

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F000826; F107988; F107989; & F212641

KATHRYN C. DOBBS, EMPLOYEE	CLAIMANT
CRAIGHEAD COUNTY NURSING HOME, EMPLOYER	RESPONDENT NO. 1
CANNON COCHRAN, CARRIER	RESPONDENT NO. 1
PINEDALE NURSING HOME, EMPLOYER	RESPONDENT NO. 2
WAUSAU, CARRIER	RESPONDENT NO. 2
OAKDALE NURSING HOME, EMPLOYER	RESPONDENT NO. 3
CANNON COCHRAN, CARRIER	RESPONDENT NO. 3
WOODBRIAR NURSING HOME, EMPLOYER	RESPONDENT NO. 4
CANNON COCHRAN, CARRIER	RESPONDENT NO. 4

OPINION FILED APRIL 26, 2005

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

Claimant presented pro se.

Respondents 1, 3, and 4 represented by HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part and affirmed in part.

OPINION AND ORDER

Respondents 1, 2 and 4, appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she sustained compensable injuries on August 14, 1999, January 29, 2000,

and August 11, 2002. The Administrative Law Judge also found that the claimant failed to prove by a preponderance of the evidence that the claimant sustained injuries in the form of low back strain or a spider bite on July 8, 2001, while employed by respondent employer no. 3. Based upon our de novo review of the record, we find that the decision should be affirmed in part and reversed in part. In our opinion, the claimant has failed to prove by a preponderance of the evidence that she sustained any compensable injuries while in the employ of any of the respondents.

The claimant, with a date of birth of September 29, 1955, has a ninth grade education and has been a licensed CNA (certified nursing assistant), since 1998. In 1992 she attempted to get Social Security disability benefits following injuries suffered when she slipped on some liquid on the steps of the county courthouse and fell down the stairs. The claimant asserted that she suffered a spasmodic back as a result of the accident and she was in the hospital for a period of approximately two weeks. After her discharge she continued to have problems with her back

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for a period of time. The claimant was not employed at the time of the 1992 injury.

The claimant suffered another injury to her back in 1996 when she fell through the floor of a trailer house. According to the claimant, diagnostic studies reflected that she had fluid on the left side of her brain and the lower part of her neck. Dr. David Marzewski's report indicated that she had x-rays of her back in 1987, 1991, 1995, and 1996. The claimant also had a CT scan of her head. The claimant testified that it was because of her head injury that she elected to commence her employment in the nursing home industry as a certified nursing assistant (CNA):

I didn't have that back pain when I started working. I went to work in the nursing homes because my head injury in case anything was to happen to me I would be there around people that I could get immediate help from plus, I needed the money. . .

The claimant started her work at Rolling Hills where she got her CNA license. The claimant was employed at Pinedale Nursing Home for a period of six days before securing employment with Craighead County Nursing Home, respondent no. 1. The claimant indicated that approximately

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thirty days prior to her August 14, 1999 injury, she suffered a slip and fall at work.

The claimant testified that on August 14, 1999, she was working as a certified nursing assistant when she suffered a fall at work:

. . .And during our break, we're allowed to do our ADLs, because most of the time that's only the time that we get to do the ADLs. So I went around to the nurses' station and got my - my ADL book and sat down and began to stretch in a swivel chair. And when - as I was stretching backwards, because the chair leaned, leant backwards, the back of it, you know, went like straight like a bed type thing. And as I was stretching and yawning the chair broke in half throwing me backwards on the concrete floor on my head and back.

The claimant stated that the injury was reported to appropriate supervisory personnel on duty. She maintained that medical treatment was not immediately provided to her following the accident nor was she examined by medical personnel of respondent. She testified that she was placed back to work. Further, the claimant testified that she did not see a doctor for her injury until the office of the respondent employer opened.

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The medical records reflect that the claimant was seen by Dr. Joe McGrath on August 14, 1999. Dr. McGrath's report reflected that in addition to her head, the claimant was having sharp pains in her right hip and she had multiple sore spots on her body. The claimant was sent to St. Bernard's emergency room to be evaluated and for more detailed x-rays. The record contains a document entitled Request for Medical Care which identified a date of injury of August 14, 1999, and a diagnosis of left elbow, right hip and low back strain. The report, authored by Dr. McGrath, noted that the claimant could return to modified work with the restriction of lifting no more than 20 pounds during her twelve hour shift. The claimant was assigned modified work for 24 hours and was returned to regular duties as of August 16, 1999.

On September 26, 1999, the claimant was seen by Dr. Jeff Barber at the Newport Hospital and Clinic for complaints of low back pain and provided prescriptions of Ibuprofen and Flexeril. The claimant was diagnosed with a low back strain and was directed to remain off work until

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September 27, 1999. The claimant was subsequently terminated.

Following her discharge from the employment of respondent no. 1, the claimant filed for unemployment benefits. She received benefits for a period of approximately three months.

In December 1999, the claimant submitted an application for employment with Pinedale Nursing Home, respondent no. 2, as a CNA. The claimant started working for respondent no. 2 in January 2000, working the 10:00 p.m. to 6:00 a.m. shift. The claimant received between \$6.50 to \$7.00 per hour. The claimant was employed by respondent no. 2 for less than one month when she suffered another alleged injury.

The claimant testified that while she performed her assigned job duties she was much slower than the other CNAs, which she attributed to the residuals of her prior injury. Regarding the alleged January 29, 2000, injury the claimant stated:

Yes, I wasn't there for very long before
I had the door slammed on - I don't - I
had went to - I was working and there
was a resident that needed some more

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blanketing, more warmth, and I went across the hall and approached the closet. And as I was fixing to turn on the - I opened the door like this, and the hall is real slim. You can't see hardly nothing in there. Then there's a small door there where you - you know, I don't know what it went to, another closet or whatever it was. And as I opened the door, I went in and turned around to flip on the light switch, and the door hit me from behind, slamming me between the door facing and the door. And she said she did not mean to shut the door.

The claimant alleged that she suffered injuries to her left shoulder and arm as a result of this incident. The claimant testified that her left arm was swollen twice its usual size and it was reported to appropriate supervisory personnel of respondent no. 2:

Yes. At the time of the accident, sir, Ms. Ellis and the - nurse, or someone, wrote that I did not make out an accident report. But I did, because the nurse told me to come over here behind the desk, sit down, and tell - you know, write down on an accident report about what happened to me, and that's what I did. She did not check me for bruising, injury, or anything of that sort. She kept me on the hall the rest of the night until the next day and then I went home. The pain continued. The swelling continued until I went to the emergency room.

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The claimant received medical treatment at the emergency room of Newport Hospital in the form of medication and a prescription for physical therapy. The claimant was also provided a limited duty work release. The respondent employer provided light duty work to the claimant. The claimant acknowledged that she was released from physical therapy by the therapist on February 8, 2000, but she insisted that it was at her request.

Respondent employer no. 2 offered the testimony of Ms. Catherine Gilmore, an administrative assistant. Ms. Gilmore testified that a review of the claimant's personnel records reflected that as of February 3, 2000, the claimant was placed on administrative leave pending an investigation of the proper way to handle the workers' compensation claim. Further, Ms. Gilmore testified that the claimant's personnel file reflected written statements wherein the claimant and another CNA argued about the other CNA shutting a door on the claimant. Ms. Gilmore stated that the claimant did not report an injury as a result of the incident.

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On January 31, 2000, the claimant was seen at the emergency room at the Newport Hospital for complaints of left shoulder pain. The claimant was provided medication and a prescription for physical therapy, three times a week for two weeks. The claimant was directed to return to the emergency room if her symptoms worsened. She was diagnosed with light contusion to the left shoulder and she was to rest and apply heat to the affected area.

Ms. Gilmore's testimony reflects that the administrator of respondent employer no. 2 at the time, Ms. Billie Wright, tried to call the claimant several times following the February 3, 2000, administrative leave, but the claimant did not return her calls. The claimant testified that she never received a call from respondent employer no. 2. The claimant once again filed for unemployment.

After her unemployment ran out, the claimant obtained employment at the Beverly Nursing Center in Searcy, Arkansas. She estimated that approximately four months elapsed between the time she was last employed for respondent no. 2, and when she secured employment at the

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Beverly Nursing Center. The claimant worked there as a CNA for approximately three months before she was terminated. After approximately two months of unemployment, the claimant then went to work as a CNA at the Beebe Nursing Home where she remained employed for three months before she was again terminated.

The claimant was unemployed again for approximately four months when she secured employment at Cabot Manor in Cabot, Arkansas, as a CNA. The claimant was employed at Cabot Manor for a period of approximately three months before quitting.

After leaving the employment of Cabot Manor Nursing Home, the claimant moved to Dallas, Texas, and was hired by the Denton Rehab Nursing Center as a CNA. In the four months she worked there she suffered a work-related injury in the form of chemical burns to her eyes. That injury was accepted as compensable and she received medical treatment. The claimant asserted that she was fired from Denton Rehab.

The claimant then went to work for the Justin Nursing Home in Justin, Texas, for just six days. The

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claimant was accused of fraud and the following is her explanation:

Well, sir, I was - my traveling back and forth to Dallas, when I was filing for unemployment - when I went to work for Justin, Texas with this nursing home I worked there six days and I didn't report it, my traveling. And me trying to get my unemployment and everything and then dealing with me, with the chemical burn to my eyes plus all the other injuries that I had to deal with and plus me driving back and forth to Justin to, you know, to my home in Dallas - I don't know really how that sidetracked me but anyway they stuck me with fraud. They said that I should have reported it. I said, Well, I didn't really know I had to. And at that time I didn't know that I had to. But they said that it's what it was called.

The claimant returned to Arkansas and began work as a CNA with Oakdale Nursing Home, Respondent employer no. 3. During her employment with respondent no. 3, the claimant worked weekends, a total of 48 hours covering Friday, Saturday and Sunday. The claimant worked a total of 21 to 22 days for respondent no. 3, during which time she earned between \$7.00 to \$7.50 per hour. The claimant maintained that she suffered injuries in the form of a strain to her back and a spider bite.

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The claimant contended that the strain that she experienced to her back was not the product of a specific incident, but rather a gradual onset. An incident report was not completed the night that the claimant reported her complaints. The claimant testified that she was not allowed to go home after she requested to go home because of her back complaint. The claimant contacted respondent no. 3 after she experienced a burning sensation in her back before going to the emergency room. The claimant's testimony reflected:

I called them because my back was burning me. I mean, it was like it was on fire. And it kept hurting me, so I - it was itching and burning, and I asked my granddaughter to scratch the center of my back. And when she scratched it, it started really burning bad. And she told me that there was sores on my back.

The claimant's mother diagnosed the claimant with a spider bite.

The claimant sought treatment at the emergency room of Newport Hospital where she received two injections and was provided medicine to put on the area. The alleged strain and spider bite occurred on the last night of the

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weekend. The claimant was terminated when she reported to work the next weekend. The claimant filed for and received unemployment benefits for approximately six months.

Although the claimant insisted that the strain she experienced in July 2001 was as a result of her working for respondent employer no. 3, she acknowledged that she had suffered strains performing her job duties as a CNA at other nursing home facilities prior to her employment with respondent employer no. 3. The claimant's testimony reflected:

Yes, sir, I hurt. Yes, sir. I was slow, you know, on all the jobs. That was their main objective [objection] of me was because I wasn't listening or because I was slow or because I didn't do this right or didn't do that - when you're hurting you can't expect to do things right. You can't expect to hear things right and you're on medication. You understand? I mean, you see what I'm saying.

The claimant asserted that her back was hurting the whole time she was working at all the other nursing homes. The claimant testified that the spider bite she experienced while employed at respondent no. 3 occurred on a Sunday night, the last night of her three-day weekend work

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schedule. The claimant acknowledged that she did not know where the spider came from. There is no evidence in the record to reflect that the claimant actually saw a spider on her. The record does reflect that the claimant was seen at the emergency room of Newport Hospital on July 10, 2001, and stated that she had been bitten by a spider at the nursing home where she worked. The claimant had two small lesions or blisters on her back for which she was provided Silvadene cream to be applied. The claimant was also provided a prescription for Darvocet. The emergency room report reflected a diagnosis of skin lesions, back, etiology unknown.

After receiving unemployment benefits for a period of at least six months following the termination of her employment by respondent no. 3, the claimant went to work as a certified nursing assistant with Woodbriar Nursing Home, respondent employer no. 4, in Harrisburg, Arkansas. The claimant testified that at the time she secured the employment for respondent employer no. 4, she was not physically ready to return to work, but, she did so out of necessity. The claimant noted that she was still having

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problems and still going to the hospital and the emergency room for back complaints.

The claimant was employed by respondent employer no. 4 for a period of approximately three weeks when she suffered another alleged injury to her back. Claimant testified that because she had continued to experience pain in her back she had given two weeks notice that she would be terminating her employment. The claimant was also receiving medical treatment at UAMS for her head complaints. The claimant testified that on August 11, 2002, she hurt her back:

It was another back strain. This was - it was more than a back strain actually. The lady - she come there - the residents, if they can stand or if they can walk or - you know, you only have the residents when they have to be helped.

* * *

If they can stand on their own, they let them stand. If - if they can bathe themselves, you let them do their own thing. If not, then they have - you know, you can help them. Well, Ms. Reid, she was able to stand up and hold herself up, but her legs bowed up underneath her, you know, I mean, they just gave -

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* * *

--up underneath her. And she had dropped down onto the whirlpool, slipping off into the floor. And I was holding her up. And she weighed about 300 pounds. And if I hadn't of held her up, she would have probably endured probably a good size fall herself.

The claimant stated the pain was very severe following the alleged occurrence and she reported it to the appropriate supervisory personnel. She testified that she was not provided medical treatment, but, was directed to go home by the nurse on duty, Doshie Hart. The claimant testified:

She sent me home, but see I wasn't ready to go home because I was having headaches and I was hurting, and I was scared of driving from Harrisburg to Newport because of blackouts or anything under - you know, anything after an accident, I was always - you know, you're never really in your right mind at the time that you have a severe accident. Anything that's due to your head, your - your back, there's just something that - there's just something that you just can't - you know, you're not yourself.

The claimant alleged that she asked Ms. Hart not to send her home because of her concerns about driving, but Ms. Hart insisted that she go home.

The claimant sought medical treatment the following day at the emergency room at Newport Hospital. She did not return to the employment of respondent employer no. 4 following the alleged August 11, 2002, injury. The claimant testified that she laid in bed for the next two weeks in severe pain. The claimant took medication received from the emergency room for her back pain, and was physically unable to return to her regular job duties. The claimant testified that since August 11, 2002, the only money she has earned was approximately \$300.00 for sitting with a lady over a 30 day period in 2003.

The claimant contended that she is entitled to medical and temporary total disability benefits as a result of injuries suffered in the employment of respondent employer no. 1, respondent employer no. 2, respondent employer no. 3, and respondent employer no. 4. Respondent no. 1, Craighead County Nursing, contended that no benefits were paid relative to the claimant's August 14, 1999 injury,

and that the statute of limitations has run on the claim. Respondent no. 2 asserted that the claimant did not sustain a compensable injury on January 29, 2000. Respondent no. 3 and respondent no. 4 contended that the claimant did not suffer compensable injuries while employed. After conducting a de novo review of the record, we find that the claimant has failed to prove that she sustained injuries with any of the respondent employers.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is

identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, Wal-Mart v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the

reasonable cause of the injury, this evidence should pass muster. See, Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. Crudup v. Regal Ware, Inc., 341, Ark. 804, 20 S.W.3d 900 (2000); KII Construction Company v. Crabtree, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

The claimant went to work for respondent employer no. 1 in 1999. On August 14, 1999, the claimant alleged that she was on a break and was sitting in a chair stretching and yawning when the chair broke. The claimant stated that she missed 2 or 3 days from work and that she injured her back, head and hip. She returned to light duty work but was eventually fired. She received unemployment compensation before she went to work for respondent employer no. 2. The record contains a few medical records concerning the August 14, 1999, alleged injury. The claimant was diagnosed with an elbow, hip and low back sprain and was released to regular duty two days later. There is a medical report from the Newport Hospital stating that the claimant came in

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complaining of a possible back problem, but she was not sure that it was hurt at work.

The claimant testified at the time that this alleged injury occurred she was on a break and she was stretching and yawning while sitting in a chair and the chair broke. In our opinion, the claimant was not performing employment services at the time of her injury. Arkansas Code Ann. § 11-9-102(5)(B)(iii) states:

An injury is not compensable if it was inflicted upon the employee at a time when employment services were not be performed, or before the employee was hired or after the employment relationship was terminated.

Although the statute does not define the term "employment services," this Commission has previously held that an employee is performing employment services when he is engaging in an activity which carries out the employer's purpose or advances the employer's interest. Cheri Pettey v. Olsten Kimberly Quality Care, FC Opinion Sept. 13, 1995 (E405037). An employee carries out the employer's purpose or advances the employer's interest when he engages in the primary activity which he was hired to perform. Id.; Kenneth Behr v. Universal Antenna, FC Opinion Dec. 6, 1995

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(E408376). When an employee engages in incidental activities which are inherently necessary for the performance of the primary employment activity, the employee carries out the employer's purpose or advances the employer's interest. Id.

We have previously held that when an employee leaves work five minutes early to go to the bathroom and wash her face and clean her glasses after being sprayed with catfish intestines, that employee was engaged in incidental activities which were inherently necessary for the performance of her job as a catfish gut sucker. Joan Jones v. FF Services, Inc., FC Opinion April 23, 1996 (E409045). If the claimant in Jones were not a gut sucker, she would not accumulate blood and guts on her glasses necessitating the need to clean her glasses.

However, in Patricia McCool v. Disabled American Veterans, FC Opinion filed June 3, 1996, (E410491), we found that the claimant "was not engaged in any activity that carried out the employer's purpose or advanced the employer's interest when the claimant deviated from her duties to go outside and smoke before she got "real busy." Likewise, in Carla Ann Cole v. Prince Gardner, Inc.,

FC Opinion filed August 26, 1996 (E408046), we found that when a claimant has finished work and is injured while walking across the employer parking lot, the injury was not compensable since employment services were not being performed.

The claimant admitted that she was on break at the time of this alleged incident. Further, there is no medical evidence that contains any objective findings of an injury. A strain or sprain is not objective medical evidence of an injury. Simply put, we cannot find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on August 19, 1999. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant went to work for respondent employer no. 2 in January of 2000. It was less than a month after she started working that she claimed that she allegedly injured her left shoulder. The claimant alleged that she was injured by a closet door when attempting to retrieve a blanket. The claimant testified that her left arm was swollen to "twice its size." She continued to work after the alleged injury and sought medical treatment from the Newport Hospital when

the swelling continued. The claimant was evaluated, x-rayed, and diagnosed with tenderness by the emergency room physician. The claimant continued to perform light duty work provided by her employer. The claimant sought physical therapy at the Newport Hospital shortly after the emergency room visit but this therapy did not start until February 4, 2000. She testified that she did not finish the physical therapy because she "couldn't." The claimant testified that she reported her injury to the director of nursing, but there was no record to substantiate that claim. The claimant was discharged from physical therapy on February 8, 2000.

The respondents offered the testimony of Catherine Gilmore, who was hired as housekeeping, laundry and maintenance supervisor in January of 2000. Ms. Gilmore started working with the claimant and attended the orientation session with the claimant when the procedures for reporting workers' compensation injuries were discussed. Ms. Gilmore testified that the first time she learned about the workers' compensation claim was a call from the adjuster from the respondent insurance carrier. She reviewed the claimant's personnel file and discovered there was no report

from anyone or any other information regarding a claim in January of 2000. She said that the claimant was responsible for reporting an injury and completing the paperwork but this was never done by the claimant. The claimant reported an altercation with a co-worker which she claimed occurred on January 29, 2000. The claimant discussed this matter on January 30th with the director of nursing but she failed to report any injury or complaints on that date. The claimant was again questioned about this altercation on February 3, 2000, and the claimant was subsequently terminated.

We find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on January 28, 2000. The claimant did not disclose that she had an injury when she met with the director of nursing on January 30, 2000, or February 3, 2000, instead she complained of an altercation with a co-worker. In July of 2001, she reported an injury to the Commission and stated this altercation was the cause of her injury. This is over a year and a half later and was the first notice that the employer had that the claimant was contending that she sustained an injury.

Further, there is no observation of pain or swelling by the director of nursing at the January 30, 2000, meeting. The claimant did not even go to the emergency room until January 31, 2000, and the physician failed to note anything other than "tenderness". On February 4, 2000, the physical therapist noted that the claimant had a light contusion to the left shoulder and edema to the left forearm and hand. However, the emergency room records from January 31, 2000, failed to note any contusions or edemas.

The claimant had ample opportunity to tell the director of nursing that she had an injury. The claimant met with the director on January 30th and February 3rd and failed to mention that she had a work-related injury. Further, the medical from the January 31, 2000, emergency room visit failed to note any contusions or edemas that were noted on the physical therapist's report of February 4, 2000. Therefore, we find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on January 28, 2000.

The evidence demonstrates that the claimant worked for respondent employer no. 3 for only a short period of

time. She was fired because she was late getting back from lunch one day. The evidence demonstrates that the claimant did not seek medical treatment for this alleged spider bite until July 10, 2001, when she went to the emergency room. The claimant conceded that she did not see a spider on July 8, 2001, but that she only felt something crawling on her. The claimant failed to produce any evidence that she was bitten by a spider at work on July 8, 2001, or any other insect for that matter. While the medical evidence reflects that the claimant did receive treatment for two small blisters on her back from the emergency room medical physician on July 10, 2001, this does not rise to the preponderance of the evidence needed to prove a compensable injury. The only medical record stated that the etiology of the condition was unknown. This is simply not enough evidence to prove that there was a compensable injury.

There was also no evidence that the claimant sustained a gradual onset back injury or a specific incident back injury while employed by respondent employer no. 3. The medical records simply do not denote any sort of back injury during the period she worked for this respondent. The

claimant admitted that she had been having back problems prior to going to work for respondent employer no. 3. It is also of note that the claimant only worked for 22 days prior to this alleged incident. Accordingly, we would affirm the decision of the Administrative Law Judge finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury on July 8, 2001, while in the employ of respondent employer no. 3.

The last injury that must be addressed is the alleged injury with respondent employer no. 4. The claimant had been working for respondent employer no. 4 for approximately three weeks when she asserted that she sustained another injury to her back. The claimant testified that because she had continuing back problems she had given the respondent employer two weeks notice that she would be terminating her employment. The claimant's alleged injury occurred on August 11, 2002, the last night that she worked for respondent employer no. 4. After this alleged injury, the claimant continued to discharge employment duties. She stated that she reported the alleged injury to the nurse on duty who directed her to go home, but the claimant testified

she asked the duty nurse not to send her home because of her concerns about driving from the facility to her residence. The nurse directed the claimant to go home and she did.

In Maverick Transp. V. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000), the Arkansas Court of Appeals discussed the difference between an aggravation and a recurrence as it relates to workers' compensation law. The Court stated:

An aggravation is a new injury resulting from an independent incident. Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. Weldon v. Pierce Bros. Constr., 54 Ark. App. 344, 925 S.W.2d 179 (1996). Only where it is found that a second episode has resulted from an independent intervening cause is liability imposed upon the second carrier.

Id. at 130, 10 S.W.3d at 468. An aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware,

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Inc., 341 Ark. 804, 20 s.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The test to determine whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. Guidry v. J & R Eads Const. Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984), Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998), Davis v. Old Dominion Freight Line, Inc. 341 Ark. 751, 20 S.W.3d 326 (2000).

After looking at the totality of the evidence, it is apparent that the claimant had a recurrence of her previous back problems. The following testimony demonstrates why the claimant was not injured while working for

respondent employer no. 4, but her condition was a recurrence of her pre-existing condition:

Q. As a result of this last injury at Woodbriar, was that the straw that broke the camel's back, from your standpoint?

A. Well, I shouldn't have really been working at Woodbriar.

Q. Okay.

A. I really shouldn't have but I did because I had to, I guess, prove to myself and I needed the money. I did not want to lose my car.

Q. Okay. But as I understand it there was a substantial client that you were trying to assist at the time that this incident occurred?

A. Actually, they've never said that I've, they've never, actually said I sustained anything.

Q. Okay.

It is obvious that the claimant was already in pain and having problems with her back prior to going to work for respondent employer no. 4. She admitted that she should not have been working at all. It is apparent that this is a recurrence of the claimant's previous condition. She has no objective medical findings and no opinion within

any degree of medical certainty establishing a compensable injury. Accordingly, we would reverse the decision of the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury while working for respondent employer no. 4 on August 11, 2000.

We find that the claimant was not a credible witness. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. Id. 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. The evidence demonstrates that the claimant would apply for a job in a nursing home, have an injury, would be terminated, and then would draw unemployment compensation benefits. The claimant had worked

for over nine nursing homes at the time of the hearing and had filed either nine or ten workers' compensation claims. She admitted that most of her problems stem from a 1992 injury when she fell through a roof and injured her head. She had various complaints, including back, shoulder and entire body problems that had absolutely nothing to do with any work-related injury. The claimant admitted that she had been trying to get on social security disability since 1992 and also admitted that she had been convicted of fraud in Texas before the date of the hearing. The claimant was indeed on social security disability at the time of the hearing and listed her problems that the Social Security Administration used to determine her disability status. None of those problems had anything whatsoever to do with any workers' compensation injuries.

Accordingly, we find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury while employed by any of the respondents in this case. Accordingly, we hereby affirm in part and reverse in part the decision of the Administrative Law Judge.

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IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. McKINNEY, Commissioner