

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412410

ETHEL BROOKS, EMPLOYEE	CLAIMANT
CROWLEY'S RIDGE DEV. COUNCIL, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED JULY 28, 2006

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

Claimant represented by HONORABLE ROBERT J. DONOVAN,
Attorney at Law, Forrest City, Arkansas.

Respondent represented by HONORABLE CAROL L. WORLEY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondent appeals the opinion of an Administrative Law Judge filed on August 17, 2005, finding that the claimant has met her burden of proving that she sustained a compensable injury on November 12, 2004, as a result of a slip and fall accident at work. In addition, the respondent appeals the Administrative Law Judge's finding that the claimant is entitled to temporary total disability benefits from November 15 through December 15, 2004, from December 18, 2004 through January 2, 2005, and from January 13 through January 30, 2005.

Our carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable back injury on November 12, 2004. Although medical evidence establishes that the claimant received medical treatment on November 13, 2005, for her back, witness testimony contradicts the claimant's version of the incident that allegedly caused her back injury. The weight of the credible evidence preponderates against the claimant's account of her injury. Therefore, the compensability of this claimant's injury is hereby denied.

The claimant, who was 68 years old at the time of her alleged accident, testified that she was a head start teacher for the respondent employer on the date in question. The claimant further testified that she had stayed late on the afternoon of November 12, 2004, in order to prepare her classroom for an inspection that was to occur the following Monday. Normally the claimant worked from 8:00 a.m until 4 p.m., Monday through Friday. The claimant's assistant, Anita Jones, testified that she had stayed late, also, but

that she had left at around 4:30 to pay a utility bill. The claimant testified that while Ms. Jones was away on her errand, she stepped outside to empty her trash. According to the claimant, the walk was wet from rain, causing her to slip and fall, thus injuring her back. More specifically, the claimant testified to this incident as follows:

... I was going to the garbage bin where we put it [trash] at. It was raining, and so I slipped and fell backwards with the garbage. And I finally got up.

The claimant further testified that she fell all the way down to the ground, landed on her back, and had to "roll over" to get up. The claimant stated that she felt immediate pain, but she proceeded to empty the garbage can and then returned to her classroom. On her way back to her classroom, the claimant allegedly stopped by her supervisor, Evelyn Scott's, classroom in order to inform her of the incident. According to the claimant, Ms. Scott was not in her classroom, and when she inquired of the two people present, they were uncertain as to Ms. Scott's whereabouts. The claimant told neither of these individuals that she had

just injured herself. After the claimant returned to her classroom and gathered her things to go home, she stated that she walked to her car where she sat for a few moments and "tried to come to myself". While she was sitting in her car, Ms. Jones returned to the parking lot and drove up beside the claimant. The claimant testified that Ms. Jones had her car windows rolled up and was on her cell phone. The claimant further testified that she rolled down her own car windows and tried to tell Ms. Jones that she had fallen and was going to try to make it home, but that Ms. Jones never got off of her cell phone. Finally, when she thought Ms. Jones had heard what she was saying, the claimant stated that she threw her hand up and said, "I'm going to try to go home."

The claimant testified that she could hardly walk by the time she arrived at her home on the afternoon of November 12, 2004. Therefore, she sat in her car for some time until her daughter-in-law, Letricia Brooks, arrived. Ms. Brooks, who lives near the claimant, testified that she frequently checks on the claimant. When by 5:00 p.m. that

afternoon the claimant had not answered her telephone, Ms. Brooks stated that she became concerned and drove to the claimant's home. Ms. Brooks said that it was sometime around 5:30 or 6:00 when she arrived at the claimant's residence, where she found her still sitting in her car. The claimant's testimony concurs with Letricia Brooks' testimony as to events following her arrival at the claimant's residence. Essentially, Ms. Brooks assisted the claimant out of her car and into the house, helped her get into bed, and gave her some nonprescription medication for her pain. In the course of assisting the claimant inside, she stated that she asked the claimant what had happened, and the claimant informed her as follows:

She said to me that she had some things left over to do at work that evening, and one of her co-workers had left already to leave and she was closing down the building and she had already ended the day by the end of her cleaning, or whatever, in her room area, or whatever, and she had taken the trash out. On the way to take the trash out she had slipped and fallen. That's what she said.

Ms. Brooks testified that when the claimant's condition was unimproved the following morning, she drove the claimant to her doctor's office.

Although the medical records from the claimant's visit with her physician, Dr. Susan Balke, on November 13, 2004, are hand-written and difficult to decipher, it appears that the claimant reported that she fell the previous day while emptying trash and landed on a concrete step, thus injuring her back. Dr. Balke noted the presence of spasms and reported tenderness in the claimant's lumbar and SI regions. The claimant testified that Dr. Balke took her vitals, prescribed her medications, and recommended that she be seen at the ER for x-rays. An x-ray of the claimant's lumbosacral spine taken at the hospital on November 13, 2004, revealed normal contour and alignment of the claimant's lumbar spine with disc space narrowing at L5-S1, and degenerative changes at L4-L5.

The claimant testified that she attempted to return to work on November 15, 2004, but was unable to stay due to her pain. It was at that time that the claimant

informed Ms. Scott of her alleged accident of the previous Friday afternoon. The claimant returned to Dr. Balke on November 15, 2004, who in turn referred her to a neurologist in Jonesboro, namely Dr. Cauli. A CT scan taken on that date showed findings which suggested a post-traumatic or degenerative etiology at the L4-L5 level, although a metastatic lesion was not ruled out. Likewise, an MRI conducted on November 18, 2004, under the direction of Dr. Balke confirmed a lesion at that level which was indeterminate, but which may be trauma related. A follow-up bone scan in 2 to 3 months was recommended.

The claimant testified that she tried to return to work for two days in December, the 16th and 17th. The respondent employer's payroll records reflect that she took annual leave on those dates. Further, the claimant testified that she attempted to return to work in January of 2005, but that she was again unable to resume her work activities. The payroll records reflect that the claimant worked a total of 37 hours during the first week of January 2005, and a total of 24 hours the following week, her last day to work that

week being January 12, 2005. The claimant testified that her job duties during that time were restricted to light duties, such as paperwork and reading to her students. After January 12, 2005, the claimant did return to work until February 1, 2005. Aside from some annual leave, holidays, and one sick day, the payroll records reflect that the claimant worked for the respondent employer from February 1 through March 4, 2005. There are no payroll records presented in the record after March 3, 2005; however, the claimant testified that she continued working for the respondent throughout the remainder of the school term, and that she was invited to return the following year.

As for her subsequent medical treatment, the claimant stated that she came under the care of a chiropractor in January of 2005; she was evaluated and treated by Dr. Mario Cauli in February, March, and April of 2005; she underwent physical therapy in Forrest City relative to her injury; and, she continues to be seen by Dr. Balke on an as needed basis for complaints associated with her alleged November 12, 2004, injury.

Pursuant to Arkansas Code Annotated §11-9-102(4)(A)(i)(Repl. 2002), a compensable injury is an accidental injury causing internal or external physical harm to the body, arising out of and in the course of employment, and which requires medical services or results in disability or death. An injury is accidental only if it is caused by a specific incident and is identifiable by time and place of occurrence. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i)(Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

It would appear by the weight of the objective medical evidence presented in this claim that the claimant has met her burden of proving that she sustained a compensable injury pursuant to the Act. Although the claimant has proven that she underwent medical treatment during the time in question for problems associated with a possible back injury, a careful examination of the testimony presented here reveals that the alleged incident that purportedly caused the claimant's injury is questionable. For example, whereas the claimant testified that she injured herself around 5:00 p.m. on the afternoon of November 12, 2004, the payroll records for that day reflect that the claimant left at 4:00 p.m. that afternoon. The claimant conceded during the hearing of June 22, 2005, that these payroll records were correct and accurate. Moreover, the testimony of the witnesses who appeared at the hearing, and of those who appeared through their written statements, each to some degree contradict the claimant's testimony regarding the events of November 12, 2004. For example, Ms. Scott testified that she observed the claimant leaving in her car

at approximately 4:00 p.m. that afternoon. Furthermore, the claimant testified that she stopped by Ms. Scott's classroom to report the incident, and that Ms. Scott was not in her classroom. This, according to the claimant's account of the alleged incident, would have been somewhere between 4:30 and 5:00 p.m. However, Ms. Scott stated that she had stepped outside around 4:00 p.m. for a meeting with her supervisor and a family social worker, which lasted approximately twenty minutes. Ms. Scott testified that after this meeting, she returned to her classroom where she remained until she left the facility at around 6:00 p.m. Moreover, Ms. Scott stated that her classroom is next door to the claimant's classroom, which is the last classroom as you are going in the direction of the dumpster. In other words, the claimant would have naturally passed by Ms. Scott's classroom on her way to her car; not on the way back from the dumpster as the claimant indicated she had done. Ms. Scott testified that she did not see the claimant at all after she witnessed her leaving the building at around 4:00 p.m. Finally, Ms. Scott stated that the claimant, as well as other employees, was

fully aware that she must report an injury within 24 hours of its occurrence. "Because every year during orientation," which Ms. Scott explained was sometime in August, "we have meetings in Jonesboro, and that's one of the things that they talk about there each year, how to file it, when to, and how important it is to call as soon as something happens." Ms. Scott admitted that she was readily available over the weekend following the claimant's alleged injury had the claimant tried to contact her regarding her alleged injury, but that the claimant failed to do so until the following Monday morning.

Likewise, the testimony of an assistant teacher at the facility, Sandra Stegall, demonstrates that the claimant did not trip and fall on her way to or from the trash bin on the afternoon in question. Ms. Stegall testified that she was outside supervising the students at play on the afternoon of November 12, 2004, when she witnessed the claimant emptying her trash can into the dumpster. Ms. Stegall stated that it was approximately 3:30 p.m. when she witnessed the claimant emptying her trash, and that she

did not see her come outside to empty trash again after then. Ms. Stegall stated that she did not observe the claimant trip, fall, or otherwise injure herself as she was emptying her trash on the afternoon in question. Finally, Ms. Stegall stated that she left the school facility at around 6:00 p.m.

Although the testimony of Ms. Jones corroborates the claimant's testimony regarding the times involved, Ms. Jones' testimony conflicts with the claimant's regarding the alleged injury. More specifically, Ms. Jones testified as follows:

When I came back from paying the electric bill I had parked in the parking lot to call in my receipt number, and Ms. Brooks [the claimant] was sitting in her car and she was getting ready to leave. I was on the phone calling in the code for my electric so they wouldn't turn my electricity off. Ms. Brooks had tried to get my attention but I had the window up and was trying to get my stuff done. When I finally got around to rolling my window down, she had her window down, and she told me that she had cleaned up best in the room that she could and that she was leaving to go home.

Ms. Jones testified further that the claimant did not mention the alleged incident or injury to her during their brief conversation. Moreover, Ms. Jones agreed that the claimant did not appear to be in physical pain or distress. Finally, Ms. Jones confirmed that employees are given strict guidelines in regards to reporting injuries. "When you have an accident no matter how small or large," stated Ms. Jones, "no matter what the circumstances are, you are to immediately report it to Ms. Scott because she is head teacher, supervisor."

The respondent proffered written statements from two more employees. One of those statements was from Ms. Sandra Perry, who wrote that she was at the facility until about 5:30 p.m. on the afternoon in question, and that the claimant mentioned nothing to her of having fallen or being injured. The second statement was from Ms. Terri Harris who stated that she did not learn of the alleged incident until the following Monday, and that the claimant had appeared to be "okay" on Friday, November 12, 2004. Ms. Harris added that upon learning of the alleged accident,

she asked the claimant if she had filed an injury report, to which the claimant responded that she had not done so because she "did not realize it was that serious."

It is well settled that questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. Ark. Coal Co. v. Steele, 237 Ark. 727, 375 S.W.2d 673 (1964); Potlatch Forest Inc. v. Smith, 237 Ark. 468, 374 S.W.2d 166 (1964); Scarborough v. Cherokee Enterprises, 306 Ark. 641, 816 S.W.2d 876 (1991); White v. Gregg Agriculture Ent., 72 Ark. App. 309, 37 S.W.3d 649 (2001). Arkansas Code Annotated section 11-9-704(b) (6) (A) vests with the Commission the duty to "review the evidence" and if deemed advisable to "hear the parties, their representatives, and witnesses." The statute further requires the Commission to determine, "on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by preponderance of the evidence." A.C.A. § 11-9-704(c) (2). Thus, in determining that the Commission's authority and duty to conduct a de

novo review of the entire record including issues of credibility is constitutional, the Court of Appeals stated in Stiger v. State Tire Serv., 72 Ark. App. 250, 35 S.W.3d 335 (2000):

When the Commission reviews a cold record, demeanor is merely one factor to be considered in credibility determinations. Numerous other factors must be included in the Commission's analysis of a case and reaching its decision, including the plausibility of the witness's testimony, the consistency of the witness's testimony with the other evidence and testimony, the interest of the witness in the outcome of the case, and the witness's bias, prejudice, or motives. The flexibility permitted the Commission adequately protects the claimant's right of due process of law.

Accordingly, when there are contradictions in the evidence, it is constitutionally within the Commission's exclusive province to reconcile the conflicting evidence and to determine the true facts. White v. Gregg Agriculture Ent., supra. We are 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 we deem worthy of belief. Id.

It would appear that the determination of compensability in this claim rests largely on the issue of credibility. On one hand, the claimant appears to give a credible account of a work related incident which allegedly occurred on the afternoon of November 12, 2004, from which she sustained a minor back injury. The seemingly credible testimony of the claimant's daughter-in-law, Letricia Brooks, and even to a certain extent, that of her assistant teacher, Ms. Jones, appears to corroborate the claimant's account of her injury. However, the testimony of other witnesses, who also appear to be credible, contradicts the claimant's version of the alleged incident. In weighing the testimony of each of the witnesses and the claimant, however, the testimony of Ms. Stegall is the most convincing, and is, therefore, given the most weight. This is because, of all of the witnesses to testify or proffer testimony, Ms. Stegall is the only person who actually witnessed the claimant emptying her trash on the afternoon

of November 12, 2004. Whatever time this alleged incident may have occurred, Ms. Jones admitted that she was not there and did not witness any such event. Additionally, the claimant did not tell Ms. Jones that she had been injured, nor did she have the appearance of having been injured. Ms. Scott stated that she witnessed the claimant leave the school facility at approximately 4:00 p.m. on the afternoon in question, which would coincide with the time she stated she was outside speaking with her supervisor and a social worker. Further, Ms. Scott stated that she returned to her classroom at around 4:20 and did not leave the facility until around 6:00 that afternoon. That Ms. Scott did not leave the school until at least 5:30 p.m., was verified by Ms. Jones in her written statement. The claimant was well aware of the proper procedure for reporting injuries, which included immediately reporting any injury to Ms. Scott. However, despite the fact that the claimant claimed she was in so much distress Friday evening that she did not even think to call Ms. Scott, this does not explain why the claimant failed to contact Ms. Scott on Friday afternoon,

while Ms. Scott was still at the facility; on Saturday, when she sought medical treatment for her condition; or on Sunday, when she testified that she did nothing. Finally, the claimant's daughter-in-law, Ms. Brooks, did not witness the claimant fall and injure herself. In fact, Ms. Brooks could only testify as to the approximate time she arrived at the claimant's house to find her sitting in her car. There is no way that this witness could know what time the claimant had left the school, or how long she had been sitting at her residence in her car. Furthermore, Ms. Brooks has only the claimant's word on which to rely concerning her alleged injury. As previously stated, Ms. Stegall was the only eyewitness to the claimant emptying her trash on the afternoon of November 12, 2004, and her testimony is that the claimant emptied the trash before 4:00, and that "She Did Not Fall!". As the respondent has correctly asserted, the claimant did not contend that she made more than one trip to the dumpster to empty trash that afternoon, nor did she argue a case of mistaken identity.

For the above stated reasons, we find that the claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable back injury on November 12, 2004, when she allegedly slipped and fell at work. Therefore, for those reasons set forth herein, the decision of the Administrative Law Judge is hereby reversed and this claim denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I respectfully dissent from the Majority's opinion reversing the Administrative Law Judge's August 17, 2005 opinion. Based upon my de novo review of this claim in its entirety, it is my opinion, that claimant has met her burden of proving that she sustained a compensable injury on

November 12, 2004, as a result of a slip and fall accident which occurred at work, and, therefore, the Administrative Law Judge's opinion should be affirmed and adopted.

The claimant, who was 68 years old at the time of her accident, testified that she was a head start teacher for the respondent employer on the date in question.

Claimant asserts that she suffered an injury which required medical treatment and rendered her totally incapacitated from engaging in gainful employment for a period of time in the course and scope of her employment with the respondents on November 12, 2004. Claimant seeks corresponding temporary total disability and medical benefits as a result of the injury. Respondents deny that the claimant suffered an injury on November 12, 2004, and have controverted the payment of workers' compensation benefits.

In order to 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 Plastic, 56 Ark. App. 126, 938 S.W.2d 876 (1997). In the instant claim, the claimant has established by a preponderance of the evidence the requirements for establishing the compensability of her claim.

There is no evidence in the record to reflect that the claimant sought or required regular medical treatment relative to low back or lower extremities prior to November 12, 2004. The testimony of Ms. Anita Jones reflects that claimant did not register complaints regarding her back or lower extremities prior to November 15, 2004.

The credible evidence reflects that while claimant, who lived in Marianna, normally got off or left work at 4:00 p.m., on Friday, November 12, 2004, she did not leave work until between 4:45 or 5:00 p.m. Claimant remained over to prepare her classroom for a pending November 15, 2004, visit of a Jonesboro assessment team. One of the claimant's job responsibilities was cleaning the classroom, to include removal of trash. Claimant suffered her injuries on November 12, 2004, when she slipped and fell while carrying the trash out. The evidence reflects that it did indeed rain on November 12, 2004.

Each of the witnesses to testify that the claimant left work on November 12, 2004, at her usual time was clearly mistaken or in error. While Ms. Sandra Stegall asserted that she saw the claimant take the trash out to the dumpster at approximately 3:30 p.m. while she was watching the children, she acknowledged that the children were not taken out when it was raining. As reflected above, the evidence preponderates that the claimant did not leave work at her usual time on November 12, 2004.

The claimant credibly testified that following her accident, she did carry the garbage out, and that upon leaving the building, looked in the classroom of Ms. Evelyn Scott, her supervisor, to report the accident, however Ms. Scott was not in the room. Ms. Scott's testimony reflects that the time the claimant left on November 12, 2004, she was not in her classroom. Further, Ms. Scott acknowledged seeing the claimant and Ms. Jones in their respective vehicles, with Ms. Jones being on the telephone. Ms. Scott concedes that the claimant did not look in her direction, as to acknowledge her presence. The evidence preponderates that from Ms. Scott's vantage point, the claimant did not see her as she was leaving the building.

Ms. Jones had left the premises of respondents on November 12, 2004, and returned after completing an errand at the time she encountered the claimant on the parking lot of respondents. Claimant was sitting in her vehicle when Ms. Jones parked next to her. Ms. Jones was on the telephone with her window rolled up, when the claimant lowered her window and told her about her accident, and that she had

done as much work as she could. By the time Ms. Jones completed her transaction and lowered her vehicle window she only heard the last portion of the claimant's statement.

Ms. Letricia Brooks, the claimant's daughter-in-law, who resides within a short distance of the claimant commenced telephoning the claimant at the time she felt that claimant should have been home from work, based on the claimant leaving work at her usual time of 4:00 p.m. After being unable to reach the claimant following repeated telephone calls, Ms. Letricia Brooks drove around to the claimant's residence where she found her sitting in her vehicle in the driveway. Claimant relayed to her daughter-in-law the occurrence of the slip and fall at work as well as her residual difficulties and pain. Ms. Letricia Brooks assisted the claimant out of the car and into her residence. Ms. Brooks observed that the claimant's clothing was wet from having fallen at work.

The credible evidence reflects that claimant was experiencing severe pain and discomfort relative to the injuries suffered in her fall at work. Claimant was seen the

following day by her primary care physician, Dr. Susan Balke, the following day, November 13, 2004, where she relayed the history of her slip and fall at work the prior day. Dr. Balke's examination of the claimant on November 13, 2004, disclosed objective finding of the injury to include muscle spasms in the claimant's lumbar spine, for which she was provide muscle relaxants. In addition to the muscle spasms, diagnostic studies performed at the direction of Dr. Balke disclosed objective findings of injury.

Supervisory personnel of respondents were notified of the claimant's November 12, 2004, compensable injury on Monday, November 15, 2004. The credible evidence in the record reflects that claimant made a good faith effort to notify appropriated supervisor personnel of respondents of her injury prior to leaving the premises of same on November 12, 2004, when she looked into the room of Ms. Scott and inquired if she was present, and when she relayed same to Ms. Jones. The fact that Ms. Scott was still on the premises, unbeknown the claimant, and observing her as she walked to her vehicle is of no fault of the claimant.

Likewise, claimant was unaware that Ms. Jones had not heard the entirety of her conversation as she spoke to her from her vehicle.

The medical treatment rendered to the claimant prior to November 15, 2004, was of an emergency nature, pursuant Ark. Code Ann. §11-9-514. There is no evidence to reflect that the respondent directed the claimant to its designated medical provider once notified of the work related nature of her injury by the claimant on November 15, 2004. Ark. Code Ann. §11-9-508(a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. Cox v. Klipsch & Associates, 71 Ark. App. 433, 30 S.W.3d 764 (2000). The evidence preponderates that medical treatment rendered to the claimant on November 13, 2004, under the care of and at the direction of Dr. Susan Balke, is reasonable, necessary and related to the compensable injury suffered by the claimant on November 12, 2004. Respondents have controverted this claim in its entirety.

The medical in the record reflects that while claimant reported for work on Monday, November 15, 2004, she was physically unable to remain and discharge employment duties. Claimant was permitted to leave after securing a replacement. Respondent was undergoing an assessment of its program by a team from Jonesboro. Claimant remained under active medical treatment relative to the injury growing out of the November 12, 2004, accident, commencing November 15, 2004. The record reflects documentation evidencing those periods that the claimant was off work pursuant to the directions of the treating physician relative to her compensable injury.

A claimant is entitled to temporary total disability benefits during her healing period if she shows by a preponderance of the evidence that she had a total incapacity to earn wages. Carroll General Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The healing period is defined as that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12). In the instant claim the evidence preponderates that the claimant

was within her healing period and totally incapacitated from earning wages from November 15, 2004, through December 15, 2004, and December 18, 2004, through January 2, 2005, and January 13, 2005 continuing through January 30, 2005.

For the foregoing reasons, I respectfully dissent from the Majority's opinion reversing the Administrative Law Judge's August 17, 2005 opinion.

SHELBY W. TURNER, Commissioner