

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F706237

LINDA SPICER, EMPLOYER

CLAIMANT

NESTLE PREPARED FOOD CO., EMPLOYER

RESPONDENT

INSURANCE CO.-STATE OF PA., CARRIER

RESPONDENT

OPINION FILED JUNE 12, 2008

Hearing before the ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 21, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant pro se.

Respondents represented by the HONORABLE LEE L. MULDROW, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits. On March 31, 2008, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Linda Spicer, the claimant, Steve Austin, Mark Evans, and Brian Lutz, coupled with medical reports and other documents comprise the record in this claim.

Upon receipt of the transcript of the March 21, 2008, hearing claimant requested that her

medical exhibit packet, which was furnished to the Commission on or about February 21, 2008, along with the Pre-hearing Filing generated at the same time, be made a part of the record in this claim. The afore has been blue backed and designated as a part of this record as Claimant Supplemental Exhibit #1.

DISCUSSION

Linda Spicer, the claimant, with a date of birth of December 22, 1965, is a high school graduate with some post secondary education. Claimant commenced her employment with respondent-employer in May 2003, as a prepper on the second shift. The testimony of the claimant reflects that prior to her employment with respondent she never experienced problems, difficulties or limitations relative to her lower back.

The claimant's past work history has consisted of office/clerical work. Claimant has previously worked for a credit bureau and as a legal secretary. In the past while working at a law firm, claimant also worked part-time on the sales floor of Dillard's.

Claimant asserts that on February 12, 2007, while working the first shift, from 7:00 a.m. to 2:30-3:00 p.m., she sustained the injury which serves as the basis for the present claim.

Claimant worked part-time, 25-hours per week, in the sanitation department. In describing the mechanics of her February 12, 2007, injury, claimant testified:

I observed Roger Hood which is one of the waste vendors that were coming to pick up the large dumpster that we have in the back. The seal broke on his - - on the large dumpster and the sauce leaked in the parking lot, and he was out there shoveling it himself, so I stopped to help him. He had ha large industrial yellow shovels and three, I believe, three grade 12-1/2 pounds garbage cans, and I was shoveling, helping him shoveling the sauce from the parking ground into the trash can. (T. 11).

Claimant maintains that her injury was sustained while shoveling, an activity of approximately 35-minutes duration. Claimant's testimony reflects that she experienced pain in her back while shoveling the sauce. Claimant maintains that she relayed to her team leader, Steve Austin, that she thought she had hurt herself, however reasoned that she would probably be all right.

Claimant did not request the completion of an incident report relative to her suspected injury.

Claimant estimates that the shoveling incident occurred between 9:30 and 10:00 a.m. on February 12, 2007. Claimant testified that she went to the dispensary, however it was locked. Claimant added that at the time there was no first shift nurse. The testimony of the claimant reflects:

I went back and I told Steve I went to the dispensary to see if I could get something to take - - I usually take Aleve or Advil, and I told him it was locked, and one of my other co-workers had something in his locker and he gave me some, and he's not here today to testify to that. We wasn't able to serve him. That was Eugene Chase. (T. 12-13).

The testimony of the claimant reflects that while she was scheduled to work the following day, February 13, 2007, she did not. Claimant testified that she called respondent-employer to report that she would not be in to work. Specifically, the claimant testified that she informed Mr. Austin that she was in too much pain to come in to work and that she was going to remain at home and apply heat and ice to her back. Claimant's testimony reflects that she missed two (2) days from work. The testimony of the claimant reflects that while she kept Mr. Austin informed of her status, she did not complete an incident report for respondent.

Claimant noted that while her back pain eased up, it did not completely subside. Claimant maintains that she "took it easy" and "helped people that had lighter duty". Claimant further explained, "I didn't do all the other physical stuff, I just took it easy, but I showed up for

work”. (T. 15).

Claimant testified that she sought medical treatment on March 5, 2007, at First Care for treatment of her back complaint attributable to the February 12, 2007, injury. The testimony of the claimant reflects that symptoms of pain going down her right leg prompted the medical treatment and resulting MRI scan. The claimant’s testimony reflects that the fact that the self-help measures of over-the-counter medication and the use of heating pad and ice was no longer help with her pain prompted her March 5, 2007, visit for medical treatment. In short, the claimant maintains that the pain became just too much for her to bear.

After undergoing diagnostic studies, MRI scan, at St. Bernards Medical Center, the claimant was later again seen by Dr. Kosinski on July 16, 2007. Claimant sought and obtained treatment under care of Dr. Savu at the Pain Center. The claimant has also been seen by Dr. Kornblum, a Jonesboro neurosurgeon.

The testimony of the claimant reflects that on February 28, 2007, her employment with respondent-employer was suspended. On March 7, 2007, the claimant’s employment with respondent-employer was terminated. Claimant’s testimony reflects that the afore was not related to her February 12, 2007, injury.

The claimant denies that she has suffered any other injury or accident since she ceased working for respondent-employer. The only time the claimant missed from work attributable to the February 12, 2007, injury was the two (2) days immediately following the occurrence. Claimant is presently employed full-time with Dillard’s.

Claimant testified that she did call Mr. Lutz, the Environmental Health and Safety Manager of respondent-employer, once she received the results of the MRI scan to inform him of

the seriousness of her injury. Claimant acknowledged that she was informed that respondents were denying the compensability of her claimed February 12, 2007, injury. Regarding the afore, the testimony of the claimant reflects:

I can't remember the date, it took it a minute to get it rolling, actually when I informed Mr. Lutz, I found out later on that it wasn't actually turned in until the 19th of March.

I was informed that by the nurse. She said she didn't have any information prior to the 19th, and I thought it was actually turned in to - - I originally had an appointment at the Neurosurgeon Association March 22nd, and when I went up there for my appointment, they had no information of workers' comp either, so they turned me away and I couldn't be seen, nor could I use my health insurance to be seen that day. (T. 18-19).

The testimony of the claimant reflects that she worked part-time the entirety of her employment with respondent-employer. Claimant acknowledged undergoing employee orientation at the time of her initial employment, and that respondent-employer had posting in the facility regarding the reporting of work-related injuries. Claimant maintains that the reporting procedure included informing "your team leader", which she asserts she did.

Claimant acknowledged that the job she performed in the employment of respondent was pretty physical and hard at time. Further, claimant conceded that during her deposition she relayed that if everybody reported an injury every time their back hurt, an injury would be reported almost every day. Claimant acknowledged that there were other times that her back would hurt while working for respondent-employer and she did not report injuries.

Claimant asserts that on the occasion of the February 12, 2007, incident, she reported the situation to Mr. Austin, "because it felt serious". Claimant testified that she did not fault/blame Mr. Austin for not completing an incident report when she informed him of her back hurting.

Claimant received the results of the MRI scan after her employment with respondent had been terminated. Claimant acknowledged making a telephone call to Mr. Lutz after she received the results to the MRI scan. Claimant asserts that she informed Mr. Lutz of the injury and that she was hurt while working for respondent-employer. Claimant concedes that Mr. Lutz told her that the reporting was the first notice he had received of an injury.

The claimant's husband is employed at UPS. The testimony of the claimant reflects that her husband's group health insurance has paid some of the bills incurred regarding the February 12, 2007, injury.

Claimant concedes that the first time she sought medical treatment following the February 12, 2007, injury was March 5, 2007, when she was seen by Dr. Kosinski. Regarding an history of trauma being relayed during the March 5, 2007, visit, claimant maintains that she was asked if her back hurt and she responded that it did not. The medical report of the March 5, 2007, visit reflects complaints of pain down the right leg and in the foot, some numbness and tingling associated with the pain.

The testimony of the claimant reflects that total medical bills incurred relative to the February 12, 2007, injury is \$2,124.00, and the her husband's group insurance has paid \$613.91. Claimant testified that her out-of-pocket expenses is \$314.29.

Regarding the history relayed to Dr. Kosinski during the March 5, 2007, visit and an indication of a similar occurrence in terms of pain and symptoms two years earlier, claimant explained:

Well, what I explained to him was the type of work that I did. Half the time they don't type what you actually say, but I explained to him the type of work that I did, like at that point which is, you know,

physical, and my back didn't hurt when that occurred. It was totally different from this time. (T. 28).

Steven Austin, a former four (4) year employee of respondent-employer, testified on behalf of the claimant. Mr. Austin's testimony reflects that he work in a supervisory capacity during his employment with respondent, and that the claimant was one of the individuals who worked under his supervision. Mr. Austin testified that ETSU, the department in which he and the claimant worked, was responsible for the Cleaning and Sanitation Department of the Nestle facility. Mr. Austin opined that the afore is a very physical job.

Mr. Austin acknowledged that the claimant informed him upon entering the building that she thought she had injured herself. Mr. Austin's testimony reflects that while the claimant relayed that she thought that she would be okay, and, as a consequence, he did not write up the incident. Mr. Austin noted that he nevertheless did document the reporting in a small book, "where we take notes, and I just wrote in the book at the time". (T. 31). Mr. Austin's testimony reflects that time there was not first shift nurse in place. Mr. Austin acknowledged that he received a telephone call from the claimant informing him that she would not be in to work the next day because of back pain. Mr. Austin was uncertain how many telephone calls he received from the claimant informing him that she was unable to come to work due to back pain.

Mr. Austin acknowledged that respondent-employer had procedures for shift supervisor to follow as far as reporting claims, which included report up the line any injuries regardless of how serious. Mr. Austin concedes that he did not file any kind of formal reports in connection with the claimant's reporting. Mr. Austin's employment with respondent-employer was terminated on March 3, 2007.

Mr. Austin testified that while he could not recall the specific date that the claimant reported that she hurt her back, he does recall the conversation with the claimant and the reporting of same. In terms of the incident which serves as the basis for the claimant's claim, Mr. Austin testified:

I didn't witness the accident, but she was standing out there to clean up a spill out there.

At the time I knew. Before she got started out there, I went out there to check the area that was needed to be cleaned up and it was a spill from the disposal service, and it was shoveling it up at the time. (T. 33-34).

The testimony of Mr. Austin reflects that he sent the claimant to assist in the shoveling.

Mr. Mark Evans, a five (5) year employee of respondent-employer, testified on behalf of the claimant. Mr. Evans testified that he worked the same shift as the claimant during her employment with respondent-employer. In describing the mechanics of the job duties in the Sanitation Department Mr. Evans noted that one mostly work with their arms, legs and back.

Mr. Evan further testified regarding the duties in Housekeeping:

You keep everything up off the floor and you sweep and you're steady sweeping up, noodles and meat or whatever is on the floor, and you'll get sore, you'll get a little sore, you know, you're steady working. (T. 36).

Regarding his knowledge of the claimant's injury, the testimony of Mr. Evans reflects:

I was working that day. I was on the line that day working in housekeeping, and I was walking to the back and then I seen you coming up limping, and you said that you was outside shoveling up. I guess stuff from the compactor had spilled, and that's the only time I knew that you were hurt. (T. 36-37).

Mr. Brian Lutz, Environmental Health and Safety Manager for respondent-employer,

testified that his job duties are the environmental and safety compliance of the facility, workers' comp administration for respondent-employer. The testimony of Mr. Lutz reflects that during the claimant's employment with respondent he had frequent interaction with her in his work capacity, noting that they talked almost daily. Mr. Lutz acknowledged that he received a telephone call from the claimant during which she informed him that she had been injured on the job. The conversation occurred sometime in March 2007, after the claimant's employment had been terminated. Mr. Lutz maintains that the afore was the first time he had notice that the clamant was claiming a job injury.

Mr. Lutz testified that respondent-employer has in place a procedure requiring that all injuries, no matter how minor, be reported. Mr. Lutz added that the reporting is responsibility of both the employee and the supervisor.

Mr. Lutz detailed the nature of the interaction he had with the claimant in February 2007:

Yes, I believe that now that I've sat and thought for a while, I believe she came in my office and looked at some backpacks that were part of a safety award during that time frame to - - that would be one-on-one interaction. Daily, every other day, we talked. We're on friendly- - but I mean, even conversations in my office - - .(T. 41).

Mr. Lutz testified that during the time period between February 12, 2007, and March 8, 2007, while in his presence he never notice the claimant limping or having difficulty performing her job. Mr. Lutz further testified that the claimant never told him she was having difficulty performing her job or that she had some trauma associated with the job.

During cross-examination, Mr. Lutz acknowledged that the review of the backpacks with the claimant in his office occurred in the area of the February 10 through 15, 2007, conceding it may have prior to the claimant's February 12, 2007, reported injury. Mr. Lutz had no

recollection of the claimant's absence from work on February 13, and 14, 2007. Mr. Lutz testified that an investigation was initiated following the March 2007, telephone conversation with the claimant wherein she reported an on-the-job injury. Mr. Lutz acknowledged that respondent did not have a nurse in place during the first shift.

The medical evidence in the record reflects that the claimant was seen at the First Care-Stadium Acute Care Clinic on March 5, 2007, by Dr. Terry Kosinski with a complaint of pain in the right leg and into the right foot of two weeks duration. The March 5, 2007, clinic note further reflects:

HPI: The patient is a 41 year old female here with complaint of pain down her right leg into her foot. Also some numbness and tingling associated with it. No history of trauma. She said she had a similar occurrence about two years ago and there was some concern about a possible blood clot in her leg. She was sent for an ultrasound and that was negative. She denies any back pain and has never had any back evaluation.

* * *

MUSCULOSKELETAL: Minor pain on palpation to L-spine. None to sacrosciati notch. There is positive straight leg raising right side greater than 45 degrees. None of the left. Reflexes are normal.

IMPRESSION/PLAN:

1. Lumbar disc degeneration with parestheia right leg.
The patient will have an MRI of her L-spine today. (RX. #1, p. 1).

The record reflects that the claimant underwent an MRI of the lumbar spine without contrast in accordance with the directions of Dr. Kosinski on March 5, 2007. The radiologist report disclosed at L5-S1 a large disk extrusion to the right, caudal from the disk space, and centrally impressing on the thecal sac. (RX. #1, p. 3-5).

The claimant was again seen by Dr. Kosinski on July 16, 2007. The clinic relative to the

afore visit reflects, in pertinent part:

HPI: This is a 41 year old female here to review some test results. She had an MRI done on her lower back which showed some disc contrusion to the right side. She is now having pain down her right leg and cramping. She hasn't worked since March. She states that she actually injured her back helping her supervisor scoop up some sauce in February. She felt a pull. She called her team leader and was given a couple of days off work and then March 5th she started having a lot of problems. She put two and two together and felt that the February injury is what has caused her problem. She hasn't worked since.

PHYSICAL EXAM: Patient has some pain to palpation of the L-spine and paraspinal areas, but negative straight leg raising. Reflexes are normal. There is no CVA discomfort. The MRI was reviewed with the patient.

* * *

IMPRESSION/PLAN:

1. Lumbar disc degeneration.

She has an appointment with Dr. Tonymon on September 1st. We will try to have her see a pain specialist before then. She will be given Feldene once a day for her anti-inflammatory. Return again as soon as possible to the pain specialist. (RX. #1, p. 6).

On July 30, 2007, the claimant was seen at Northeast Arkansas Pain Medicine by Dr.

Calin A. Savu, pursuant to the referral of Dr. Kosinski. The July 30, 2007, office note relative to the claimant's visit reflects, in pertinent part:

HISTORY OF PRESENT ILLNESS: Ms. Spice is a pleasant 41-year-old woman with a history of low pack and right lower extremity pain, which started in February 2007. At that time she was cleaning some sauce which spilled in the yard and used a shovel intensively. She experienced progressive discomfort than and the next day, which never let up. The pain extended from the middle of the back into the right buttock and thigh. At the present time, it involves the mid-calf as well. It is accompanied by weakness described as easy tiredness, involving the right lower extremity. Most of her discomfort, though, is in the back and it is described as a deep-seated, aching discomfort. It seems to have improved slightly in the last two or three weeks, and it is partially responsive to pain medication. Her discomfort is typically worsened by lifting, bending, straightening up, and

traveling, as well as standing. Pain scores range between a best of 4 and a worst of 10, and there is minimal associated difficulty sleeping.

* * *

PHYSICAL EXAMINATION:

MUSCULOSKELETAL: Reveals a normal lumbar lordosis, normal gait, good heel-and-toe walking, but a decreased posterior extension and tenderness overlying the facet and SI joints bilaterally, right more than left. Straight leg raising elicits moderate sciatic irritation on the right side at about 50 degrees in both sitting and supine position.

MEDICAL DECISION MAKING:

- A. DIAGNOSTIC TEST INCLUDE:** An MRI of the lumbar spine showing L4-L5 facet hypertrophy and mild bulging of the annulus without significant stenosis. At L5-S1 there is a large disc extrusion to the right, caudal from the disc space, centrally impressing on the thecal sac.
- B. DIAGNOSIS:** Very likely a combination of discogenic pain and radicular pain secondary to the pathology present and described at L5-S1. Some degree of facet arthropathy may also accompany that problem as a secondary development. The patient appears to report some slight improvement, which is not unusual for such lesions.
- C. THERAPY PLAN:** A series of selective nerve root blocks should be followed by epidural steroids, if successful. Medial branch blocks may be followed by radiofrequency neurolysis if they offer significant relief. Physical exercise should be strongly encouraged, and core strengthening should play a significant role in planning them. (RX. #1, p. 8-9).

On October 4, 2007, the claimant was seen at NEA Clinic Neurosurgical Associates and

Dr. Jeffrey Kornblum. The clinic relative to the afore visit reflects, in pertinent part:

HPI

Mrs. Spicer is a 41-year-old right-handed lady seen in consultation on October 4th at the request of Dr. Kosinski. She notes that in February she developed some low back pain while shoveling a pasta sauce spill at Nestle's. The back pain eventually resolved, though about two-and-a-half

weeks later she had development of right lower extremity pain. This became quite severe, radiating down the back of her leg into the sole of her foot. She sought out medical attention in March. She had been given some narcotics, muscle relaxers, anti-inflammatories. She has used some heat and ice. She notes over about a six week period the pain significantly improved and eventually resolved. She has no radiating pain at this time, but does note intermittent cramps in her right calf. At times the cramps are quite painful. She has no complaints of numbness or parasthesia at this time. No complaints from the left side. No complaint of any change in bladder or bowel function. She is back to work, through has changed jobs at this time, now working for Dillard's. She indicates that she has avoided some personal activities for fear of recurrence. Notably, she has not resumed her fitness program and she was playing softball prior to the accident. She reports having had an episode of leg pain about 2 years ago that also resolved on its own. She has had some variable mild backaches at times which she has associated with straining to work that has always subsided and at time she utilizes Advil.

* * *

Physical Exam

On exam she is noted to have a normal gait. She is able to get up on toes well with good strength. Range of motion of the lumbar spine is full without limitation. Extension gave her some back discomfort. She is not tender to palpation. Straight leg raising and FABER maneuver were both negative. Deep tendon reflexes revealed an absent Achilles on the right, 1-2+ on the left, patellar 1-2+ bilaterally; branchioradialis 1-2+ bilaterally.

Assessment

MR imaging of the lumbar spine reveals degenerative disc changes at L4 and L5 with a sizable disc herniation on the right at L5 into the axillary region of S1. Her canal appears to be quite large and with her symptomatology clearly accommodating the disc herniation.

IMPRESSION: Mrs. Spence describes having had S1 radiculopathy. She had some residual cramps in her calves and absent reflex. She is otherwise doing quite well. I reviewed with her the MR imaging that was done in March and the natural history of disc disease with and without surgery. .

Plan

At this time she is doing very well. I have not advocated surgical intervention. She is aware of the potential for recurrent radiculopathy. I have advised she

gradually try to resume her usual activities, though to show some caution with regard to activities that increase the strain on her low back. I have given her a manual of postural exercises. If the need arises, she may call or be referred for re-evaluation. (RX. #1, p. 11-12).

After a through review of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 12, 2007, the relationship of employee-employer-carrier existed among the parties.
3. On February 12, 2007, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$214.00/\$160.00, for temporary total/permanent partial disability.
4. On February 12, 2007, the claimant sustained an injury to her low back arising out of and in the course of her employment.
5. The respondent shall pay all reasonable hospital and medical expenses arising out of and in connection with the injury of February 12, 2007.
6. The respondents have controverted this claim in its entirety.

CONCLUSIONS

The claimant was employed by respondent-employer from May 2003 until her February 28, 2007, suspension and subsequent March 7, 2007, termination of her employment. Claimant asserts that she sustained an injury to her back on February 12, 2007, within the course and scope

of her employment which required medical treatment and for which respondents are liable. Claimant seeks the payment of her incurred medical expenses as well as reimbursement of her out-of-pocket expenses for medical treatment. Respondents deny that the claimant sustained an injury arising out of and in the course of her employment with same. Further, respondents maintain that the claimant failed to provide timely notice of any injury sustained in their employment.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In order prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A)(i). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

On February 12, 2007, during a period of approximately thirty-five (35) minutes claimant shoveled spilled material into a dumpser. Following the shoveling episode claimant noted the onset of back pain. The claimant reported the afore to her supervisor. The credible evidence

reflects that the claimant's back pain progressively worsen throughout the remainder of her shift. At one point claimant secured and took over-the-counter pain medication for a co-worker in an effort to address her back pain. The claimant's immediate supervisor, Steve Austin, confirmed and corroborate the claimant's assigned job task of shoveling the spilled material and the claimant's reporting of having hurt her while so doing.

The evidence reflects that while Mr. Austin did not completed an incident/accident report in connection with the claimant's February 12,2007, reporting, he did document the reporting. A co-worker of the claimant, Mr. Mark Evans, witnessed the claimant walking with a limp and overheard her reporting that she had hurt her back while shoveling spilled material.

Claimant was off work on February 13, 2007, and February 14, 2007, because of severe back pain growing out of the February 12, 2007, shoveling episode. Claimant acknowledged that her back pain did relent and she returned to work. The claimant continued to work through February 28, 2007, when her employment was suspended for reasons not related to her injury or workers' compensation claim.

Claimant sought and obtained medical treatment on March 5, 2007, when she experienced symptoms of pain radiating down her right leg and into her right foot along with numbness and tingling in addition to the back pain. Diagnostic studies, MRI of the lumbar spine, disclosed the presence of a herniated disc at L5-S1. Claimant later received treatment under the care of Dr. Savu, a pain management specialist, pursuant to the referral of Dr. Kosinski. Further, the claimant was later evaluated by Dr. Kornblum.

The evidence preponderates that the claimant sustained an injury to her low back on February 12, 2007, within the course and scope of her employment while shoveling spilled sauce

over a period of thirty-five (35) minutes. Further, the claimant reported the injury to her immediate supervisor. Additionally, the credible evidence reflects that the respondent was aware of the claimant's claimed injury prior to the point in time that she first sought medical treatment for same. Diagnostic studies disclosed the presence of objective findings of the injury. Respondents have controverted the compensability of the claimant's February 12, 2007, compensable injury in its entirety.

Ark. Code Ann. §11-9-508 mandates that the employer provide medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508 (a) (Supp. 2007). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005).

In the instant claim, the evidence preponderates that the medical treatment rendered to the claimant under the care of Dr. Kosinski, as well as referrals therefrom to include Dr. Savu, and Dr. Kornblum was reasonably necessary in connection with the February 12, 2007, compensable low back. Respondents have controverted this claim in its entirety.

AWARD

Respondents are herein ordered and directed to pay all reasonably necessary medical, hospital, nursing, diagnostic studies and other apparatus expenses growing out of and in connection with the claimant's February 12, 2007, compensable back injury, to included medical related milage. Respondents are also ordered to reimburse the claimant for out-of-pocket medical expenses incurred in connection with her claim.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809,
until paid.

Matters not addressed are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE