BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501662; F501663; F501072

RUBY NELL MEACHUM, EMPLOYEE CLAIMANT

CROSS COUNTY SCHOOL DISTRICT
A SELF-INSURED EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES, INC., TPA RESPONDENT

OPINION FILED APRIL 12, 2006

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

Claimant is not represented by counsel, but appears pro se.

Respondent represented by HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. Based upon our de novo review of the record, we reverse the decision of the Administrative Law Judge.

The first issue that must be addressed is the issue of the evidence that the Administrative Law Judge allowed to be admitted by the claimant at the hearing. The

record reflects that a prehearing telephone conference on this claim was held on April 20, 2005. The claimant was *pro se*, and the respondents were represented by Mr. David Jones. At the time of the prehearing conference, the parties were informed of the hearing date, the time, and the issues for which the submission of evidence would be necessary. Page Two (2) of the Prehearing Order reflected the following:

> All medical reports and documentary evidence, not previously identified and exchanged during the Pre-hearing Conference, relied upon by the parties and to be made a part of the record in this claim shall be identified and furnished to opposing party(ies) within seven (7) days of authorship [the date reflected on the document]. Failure to comply with this provision shall result in the exclusion of the document(s) from the record.
>
> All medical reports, medical depositions, and documentary evidence relied upon by the parties and to be introduced and made a part of the record in this claim shall be exchanged among the parties, with a copy being furnished for the Commission's file, pursuant to Ark. Code Ann. §11-9-705, seven (7) days prior to the scheduled hearing.

The Prehearing Order was filed on April 20, 2005. On June 13, 2005, the respondents filed an Amended Prehearing Questionnaire. In that Amended Prehearing Questionnaire, the respondents submitted the medical records and documents that were available to them to the Administrative Law Judge. The respondents stated in their Amended Prehearing Questionnaire:

> ...However, based upon the Claimant's failure to serve the Respondents with any pleadings, exhibits, or records, the Respondents would reserve the right to object to any documentation introduced by the Claimant at the time of the hearing, and ask that those documents be excluded from admission. Furthermore, the Respondents would hereby specifically reserve their right to amend and supplement their Prehearing Questionnaire in all respects, including supplementing their exhibits, at a later date if this matter is continued for any reason, or if the Claimant attempts to introduce documentation at the time of the hearing which has not previously been served on the Respondents in compliance with Judge Blood's prior Prehearing Order and deadlines for filings.

Furthermore, the respondents attached a cover letter to this Amended Prehearing Questionnaire which is contained in the record that states:

> ...we have not received any exhibits or filings from the Claimant as of yet. Therefore, I would simply note at this point that we will be objecting to the admission of any exhibits that the Claimant attempts to submit at the time of hearing, and would simply ask that the Claimant comply with our prior Prehearing Order and the prior filing deadlines. We would obviously ask that you follow and up hold your Prehearing Order concerning the filing exhibits at the time of the hearing.

At the hearing held in this matter on August 22, 2005, the claimant attempted to offer into evidence copies of her medical records. These records included reports of Dr. Ray. The claimant testified that she promptly telephoned the office of the respondents' attorney that she had these medical records. The respondents objected to the introduction of these documents. The following exchange took place at the hearing:

[Judge] ... Claimant has furnished a May 26, 2005 office note from Dr. Morris Ray relative to a visit that she had with him on that date. Mr. Jones, you've seen this exhibit. Any objection to the offered exhibit?

[Jones] Yes, Judge, we'd just note our objection for the record as the prehearing order stated, she was supposed to file our exhibits last week. We didn't receive it. She's introduced it today, and of course we'd note our objection for the record.

[Judge] Ms. Meachum, did you forward a copy of this to Mr. Jones in accordance with the prehearing order?

[Claimant] I called him about it and he said I could present it today.

[Judge] Do you recall the - - did you call him last week, Ms. Meachum?

[Claimant] Yes, sir, I called him right after - - I received it from Dr. - - they transferred my record to Dr. Barber, and I asked him could I have a copy of it and he said I sure could.

[Judge] Do you know when you received it, ma'am?

[Claimant] Tuesday of last week.

[Judge] And did you give him a call on that date?

> [Claimant] I gave him a call that day.
>
> [Judge] Today is Wednesday. Do you recall the telephone call, Mr. Jones?
>
> [Jones] Judge, I received the message and then I talked to you last Thursday.
>
> [Claimant] Yes, I had called him and I did get him. He was out of the office and he told me just - - he said I could present it today.
>
> [Jones] I told her she should bring it and let you make the ruling, Judge.
>
> [Judge] Very well. I'm going to allow the exhibit to come in as Claimant's Exhibit Number Two (2) and note your exception to the ruling, Mr. Jones. Anything further before we take testimony?
>
> [Jones] I don't think so.
>
> [Judge] Very well.

The Administrative Law Judge found that the medical records should be included in the evidence and accepted same. Further, the Administrative Law Judge found that the claimant had complied with the "spirit" of the Prehearing Order and that the respondents were not

prejudiced by the admission of the medical records. The Administrative Law Judge went on to say that the respondents had access to, if not actual possession of, the claimant's medical records, including those offered by the claimant at the hearing and that the contents of those records did not come as a surprise to the respondents.

The respondents contend that every party should be bound by the same procedural rules and be given the same rights and protections of due process and that the Administrative Law Judge abused his discretion in allowing the claimant to introduce records on the date of the hearing, after having been provided numerous notices by not only the Administrative Law Judge, but also the respondents' counsel, prior to the hearing date and time.

Arkansas Code Annotated § 11-9-705 (c)(C)(ii)(2)(A) specifically states in part:

> Any party proposing to introduce medical reports or testimony of physicians at the hearing of a controverted claim shall as a condition precedent to the right to do so, **furnish the opposing party and the Commission copies of the**

> **written reports of the physicians of their findings and opinions at least seven (7) days prior to the date of the hearing**. However, if no written reports are available to a party, then the party shall, in lieu of furnishing the report, **notify in writing the opposing party and the Commission** of the name and address of the physician proposed to be used as witnesses at least seven (7) days prior to the hearing and the substance of their anticipated testimony.
>
> * * * * *
>
> (3) **A party failing to observe the requirements of this subsection may not be allowed to introduce medical reports** or testimony of physicians at a hearing, except to the discretion of the hearing officer or the Commission.
>
> [Emphasis supplied.]

It is well established that the Commission has broad discretion with reference to admission of evidence. Potlatch Forests, Inc. v. Funk, 239 Ark. 330, 389 S.W.2d 237 (1965). Moreover, in making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure. Ark.

Code Ann. §11-9-705(a)(1). In addition, a party failing to observe the requirements of Arkansas Code Ann. §11-9-705, may not be allowed to introduce medical reports or testimony of physicians at a hearing, except in the discretion of the hearing officer or the commission. Ark. Code Ann. §11-9-705(c)(3).

It is abundantly clear that the Administrative Law Judge abused his discretion in this claim by allowing the claimant to introduce any type of documentary evidence at the time of the hearing. As stated above, the parties held a Prehearing Conference on April 20, 2005, at which time the parties discussed the issues, as well as the submission of the evidence. As reflected in the Commission's Exhibit No. 1, the Prehearing Order of April, 20, 2005, specifically warned the parties, including the claimant, that they were to furnish the opposition with:

> All medical reports, medical depositions, and documentary evidence relied upon by the parties and to be introduced and made part of the record in this claim **shall be exchanged among the parties, with a copy being furnished for the Commission's file, pursuant to Ark. Code. Ann.**

§ 11-9-705, seven (7) days prior to the scheduled hearing.

In regard to the introduction of the medical reports and documentary evidence, the Order also stated "**failure to comply with this provision *shall result in the exclusion of the documents from the record*.**" [Emphasis supplied.] Accordingly, the Prehearing Order indicated that there would be no introduction of said documents. Furthermore, the respondents themselves directly informed the claimant that they would be objecting to any documentary evidence which was not submitted within the seven (7) day deadline. In the letter of June 13, 2005, the respondents' counsel filed an Amended Prehearing Questionnaire, and noted that they had not received any exhibits from the claimant as of that date. Counsel for the respondents notified the claimant that the respondents would object to the submission of any exhibits at the time of the hearing, and asked that the claimant comply with the Judge's prior Prehearing Order. The respondents also notified the claimant in the Prehearing

Questionnaire that they would be objecting to any attempts by the claimant to admit evidence at the time of the hearing.

At the beginning of the hearing, the respondents counsel immediately objected to the claimant’s attempt to introduce the exhibits she was seeking to offer. Mr. Jones noted that the claimant had not served them with copies of the exhibits, and the claimant admitted that she had not provided the exhibits in a timely manner. Furthermore, more than halfway through the hearing itself, the claimant revealed additional medical reports which she attempted to introduce. While the claimant testified that she attempted to contact the respondents’ counsel the week prior to the hearing, the testimony and evidence at the hearing revealed that the respondents did not receive any type of written notice or verbal notice prior to the seven day deadline for filings. Over the respondents’ objection, the Administrative Law Judge allowed the claimant’s Exhibits No. 2 & 3, Dr. Ray’s report of February 1, 2005 and his letter of

February 2, 2005, respectively, to be introduced into the record. The respondents objected to those exhibits as well. When the claimant was questioned as to whether or not she had read the prior notices from the Judge and the respondents' counsel, the claimant testified "No, to be honest with you, I probably didn't. I probably didn't." Upon questioning by the Judge, the claimant admitted to recalling the discussions during the Prehearing Conference concerning the submission of exhibits. The Administrative Law Judge allowed the claimant to introduce the Claimant's Exhibits No. 2 and No. 3 at that point, over the respondents' objection, and even noted the respondents' prior notice concerning the claimant's exhibits and the probable objection concerning the same. Further, during the hearing the Administrative Law Judge questioned the claimant about the letter that the respondents sent with their Amended Prehearing Questionnaire. The following exchange is particularly enlightening.

[Judge] Do you have the other medical records over there, ma’am? Do you have any other medical records?

[Claimant] From him?

[Judge] Yes, ma’am.

[Claimant] No.

[Judge] That you picked up.

[Claimant] No, sir. Let me look and make sure. I just have a letter, here.

[Judge] Let me see. This is a letter to Dr. Barber from Dr. Ray regarding the referral. February 1, 2005. Recommendation regarding the nerve conduction studies. Objection, Mr. Jones?

[Jones] Yes, sir, we already - - once again, she did not provide it within the deadline, and of course we’ve already submitted our exhibits for the Hearing today, and obviously she’s supposed to comply with the rules as we are.

[Judge] Ma’am, what...

[Claimant] When I called you that’s when...

[Judge] Excuse me, ma’am, we had this discussion on the telephone during the telephone conference. I said, “Make sure you get the exhibits forwarded to...”

[Claimant] That’s why I called him. I said, “I just got this and I haven’t got time to report it.” And he told me to bring it with me. Now did you not tell me that?

[Jones] I told you to bring whatever you wanted to introduce at the Hearing, but I also...

[Claimant] I specified that. I said, “Do I bring this or do you need it?”

[Jones] And I told you it was up to you to represent your case, did I not?

[Claimant] So I...

[Jones] I told you to represent your own case because I don’t represent you. Is that correct?

[Claimant] Yes.

[Jones] I told you you had...

[Claimant] And I called Ms. Ray, and I told her my conversation, and she told me to just take it to the Hearing.

[Jones] Ms. Meachum, for the record, I also informed you that you had to comply with the Judge’s prehearing order, did I not, at the time of your deposition? Do you remember after your deposition we discussed submission of evidence and that you had to comply with the Judge’s order? Do you remember that?

[Claimant] No, sir, I'll be honest with you. I don't remember that. I'm not disputing it either, but I mean I...

[Jones] And you did get...

[Claimant] I just know that's when I called you when I got that.

[Jones] And you understand, I'm against you. Do you understand that?

[Claimant] I understand that.

[Jones] And I've explained that to you several times. Is that correct?

[Claimant] Yes, sir.

[Jones] And in fact, our June 13 letter to you and to the Judge indicated that we would object to anything you tried to introduce today, did we not?

[Claimant] No.

[Jones] You didn't read the letter?

[Claimant] No, to be honest with you, I probably didn't. I probably didn't. I just remember seeing something...

[Judge] Okay. that's fine. Where are the exhibits?

[Jones] Here's the...

> [Claimant] ...so many days and that’s why I called you that day.
>
> [Judge] Let me interrupt. You’re giving the impression you’re relying on Mr. Jones...
>
> [Claimant] No, sir.
>
> [Judge] Now let me finish. Mr. Jones is saying all along, and we had the discussion on the telephone conference, if you have a question regarding your claim, any aspect of it, call the legal advisors if you are not represented by an attorney, I understand you consulting with him, but he cannot...
>
> [Claimant] No, he told me this.
>
> [Judge] Now hold on. He cannot tell you what to submit and what not to submit because he did not represent you.
>
> [Claimant] Yes, sir.
>
> [Judge] And we had this discussion on the telephone conference?
>
> [Claimant] Yes, sir.

We find that the respondents were clearly prejudiced by the Administrative Law Judge allowing these medical records into the record. The Commissions rules of

procedures in claims must be applied equally to each and every party. *Pro se* claimants should be held to the same standard and must adhere to the same rules as the respondents. The Administrative Law Judge had made it clear to the claimant that the Legal Advisor Division could help her. It is also clear that the claimant was warned by the Administrative Law Judge that she would have to comply with the prehearing order. She admitted, under oath, that she did not even read the letter from Mr. Jones dated June 13, 2005, that he sent with the Amended Prehearing Questionnaire. The respondents should be afforded the same procedural due process whether or not they dealing with a pro se claimant or a represented claimant. They should be able to anticipate what and how a case will be presented at the time of the hearing. We cannot agree with the Administrative Law Judge that the claimant complied with the "spirit" of the prehearing order. Accordingly, we reverse the decision of the Administrative Law Judge and find that the claimant's exhibits should be excluded from the record.

The next issue that must be addressed is the merits of the claimant’s claim. The claimant contends that she sustained a compensable injury on January 28, 2004, as well as September 24, 2004. Based upon our de novo review of the record, we find that the claimant cannot prove by a preponderance of the evidence that she sustained compensable injuries. Specifically, the claimant cannot prove by objective findings that she sustained a compensable injury.

The claimant was employed by the respondent employer as a teacher’s aid. At the time of the first incident on January 28, 2004, the claimant was working as a P.E. Instructor. The claimant testified that she was playing kickball with the children when her feet were kicked out from under her and she fell to the ground. The claimant reported the injury to the respondent employer but refused medical treatment. The claimant testified that she did not seek medical treatment because she thought it was old age. The medical evidence and the claimant’s testimony demonstrate that the claimant’s sought treatment for other

health related issues after January 28, 2004, but not for the alleged work related injury of January 28, 2004.

The claimant testified that she sustained a second alleged work related injury on September 24, 2004. The claimant had gone with the children and supervisory personnel to Parker's Homestead on a school outing. The claimant testified that she stepped in a hole while moving an ice chest and injured herself. The claimant did not report this injury to her physician when she went to the doctor in October of 2004. It was not until December of 2004 that she began seeking treatment.

Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002) defines "compensable injury" as "[a]n 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). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). Under the statute, for an accidental injury to be compensable, the claimant must show that he/she sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. *Id*. 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).

The claimant has no objective medical findings to support her claim for any work related injuries. The evidence demonstrates that the claimant did not seek treatment following the January 28, 2004, incident. The claimant was asked when she reported the incident if she was injured and needed to seek treatment and she kept stating, "oh, its just old age." It is of note that the claimant was 68 years old at the time of the hearing. The claimant had Shingles as well as other health related issues after January 28, 2004, and she stated that she did not know that

her back was really hurting during this period of time. She testified,

> ...it was really hard to tell that it was really my back because I've had colon trouble, and my colon trouble would cause my back to bother me, so I went and had, you know, - - I went to the doctor and I still didn't - - you know, because I was thinking probably it was colon. Then I got Shingles ...

The claimant then added,

> To be honest with you, Judge, I really and truly - - I'm sixty-eight years old. I was sixty-eight Sunday. I really and truly thought maybe it was old age because I've been real active all of my life, but I just know this past year I can't do, you know, and its been since January that I got where I couldn't do these things.

On cross-examination the claimant was questioned:

> Q. ... And you didn't actually go to the doctor between the January 2004 and September 2004 injury, did you, for the back problems?
>
> A. No, sir, because like I said, I just really kept on thinking it was going to be okay. I had just gone to him just for the colon thing, they done it, and then

> I got the shingles, and I had inner ear trouble, you know, but I mean, I just didn't. I just kept thinking, "It's old age. I am going to get okay."

The claimant went on to admit that none of her medical records between January of 2004 and the September of 2004 incident reflected any type of work-related incident. On further cross-examination, the following exchange took place:

> Q. ... And there's no objective findings we've been able to find showing an injury that occurred in January of 2004 as far as we can tell from the medical records?
>
> A. No, sir, until I went in December [2004].

The evidence demonstrates that the claimant did not seek treatment for any alleged injuries in January or September of 2004, until sometime in December of 2004. There is no medical evidence between those dates to support any kind of compensable event in January of 2004. Moreover, the claimant sought medical treatment for other medical issues

between January 28, 2004, and September 24, 2004, and there is absolutely no mention of a work related incident.

Furthermore, the medical reports that were introduced by the claimant, which we find should not have been admitted, simply demonstrate that the claimant has degenerative changes and an osteoarthritic condition. The claimant sought treatment from her primary care physician on October 6, 2004, and she did not report any type of back injury, pain, or incident at that point. The respondents introduced the EMG/NCV report of February 1, 2005. The claimant was found to have a normal NCV/EMG of the lower extremity. An x-ray report dated February 1, 2005, showed that the claimant had degenerative lumbar disk disease, degenerative lumbar osteoarthritis, and very mild degenerative lumbar scoliosis. Simply put, even if the medical records the claimant submitted are considered, which we find they should not be, we find that the claimant cannot prove by a preponderance of the evidence that she sustained a compensable injury on January 28, 2004; nor can she prove

by a preponderance of the evidence that she sustained a compensable injury on September 24, 2004. The only objective findings of anything that we have is degenerative changes and osteoarthritic problems, which are not causally connected to the events alleged by the claimant. Therefore, we hereby reverse the decision of the Administrative Law Judge.

IT IS SO ORDERED.

____
OLAN W. REEVES, Chairman

____
KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's opinion reversing the Administrative Law Judge's August 22, 2005 opinion holding in which respondent was found liable

for all reasonable and necessary hospital and medical expenses arising out of the injuries of January 28, 2004, and September 24, 2004. After my de novo review of this claim, it is my opinion, that the Administrative Law Judge's August 22, 2005, opinion should be affirmed and adopted.

Claimant in the instant claim appears *pro se*. The evidence reflects that claimant executed a medical release authorization and furnished the same to respondent. At the time of the hearing claimant credibly testified that once she had picked up copies of her medical records from Dr. Barber's office, which included reports of Dr. Ray, she promptly telephoned the office of respondent's attorney to relay that she had the record. The respondent obtained the medical records of Dr. Ray, which included a February 1, 2005, X-Ray Report, relative to the claimant.

Respondent does not assert that they did not have copies of the reports offered by the claimant. Ark. Code Ann. §11-9-704(c)(2)(A), provides in pertinent part:

> Any party proposing to introduce medical reports or testimony of physicians at

> the hearing of a controverted claim shall, as a condition precedent to the right to do so, furnish to the opposing party and to the commission copies of the written reports of the physicians of their findings and opinions at least seven (7) days prior to the date of hearing. However, if no written reports are available to a party, then the party shall, in lieu of furnishing the report, notify in writing the opposing party and the commission of the name and address of the physicians proposed to be used as witnesses at least seven (7) days prior to the hearing and the substance of the anticipated testimony.

In their June 13, 2005 letter, respondent noted that claimant had been deposed and that they had obtained most of her medical records from the providers. Respondent further noted in the June 13, 2005, correspondence that they had not received any exhibits from the claimant, and would be objecting to the admission of any exhibits that the claimant attempted to submit at the time of the hearing. More importantly, the June 13, 2005, correspondence of respondent reflects, "As this case involves what appears to be simply a medical question concerning whether there are

any objective findings to support compensability, the Respondents will probably not be calling any witnesses, and will only be cross-examining the Claimant at the time of the hearing."

Since respondent had access to, if not actual possession, of all of the claimant's pertinent medical records, to include those offered by the claimant, the contents of the records do not come as a surprise to respondent. Additionally, respondent characterized the issues, after acknowledging the occurrence of the events/accidents involving the claimant of January 28, 2004, and September 24, 2004, as one of whether there are objective findings to support compensability.

In the instant claim, claimant is a credible, hard-working, long term employee of respondent who suffered two (2) work-related accidents. The accidents were reported by the claimant to appropriate supervisory personnel of respondent shortly after the occurrence. More importantly, claimant disclosed the history of her work-related accidents

to her treating physician when she sought medical treatment for her complaints growing out of the accidents. Since respondent was aware of the contents of the claimant's medical record, particularly as the same related to medical treatment received and the results of diagnostic studies, the contention of a lack of objective medical evidence to support compensability becomes somewhat disingenuous when coupled with an effort to exclude the very medical records.

Ark. Code Ann. §11-9-705(c)(3), provides:

> A party failing to observe the requirements of this subsection may not be allowed to introduce medical reports or testimony of physicians at a hearing, except in the discretion of the hearing officer or the commission.

In the instant claim, with disclosure and access to the pertinent medical records, it is my opinion that the claimant has complied with the spirit of the Pre-hearing Order, and that respondent was not prejudiced by the admission of the medical records.

On January 28, 2004, while discharging employment duties and within the course and scope of her employment claimant suffered a fall and landed on her buttock on the gymnasium floor which is concrete with tile. On September 24, 2004, while discharging duties within the course and scope of her employment claimant stepped in a hole resulting in a twisting movement and pain in her lower back and right leg. Claimant asserts that the injuries to her low back and right leg suffered in the two incidents required medical treatment for which respondent is liable. Respondent denies that the claimant suffered compensable injuries in either of the acknowledged incidents.

The present claims are governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers’ compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provisions. In order to be entitled to workers’ compensation benefits for a specific incident injury, claimant has the burden of proving by a preponderance of the

evidence that she suffered an accidental injury, identifiable by time and place, that arose out of and in the course of her employment, caused internal or external physical harm to her body and required medical services by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102 (4) (A) (i). Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997); Kimbrell v. Arkansas Department of Health, 66 Ark. App. 245, 989 S.W.2d 570 (1999).

There is not a dispute regarding the occurrence of the January 28, 2004, and September 24, 2004, events. The credible evidence in the record reflects that subsequent to the January 28, 2004, incident claimant experienced symptoms in her lower back unlike any she had previously experienced. Claimant had in place a primary care physician prior to January 28, 2004. There is no evidence in the record to reflects that claimant sought, obtained, or required medical treatment relative to her low back in close proximity to the January 28, 2004, incident. The last time claimant had

received medical treatment proceeding the January 28, 2004, incident, based on the evidence in the record, was November 17, 2001, regarding an injury to her forehead suffered in the course and scope of her employment.

The credible evidence in the record reflects that subsequent to the January 28, 2004, accident, which was timely reported to appropriate personnel, claimant experienced symptoms of pain and stiffness in her lower back. Access to medical treatment was afforded the claimant, however she declined it. While claimant's symptoms persisted, she did not seek medical treatment or miss any time from work as a result of same.

On September 24, 2004, claimant suffered another work accident when she stepped in a hole while carrying a basket and twisted her right leg and low back. The September 24, 2004, incident increased the low back symptoms. The September 24, 2004, accident was reported to appropriate supervisory personnel of respondent. Claimant

received conservative treatment under the care of her primary care physician for her low back and right leg pain.

Claimant has been employed by respondent since 1967. Although claimant experienced symptoms and complaints of pain in her low back and right leg as a result of each of the accidents, she continued discharging her regular job duties and did not miss any time from work. Claimant finally took the opportunity to obtain medical treatment relative to the complaints attributable to the January and September 2004, accidents during the time that school was out for the Christmas holidays in December 2004.

The claimant is honest and forthright regarding her injury, symptoms, and request for workers' compensation benefits. In her claim, claimant seeks only the payment of medical benefits relative to medical treatment she received for the injuries suffered in the January and September 2004, accidents.

It is undisputed that claimant suffered accidents within the course and scope of her employment with

respondent on January 28, 2004, and September 24, 2004. Following the January 28, 2004, accident, claimant, who previously had been asymptomatic regarding her low back, experienced pain in her low back along with stiffness, which restricted her physical level of activity. Claimant did not seek medical treatment for the symptoms. Following the September 24, 2004, accident, claimant's symptoms increased. Claimant has not been asymptomatic since the January 28, 2004, accident.

The claimant is sixty-eight years of age. The medical in the record reflects that claimant suffered from pre-existing degenerative disc changes and degenerative osteoarthritis to the spine prior to the January 28, 2004, accident. Nevertheless, the record is devoid of evidence that the afore degenerative disc and degenerative osteoarthritis was symptomatic prior to the January 28, 2004, accident or required medical treatment prior to the accidents. Dr. Morris Ray, the Memphis neurosurgeon, opined that the claimant's x-ray changes were present for some

time, however, they have been made symptomatic by her accident.

The medical evidence reflects that while under the treatment of Dr. Ray, claimant was prescribed physical therapy and medication. Among the medications prescribed and provided to the claimant by Dr. Ray was Medrol Dosepak and Bextra. Further, Dr. Ray recommended a trial of lumbar epidural blocks in the event claimant did not respond to the physical therapy and medication regimen. In Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000), the Arkansas Supreme Court ruled that the prescription for Valium as needed for muscle spasm constituted objective medical findings to support compensability of the claim. In Fred's Inc., v. Jefferson, ___ Ark. ___, ___ S.W.3d. __ (3-31-05), noted:

> This case is distinguishable from Estridge, however, in that Dr. Rhodes did not indicate specifically what the medications were for or specifically why he prescribed physical therapy. Yet, following the logic expressed in Estridge, a reasonable inference from the chronology of events is that the

> medication and the physical therapy were prescribed to aid Jefferson and to treat her injury. Any other construction of these event does not withstand scrutiny or pass the test of reasonableness. Supra.

Accordingly, it is my opinion that the claimant has sustained her burden of proof by a preponderance of the evidence that she suffered an injury arising out of and in the course of her employment on January 28, 2004, and September 24, 2004; the injuries caused internal or external harm to the body which required medical services; further, there is medical evidence supported by objective findings, as defined by Ark. Code Ann. §11-9-102 (16), establishing the injury; and the injury was caused by specific incidents and identifiable by time and place of occurrence. Additionally, the claimant has established a causal connection between the objective findings and the compensable injuries. Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998); Farmland Insurance Co. v. Dubois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). Respondent has controverted these claims in their entirety.

In the instant claim, the cost of claimant’s medical treatment relative to her compensable injuries of January 28, 2004, and September 24, 2004, has either been borne by the claimant, third-party health care carrier, or remained unpaid. Pursuant to Ark. Code Ann. §11-9-508, the employer is required to 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).

Pursuant to Ark. Code Ann. §11-9-411, respondent would be entitled to a credit for medical benefits paid by the group health care carrier in this claim. Respondent would not, however, be entitled to a credit for the sums paid by the claimant for the medical treatment.

It is my opinion, that the medical records the claimant submitted should be considered. Also, in my opinion, the claimant proved by a preponderance of the evidence that she sustained compensable injuries on January 28, 2004, and September 24, 2004. For the foregoing

reasons, I must respectfully dissent from the Majority’s opinion reversing the Administrative Law Judge’s August 22, 2005 opinion.

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SHELBY W. TURNER, Commissioner