads in pertinent part:

Janice Sims is a patient I have followed since March 17, 2006. She has a past history of a hysterectomy 26 or 27 years ago and bilateral subcutaneous mastectomy for a strong family history of breast malignancy. When I saw her in March of 2006, she was having severe problems with incontinence having to change pads 15-20 times per day. About one year ago, she apparently had an anterior and posterior vaginal repair. My work-up diagnosed an intrinsic sphincter deficiency with incontinence and she was scheduled for a collagen bladder neck submucosal injection. This was accomplished on February 6, 2007. The patient states that she [is] "a lot better than previous" [sic] but still wears a pad for slight dribbling.

I recommend that she avoid any lifting over 10 lbs. For an indefinite period of time. I will follow her on every three month intervals. Her possibility of needing a re-injection is probably around 50%.

On March 20, 2007, Claimant underwent an EEG MCV of the right upper extremity. The nerve conduction study was consistent with mild right carpal tunnel syndrome. The electromyogram neural examination showed neurogenic change in a C8 innervated muscle.

#### Records-Nonmedical

Claimant's Exhibit 2. Claimant on May 12, 2006 signed a Form AR-N in which she alleged that she suffered a prolapsed bladder and rectum (resulting in surgery in April 2006) on October 1, 2003

due to all the lifting you have to do as a cook and working short staff for 6 months, and all that goes with kitchen work, stocking dishes, loading and unloading delivers [sic], preparing 450 to 500 meals a day, 5 days a week, little or no help in kitchen[.]

She wrote a letter to the Commission on May 10, 2006 concerning her claim. The letter reads in pertinent part: "I Janice L. Sims; claimant would like to inform you, that I had the

wrong year of injury. [I]nstead of 2003, 2004 was the time of doc involvement AWCC File #: F604026[.]”

Respondents' Exhibit 1. This exhibit is comprised of three documents. The first is a Form AR-C signed by Claimant on April 10, 2006 in which she is seeking compensation for a “[p]rolapsed bladder & rectum due to heavy lifting,” which she stated occurred in October 2003. On June 22, 2006, she filed an amended AR-C that added a claim for right carpal tunnel syndrome, and changed to date to allege that all of the injuries were gradual onset. Finally, her counsel on January 8, 2008 wrote the Commission to add a claim for a neck injury “as a result of years of doing heavy lifting while employed for Northwest Arkansas Economic Development District.”

### **ADJUDICATION**

#### A. Compensability

Claimant has contended that she suffered compensable injuries to her rectum, bladder, neck and right hand.

In order to establish the occurrence of a gradual onset or cumulative trauma injury, the claimant must prove by a preponderance of the evidence that: (1) he sustained an injury arising out of and in the course of employment; (2) the injury caused external or internal physical harm to the body; (3) the injury is supported by objective medical findings; (4) the injury was caused by rapid repetitive motion; and (5) the injury was the major cause of any disability or need for treatment. *Stevenson v. Frolic Footwear*, 70 Ark. App. 383, 20 S.W.3d 413 (2000).

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). This standard means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003)(citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

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.*

Rectum. Claimant's sole testimony regarding this alleged injury is that by 2004, her "rectum had completely fallen out." Her records reflect that on July 3, 2006, she reported to Dr. Knox that she had had surgery for a rectal prolapse. But the evidentiary record is devoid of any reference to Claimant having this condition, let alone undergoing treatment for it. Dr. Cook performed an anterior and posterior colporrhaphy on April 6, 2006. But this procedure was only to treat her vaginal vault prolapse that Dr. Webb found. A March 20, 2006 CT scan of her pelvis found no problems with her bowel. Hence, there is no medical evidence, supported by objective findings, to support this alleged injury.

Carpal Tunnel Syndrome. On April 25, 2006, Claimant went to Dr. Hodges and told of having right shoulder pain and right hand numbness. Three days later, she reported having a burning and aching sensation in her right bicep and tricep, and of being unable to use her right arm. A nerve conduction study performed on May 4, 2006 was positive for

right carpal tunnel syndrome. Another test confirmed this on March 20, 2007. It is unnecessary to prove rapid repetitive motion when there is a diagnosis of carpal tunnel syndrome. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

I find that the Claimant has proven that her right carpal tunnel syndrome of the right wrist was an injury causing physical harm to the body, and she has established this by medical evidence supported by objective findings. That, however, leaves the question of, *inter alia*, whether her injury arose out of and in the course of her employment by Respondent NWAEDD. Her problem with establishing the causal connection between this injury and her employment there is the length of time that elapsed between her leaving the Van Matre Center, January 25, 2005, and the development of her symptoms. Russell testified that Claimant began having wrist and arm problems in mid to late 2004, while still at Van Matre, and that she sought treatment at that time. However, the first mention of such symptoms in her medical records is not until exactly 15 months after her departure from NWAEDD—and after she had presented for treatment on multiple occasions. It is true that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). But I find that this period is not reasonable, especially in light of the fact that Claimant held another cooking position after she left NWAEDD. I cannot attribute her carpal tunnel condition to her employment at Respondent NWAEDD without resorting to speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. *Dena*

*Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Hence, she has not proven that this injury is compensable.

Neck. Claimant has the same problem in proving her alleged neck injury. The first reference of any type in her medical records to such a condition is January 2, 2007, which showed a central disc herniation at C5-6. Huckabee, her co-worker, was unaware of any neck injury. While Russell and Claimant testified that she suffered acquired this injury gradually at NWAEDD (and at one point Claimant in her testimony tried to tie it to falls she suffered in 2004—which conflicts with her contention that it is a gradual onset injury), there is no documentation of the condition until nearly two years after her employment at the Van Matre Center ended. Hence, the disc herniation cannot be tied to her job there without engaging in speculation and conjecture. She has not met her burden of proof on this point.

Bladder. As shown above, Claimant was diagnosed as having a Class III-IV vaginal vault prolapse and a bladder neck prolapse. The vault prolapse was repaired *via* surgery; Dr. Webb gave Claimant a collagen injection into the bladder neck on February 6, 2007. He gave her the diagnosis of intrinsic sphincter deficiency. She first presented for treatment for urinary incontinence on November 3, 2004. Claimant told Dr. Teal that her episodes are brought on by coughing, sneezing and straining, but that they also occur spontaneously. She added that no certain activity exacerbates the condition. Claimant stated that she has had the problem “for years,” but that it has gradually worsened within the six months preceding the visit with Teal.

When she went to Dr. TerKeurst on February 3, 2005, she stated once that the problem began two years before, and at another point that it had been ongoing for two and

one-half years. TerKeurst assessed her as having a cystocele with profound stress incontinence.

In reviewing her records, I note that Claimant had a hysterectomy, including removal of her cervix and uterus, along with a single-sided oophorectomy, some 20 years before she presented for treatment. I also note that of all the physicians who treated Claimant, not one opined that her incontinency or her bladder condition in particular was due to excess lifting or any other type of work-related activity.

Russell testified that Claimant's incontinency problem began in 2003, but did not occur prior to her arrival at Van Matre. He added that by November 2004, she was using around 20 feminine pads per day to deal with the issue.

Claimant was been inconsistent in dating the onset of her problem. At first, she stated in her first Form AR-C that it began in October 2003. Later, this was amended to October 2004. Asked to explain why she did not report to her employer that this alleged injury was work-related, Claimant explained that she was not aware that Respondent NWAEDD had workers' compensation coverage. She did admit, however, that the workers' compensation coverage was posted. And Curtis testified that she oriented Claimant on personnel policies, including the reporting of work-related injuries. All that aside, I find it noteworthy that Claimant herself in giving her history to Drs. Teal, *et al.*, did not ascribe her incontinent condition to lifting, whether at work or elsewhere.

In view of the foregoing, only through speculation and conjecture could I find that Claimant's bladder condition arose out of and in the course of her employment at the Van Matre Center. Hence, she has not proven this to be a compensable injury.

**B. Balance of Issues**

Respondents have contended that Claimant's claim for the alleged injuries addressed above are barred under the statute of limitations. However, since I have found that they are not compensable, this issue need not and will not be addressed. See *Malone v. Mid-South Mfg., Inc.*, 2003 AWCC 82, Claim No. F100223 (Full Commission Opinion filed April 28, 2003). The issues concerning notice and reasonable and necessary medical treatment are also moot.

**CONCLUSION**

Claimant has failed to prove by a preponderance of the evidence that her alleged injuries are compensable. Therefore, her 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