

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506464

PATSIE SWEANEY, EMPLOYEE	CLAIMANT
SOUTHERN PARAMEDIC SERVICE, INC., EMPLOYER	RESPONDENT
AIG CLAIMS SERVICE, CARRIER	RESPONDENT

**OPINION FILED JULY 5, 2006**

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

Claimant represented by HONORABLE M. SCOTT WILLHITE, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE MELISSA ROSS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the Administrative Law Judge filed December 15, 2005.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.

3. The claimant has failed to prove, by a preponderance of the evidence, that she sustained a back injury arising out of and in the course of her employment, and which gradually occurred over time within the meaning of Ark. Code. Ann. §11-9-102(4)(A)(ii)(b)(Supp. 2005)

4. The claimant has failed to prove, by a preponderance of the credible evidence, that her need for medical treatment and disability was causally related to an injury sustained while employed by Southern Paramedic Service.

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

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the

Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

**DISSENTING OPINION**

I must respectfully dissent from the Majority's decision finding that the claimant did not sustain a compensable injury. The claimant is alleging that she sustained an injury to her lumbar spine as a result of a

nonspecific job-related injury. The claimant, who was employed as a paramedic, contends that the repeated, heavy lifting required by her job duties caused her to develop a herniated disc at the L5-S1 region of her lumbar spine. The respondent controverts this claim in its entirety, contending that there is insufficient evidence to establish that the claimant sustained any injury at work and that the claimant's back condition is the result of either a preexisting condition or a non-job related problem.

After conducting a hearing in this case, an Administrative Law Judge issued an Opinion dated December 15, 2005, in which he found that the claimant had failed to establish that she sustained a nonspecific job related injury to her back. The Majority now affirms and adopts the decision of the Administrative Law Judge as their own. However, based upon my de novo review of the evidence contained in the record, I find that the Administrative Law Judge's decision should be reversed.

The claimant sustained an injury to her L5-S1 lumbar disc. This herniation was described by Dr. Morris

Ray, a neurosurgeon, as being a "large" or a "very large" herniated disc. Also, based on the claimant's MRI scan and Dr. Ray's operative notes, it appears that the herniation had an acute fragment and was touching upon or displacing the L5-S1 nerve root. Obviously, this was a major injury to a portion of the claimant's lumbar spine.

The claimant's undisputed testimony is that as an ambulance driver she and one partner would load people onto a stretcher which they then had to lift to a standing position. Once one end of the stretcher was loaded into the ambulance, the legs would be lifted and one person would have to hold the end of the stretcher while the other person would lift and pull it into the ambulance. The claimant noted that preceding the onset of her symptoms she had, on several occasions, lifted individuals weighing in excess of 300 pounds and, in one instance, had assisted loading an individual weighing as much as 600 pounds. The claimant contends that the accumulated effects of the episodes of lifting extremely heavy patients caused her to injure her back. The fact that her first onset of symptoms occurred at

home does not change the fact that she was engaging in extremely heavy lifting at work; which was most likely the cause of her injury.

The respondent is apparently arguing that the claimant's back injury was the result of preexisting degenerative changes. They support this argument by noting that the claimant had been seeing a chiropractor for treatment to her lower back for a number of years. However, a review of the chiropractic notes indicates that the claimant was suffering from nothing more than transitory back pain. This is a far different ailment than the large disc herniation she was treated for.

During his deposition, Dr. Craig McDaniel, the claimant's initial treating physician, rendered his opinion as to the cause of the claimant's injury. Dr. McDaniel noted that the claimant's job duties required her to frequently lift very heavy patients and, in his considered medical opinion, the claimant's injury was most likely sustained from on the job lifting. Dr. McDaniel noted that the claimant did not engage in heavy lifting or other strenuous

activities anywhere besides her work and that the type of injury the claimant had would not happen spontaneously and would most likely would have been caused by her heavy lifting.

I find that the claimant's injury was the result of accumulative effects of her job related assistance. In fact, considering the severity of her disc herniation, it seems very unlikely that it would have developed from degenerative disc disease as alleged by the respondent. As such, I find that the injury sustained by the claimant was the cumulative effect of her heavy lifting at work.

For the aforementioned reasons, I must respectfully dissent from the Majority opinion.

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SHELBY W. TURNER, Commissioner