

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212505

LINDA CROUCH,  
EMPLOYEE

CLAIMANT

FUN CITY,  
EMPLOYER

RESPONDENT NO. 1

UNION STANDARD INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED FEBRUARY 3, 2004

Upon review before the FULL COMMISSION in Little Rock,  
Pulaski County, Arkansas.

Claimant represented by HONORABLE JASON HATFIELD, Attorney  
at Law, Fayetteville, Arkansas.

Respondents No. 1 represented by HONORABLE WILLIAM C. FRYE,  
Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE,  
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the  
Administrative Law Judge filed August 11, 2003. The  
Administrative Law Judge entered the following findings of  
fact and conclusions of law:

1. The stipulations agreed to by the parties at  
the pre-hearing conference conducted on April  
30, 2003, and contained in a pre-hearing

order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned sufficient wages to entitle her to a compensation rate of \$197.00 for temporary total disability benefits and \$154.00 for permanent partial disability benefits is also hereby accepted as fact.
3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her back while employed by respondent on May 28, 2002.
4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.
5. Claimant is entitled to temporary total disability benefits beginning November 1, 2002 and continuing through a date yet to be determined.
6. Respondent has controverted claimant's entitlement to all temporary total disability benefits.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

## DISSENTING OPINION

I must respectfully dissent from the majority opinion affirming and adopting the decision of the Administrative Law Judge. In my opinion, I do not find the claimant's testimony to be sufficiently credible to support a finding of compensability. As noted by the Administrative Law Judge a totality of the evidence reveals that there is evidence to support the contentions of both sides.

The Administrative Law Judge and the majority rely upon the self serving evidence of the claimant to support a finding of compensability. In my opinion, the claimant's testimony is simply too erratic to be worthy of belief. While there are threads of consistency throughout the claimant's testimony, I find that these meager threads cannot be sewn into a cloak of truth. Did the claimant injury herself moving boxes in the walk-in cooler, moving tables, or lifting a box of cola syrup? Claimant had back pain prior to any of these activities. She continued to have back pain after these activities. Based upon the claimant's testimony, I cannot find that any of these activities resulted in a compensable injury for which the claimant is entitled to benefits. While the claimant reported a work-related injury on May 28, 2002, claimant's varied accounts

as to her activities at the time of the injury are simply too inconsistent to support a finding of compensability. Moreover, I find it significant that the claimant did not seek medical treatment until October of 2002. Claimant called her doctor on May 28, 2002, seeking additional medication, but the claimant was able to continue working until October of 2002. Anything could have happened to result in a recurrent disc herniation during this extended lapse of time.

Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner