

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601643

CASSANDRA (RICHARDS) WILSON, EMPLOYEE	CLAIMANT
ST. EDWARD MERCY MEDICAL CENTER, EMPLOYER	RESPONDENT
SISTERS OF MERCY HEALTH SYSTEM, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 27, 2008

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

Claimant represented by the HONORABLE J. RANDOLPH SHOCK,  
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE RANDY MURPHY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Respondents appeal an opinion and order of  
the Administrative Law Judge filed December 17, 2007.

In said order, the Administrative Law Judge made the  
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 26, 2006, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On January 26, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$293.00 for total disability and \$220.00 for permanent partial disability.
4. On January 26, 2006, the claimant sustained a compensable injury to her low back or lumbar spine, in the form of protrusions or herniations of the L3-L4 and L4-L5 intervertebral discs.
5. The claimant has failed to prove by the greater weight of the credible evidence that she has sustained a compensable mental injury, as a consequence of her admittedly compensable lumbar spine injury. Specifically, she has failed to prove the existence of any mental injury or illness that has been diagnosed by a licensed psychiatrist or psychologist and that meets the criteria set out in the most current issue of Diagnostic and Statistical Manual of Mental Disorders, as required by Ark. Code Ann. §11-9-113(a)(2).
6. There is no dispute over the payment of medical expenses incurred as a result of the claimant's compensable injury through February 24, 2007.
7. The additional medical services recommended by Dr. John R. Swicegood for the claimant's continuing lumbar difficulties represent reasonably necessary medical services for her compensable injury. Specifically, these recommended medical services are necessitated by or connected with her compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.
8. There is no dispute, at the present time, over temporary disability benefits.

9. The respondents have controverted the claimant's entitlement to any benefits attributable to the alleged mental injury or illness and have controverted her entitlement to additional medical services by and at the direction of Dr. Swicegood, after February 24, 2007.
10. As no controverted benefits, which are herein awarded, represent installments of compensation payable to the claimant, no controverted attorney's fee can be awarded to the claimant's attorney.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the December 17, 2007, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law

Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

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

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she was entitled to

additional medical treatment for her lumbar spine. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof. Accordingly, I dissent from the majority opinion.

The claimant was employed by the respondent employer as a CNA. The claimant sustained an admittedly compensable injury to her low back on January 26, 2006. The claimant underwent conservative treatment and ultimately she was found to have a moderate disc protrusion at L3-L4 and at L4-L5. The claimant underwent a series of epidural steroid injections by Dr. Swicegood, but the claimant continued to have pain. Dr. Swicegood recommended a percutaneous decompression of those two discs which was performed on June 2, 2006. This procedure was successful and resulted in complete pain relief for the claimant. In fact, Dr. Swicegood testified:

[T]he most intense symptoms had resolved. There was still some discomfort that one might expect from just the procedure itself. As far as the severe pain, it was -- it was-- it was reduced significantly and she was doing fine..."

Claimant's physical therapy records support the claimant's pain free status following the disc decompression.

Pt. has history of injury on 1/26/06 when a 450 lb. patient she was assisting fell and pulled her down with him while she was working as a CNA. She reports she had increased Lumbar pain across her low back. She reports she had a disc decompression of L3-4-5 on 6/2/06 and the pain has resolved since then. She reports she is employed by St. Edwards as a unit secretary and is currently working. Current level of pain is 2/10 on a 10 point functional scale and 3/10 at its worst.

Consistently, the claimant testified at the full hearing as follows:

Q. And, in fact, we have some physical therapy notes in July, indicating that you also had no complaints of pain, and that's correct; right?

A. Yes.

Based on the medical records, I can surmise that the claimant's disc decompression on June 2, 2006, was a complete success that resulted in complete relief of the claimant's pain.

On August 1, 2006, the claimant returned to Dr. Swicegood. Dr. Swicegood's note reflected: "Doing well post perc diskectomy until moved coffee table one week ago. Pain in right upper buttock, not as intense as previous pain." Dr. Swicegood confirmed this history in notes for office visits on August 7; August 14; and

October 6, 2006. After conservative efforts failed to resolve the re-injury, Dr. Swicegood ordered an MRI. Dr. Swicegood stated in his deposition regarding the MRI results:

...The thing I'd like to point out is that her exam -- when she came in, she had low back pain. Through our treatments and regardless of the re-injury, the pain that she was left with and to my understanding that she still has, at least the pain she had on her last visit me [sic], was true spine pain. It was -- it was true actual spine pain with no symptoms with her sciatic symptoms. So, this film, again, it shows problems with two levels of discs, but really I think that it's -- her pain, I think, is part and parcel to some early degeneration in the disc, and so, you know, the radiologist didn't read disc degeneration, but I see it as defined as loss in 202 signal, and it goes along with kind of my thinking that Cassandra would probably benefit from either an IDET, which I think would address the degeneration I saw and perhaps some of the disc pain.

Dr. Swicegood also stated: "her disc[s] are a bit worse with some degeneration."

Dr. Swicegood related the claimant's treatment after August 1, 2006, to the coffee table incident recorded in his notes. In reaching this opinion, Dr. Swicegood stated that the claimant performed the activity of moving the coffee table with discs that had

been injured and treated. However, Dr. Swicegood testified unequivocally that the August 1, 2006, coffee table incident was a re-injury. This conclusion is based, in part, on the fact that the claimant's current problems did not include the radicular or sciatic symptoms she suffered following her compensable injury.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

My review of the evidence demonstrates that the claimant has failed to prove by a preponderance of

the evidence that she is entitled to additional medical treatment. The sole question in this claim is whether the claimant sustained a re-injury when she moved the coffee table prior to August 1, 2006. In my opinion, the answer to this question is simply, yes. The claimant had a new injury on August 1, 2006, and therefore her current symptoms are not causally related to her work related injury.

The evidence demonstrates that Dr. Swicegood, throughout his deposition, unequivocally stated that the claimant's statements to him were that she suffered a new and different pain after moving the coffee table. Dr. Swicegood's medical records are replete with reference to the coffee table moving incident. On August 1, 2006, Dr. Swicegood's notes stated: "Doing well post perc diskectomy until moved coffee table one week ago. Pain in right upper buttock, not as intense as previous pain." August 7, 2006, Dr. Swicegood's notes stated:

This 21 year old female presents today with complaints of pain back [sic] She has been pain free until a lifting/twisting injury 2 weeks ago. She states the pain her in back [sic] is constant and stabbing.

On October 6, 2006, Dr. Swicegood's notes stated:

This 21 year old female presents today with complaints of pain back. [sic] Associated signs and symptoms

include "pulling" type pain and aching. Symptoms in the area occurred (possibly) as a result of: lifting injury. Previous interventional therapies not long lasting. Pt. pain free until she moved a coffee table about 2 months ago, now pain has relapsed, constant, no help with conservative efforts.

The claimant underwent an MRI on November 30, 2006, which showed that she had "diffuse disc bulging with a central protrusion noted" at the L3-4 level and at the L4-5 level there was a "central disc protrusion with some mass effect on the anterior aspect of the thecal sac. This appears somewhat more prominent than the above level." Dr. Swicegood unequivocally related the claimant's treatment after August 1, 2006, to the coffee table incident recorded in his notes. He testified throughout his deposition about the claimant's statements to him that she suffered a new and different pain after moving a coffee table prior to August 1, 2006. The claimant disputes the testimony and said that she told Dr. Swicegood about moving a coffee table but did not say anything that would indicate that she re-injured her back doing so. The Administrative Law Judge seems to disregard Dr. Swicegood's opinion because he states that the nurse must not have gotten it right. It is hard for me to imagine the nurse getting it wrong so

many times. In my opinion, the claimant's current problems with L3-4 and L4-5 are not related to her compensable injury. Therefore, they are not the responsibility of the respondents. Accordingly, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner