

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F901070

LUERETTA CROW,  
EMPLOYEE

CLAIMANT

ANCHOR PACKAGING,  
EMPLOYER

RESPONDENT

CANNON COCHRAN MANAGEMENT,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 21, 2010

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

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

Respondent represented by the HONORABLE MICHAEL E. RYBURN,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed March 4, 2010. The administrative law judge found that the claimant sustained an injury to her lumbar spine. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved she sustained a compensable injury. We find that the

claimant proved she was entitled to reasonably necessary medical treatment and temporary total disability benefits.

I. HISTORY

Lueretta Ann Crow, age 62, testified that she began working for Anchor Packaging in November 1994. Ms. Crow testified that her job title was Packer. The claimant testified on cross-examination that she began suffering from back problems in 1998 after lifting boxes for the respondent-employer. The record indicates that an x-ray of the claimant's lumbar spine was taken in August 1998:

The lumbar vertebral bodies appear normal in height. There is intervertebral disc narrowing at the L5-S1 level. The pedicles are intact. No paraspinous mass is seen. No spondylolisthesis or spondylosis is identified.

CONCLUSION: Intervertebral disc narrowing at the L5-S1 level.

Dr. James Rodney Feild examined the claimant on September 11, 1998:

CHIEF COMPLAINT: Job injury 8-13-98. Low back pain across both hips, pressure. Right leg gives away and she will fall. One time left leg also gave way.

PRESENT ILLNESS: Patient on 8-13-98 had about 52 pounds of material held out in front of her. She took a couple of steps, dropped it because of back pain and basically has had severe back pain, quite severe the first week, less the second and now into the third week, improving. The pain is in

the center of the back, aggravated by twisting and bending. There is no leg pain....She has seen Dr. Darrell Bonner who has performed a MRI and a CT scan. The reports are as follows: "8-26-98 CT scan: Moderate central disc protrusion at L5-S1 level. No frank disc herniation identified. Mild bony degenerative change."

"8-31-98 MRI lumbar spine: Mild discogenic degenerative change with disc dissication (sic) at the lower three levels. Disc bulge centrally at the L-5/S-1 level, no spinal stenosis, disc herniation or neural foramen encroachment is identified."

Dr. Feild's impression was "Lumbar strain syndrome."

Dr. Feild noted on September 16, 1998, "I have reviewed the MRI scan and CAT scan with patient. I showed her the films, discussed her condition. She has a minimally bulging L5 disc. There is no evidence of rupture, although on the MRI scan there is some evidence of edema in that disc particularly in the posterior aspect under the posterior longitudinal ligament....Patient was fitted with a brace and sent to work on 9-20-98 with a weight lifting limit of 15 pounds for 4 weeks. She is to wear her brace. Return to regular work after 4 weeks. She is to wear her brace for two to three months. Return on a p.r.n. basis."

Dr. Feild examined the claimant in July 1999:

Patient was doing good until April 1999. She started having pain again, got much worse on June 24, 1999....She was pulling on something at work

and the pain worsened. This was an on the job exacerbation of her previous condition. She complains of pain in her right hip that radiates into the anterior thigh, the posterior calf to the ankle aggravated in the back at times by coughing and sneezing and particularly in April and May when she was lying in bed at night.... June 24<sup>th</sup> her pain worsened. She at that time was working twelve hours a day four days a week and goes on to some detail about bending, twisting and pulling....Patient has consulted Dr. Jon Collier and brings a MRI of the lumbar spine made on 6-26-99. The official report is as follows: "Disc disiccation (sic) at the lower three levels with disc bulges at L4-5 and disc protrusion at L5-S1 level showing progression from the 1998 study. No frank herniation or spinal stenosis identified and no nerve root displacement or neural foramen encroachment identified. Nondiscogenic facet joint changes at the lower two levels." These were reviewed with patient and compared to the 1998 scans of the lumbar spine.

Dr. Feild's impression was "Degenerative lumbar disc disease. RECOMMENDATION: Back support. Patient can return to regular duty on 7-8-99."

Dr. Beata Majewski examined the claimant in November 2002:

Patient was in good health until January when she started with back pain after lifting some heavy boxes at work. She had lumbar spine x-rays that showed degenerative facet arthropathy with spondylolisthesis of the L4-L5. MRI of the lumbar spine showed degenerative changes with disk desiccation and disk bulges. No herniation. Intervertebral disk narrowing at L5-S1. Patient was evaluated by Dr. Savu who believed that trigger point injections would not help....

There are some soft tissue nodules at both sacral areas....

Dr. Majewski's impression was "Morning stiffness and gelling phenomenon involving the lumbar spine in a patient with facet arthropathy." Dr. Majewski planned conservative treatment. Dr. Majewski noted in June 2003, "Patient with chronic back pain. She has failed all the standard muscle relaxants....Most of her troubles are because of stiffness in her back in the morning that goes away with activity." Dr. Majewski's impression was "Chronic back pain, suspect facet arthropathy....I will see her prn."

Dr. Calin A. Savu saw the claimant in July 2008:

Ms. Crow is a pleasant 60-year-old woman who was previously seen in our clinic about four years ago. She underwent a highly successful medial branch blocks followed by an equally successful radiofrequency neurolysis series, which was bilateral. The pain relief lasted up until about six months ago. It recurred gradually as a result of no apparent injury. It is described as a deep-seated aching discomfort located in the mid and low lumbar area with extension into both buttocks and thighs....She continues to work as a packer in a fairly demanding job and reports having increasing difficulty accomplishing her daily routine tasks.

Dr. Savu's diagnosis was, "suspecting a combination of SI and facet arthropathy, a series of diagnostic injections

will be initiated at this stage." Dr. Savu performed three lumbar injections.

The parties stipulated that the employment relationship existed "at all times pertinent, to include January 2009."

The claimant testified on direct examination:

Q. What were you specifically doing during the month of January of 2009 for Anchor?

A. I was packing parts that came out from the machine.

Q. Now, when you say parts, what kind of parts are you talking about?

A. These are plastic parts. There's two hundred and fifty of them that goes in a box. You have to make a box, and when you get your box made, you slide them down the conveyor. And when your conveyor gets full, then you've got to get down fast enough to stack them on a pallet, and they go so many on a layer, so many layers high - and get back before those parts go into the grinder....

Q. So, once you place the box - the full box with parts in it - what does it generally weigh?

A. Twenty-eight pounds.

Q. All right. So you place the twenty-eight pound box on the conveyor belt, and you typically then repeat that process of making up another box and filling it?

A. Yes....

Q. What happens when that conveyor belt gets full?

A. You've gotta get down, pick up one box at a time, and put it on your pallet, come back to the line, put another one on the pallet, until you - until you empty it, if you're fast enough. And if you're not, then you have to stop, get back up on that table, and get caught up with all the parts, and then you finish doing whatever you were doing....

Q. Now, about how long, per day, would you do this job?

A. I do it twelve hours....

Q. Tell me what happened in January of '09, with regard to your work. Did you have an incident a work?

A. Yes, sir.

Q. Okay. Tell me about the first one.

A. Okay. I was packing in my boxes, taking them off the conveyor and putting them on the pallets. But the boxes was so high, I had to bend - and they were extra heavy - and I had to bend back so far to get them up where they needed to be, and the more I bent backwards, the more it hurt.

Q. Okay. Was it something that built up over time, or did you, in sort of one instance, feel something in your back?

A. No, it just happened, because those boxes were heavy, and that constant bending backwards like that was pulling whatever it was pulling in my lower back....And the more I did it, and the higher up I tried to get to, I couldn't even - I couldn't reach it, cause it was up so high.

Q. Okay. You're suggesting you had to lift the boxes a certain height - is that correct?

A. Yes, sir, over my head....

Q. And how many did you have stacked on top of each other?

A. Let's see, well, it's five per layer, and I had 30 boxes, so it would be six high....

Q. Did you have any other incidents at work, later, in January of '09?

A. Yes, sir....I think it was line 38....

Q. Tell me exactly what happened?

A. Well, I got - caught her up on the table cause she was behind, then I had to unload her line, and they were up - these was a little bit heavy. But then, I had to bend backwards, cause it got up over my head then, I told the operator, I said, I can't do it no more....

Q. Did you feel something at a specific point in time, or was it something that you felt pain after you finished that was -

A. No, I did. It was right then, when I put - it was the second layer, I believe, of the boxes, cause I had to lean back to get that third one up there. It was supposed to have gone up two more layers. I couldn't do it. It just - it was a severe - severe pull, ache - I don't know really how to describe it. I mean, bad - I just know I couldn't do it no more....

The claimant was seen at Paragould Doctor's Clinic on January 23, 2009:

This is a 61 years old female who presents with URI symptoms. The symptoms began 12-24 hrs ago. The patient presents with nasal congestion and sinus pressure. Associated symptoms include headache. The patient also complains of back pain. The symptoms began 4-8 weeks ago.

Also c/o low back pain x1 month. She complains of low back pain. The pain radiates to right hip. Lifting heavy boxes at work....

Dr. Mack Shotts' impression was "back pain." Dr. Shotts noted on January 23, 2009, "Please excuse the employee from work for the dates listed. The employee had an injury and could not work....From: 01/23/2009, May return to work on: 01/26/2009." Dr. Shotts also noted, "The employee has the following restrictions until date listed. Restrictions Effective Until: 02/06/2009. No lifting over 20 pounds."

A CT of the claimant's lumbar spine was taken on January 24, 2009, with the following impression:

1. Spondylolisthesis of L4 in relation to L5 related to degenerative facet arthropathy.
2. Bony canal stenosis (approx. 50%) at L4/L5 level.
3. L5/S1 degenerative disc.

Dr. Michael D. Lack examined the claimant on January 30, 2009:

Ms. Crow has worked for Anchor for 15 years. She has chronic pain. She takes multiple medications. She hurt her back on 01/20/2009 while lifting boxes. She has had similar injuries on the same line before, and she thinks she has to work too hard on this line. She wants to be on light duty, and to not go back to this line. The patient states she has multiple bulging disks and has been seen by several specialists, including Dr. Savu and others she cannot remember. She did have a

CT, but we do not have the results. She has seen Dr. Shotts....

Dr. Lack's assessment was "1) Lumbar strain, acute; 2) low-back pain, chronic. It is not clear how this is related to her work....Patient is to continue her medications and to use heat....Patient is returned to regular work with these restrictions: 1) no heavy manual labor; 2) no stooping, crawling or bending; 3) not to lift, push or pull more than five pounds. Patient is to return here in approximately one week for further evaluation. Any restrictions have been intended to allow for spontaneous recovery and time to build activity tolerance through exercise."

The claimant's testimony indicated that she returned to light duty work beginning January 30, 2009. The claimant followed up with Dr. Lack on February 4, 2009: "PATIENT DESCRIPTION OF INJURY: Lifting boxes that were too heavy and straining to stack them over my head on line #38." Dr. Lack's assessment was acute lumbar strain and chronic low back pain. Dr. Lack continued restrictions of no heavy manual labor; no stooping, crawling, or bending; no lifting, pushing, or pulling greater than five pounds.

A claims adjuster informed the claimant on February 4, 2009, "After thorough investigation of your workers'

compensation claim it was determined that your back complaints are a result of a pre-existing injury. Unfortunately, we are denying your workers' compensation claim at this time. However, your initial visit with Dr. Lack from 1/30/09 will be paid."

Dr. Lack had scheduled a follow-up visit for February 12, 2009, but a note entered February 6, 2009 indicated that the respondent-carrier cancelled the follow-up visit with Dr. Lack and denied the claim.

Dr. Kenneth Tonymon consulted with the claimant on February 12, 2009:

Mrs. Lue Crow is a 61 yr old white female who is here today for evaluation of lower back pain that has been chronic since an initial accident that occurred while at work @ the Anchor Packaging plant. At that time she reports hurting her back while lifting "packing bags" at work. The most recent incident was January 20<sup>th</sup> 2009 when lifting boxes @ 28 lbs each, one after the other on the "skid". She reports the pain is now constant instead of intermittent as a "deep sore" 10/10 on pain scale. Reports the "deep dull ache" is in her lower back, around to abdomen, bilateral hips and down Left "whole" leg to ankle. Right anterior thigh to below the know (sic)....

Triggers: Lifting a gallon of milk hurts her back, bending over, sitting on hard surface, cough/sneezing, "driving" using her left leg to push the accelerator/brake. Reports some relief when standing, using heat or taking her Hydrocodone/muscle relaxers....

**Assessment**

1. L5-S1 degenerative disc disease, severe; progressive since 1998.
2. L4-5 degenerative spondylolisthesis, grade I; first noticed 2002 (minimal).
3. Hypertension.

Dr. Tonymon's treatment plan included additional diagnostic testing and "3. Consider for ALIF L4-5 & L5-S1. 4. Off work until next appt." Dr. Tonymon's signature was stamped to a Certificate dated February 12, 2009: "No work til re-evaluated by Dr. Tonymon scheduled for April 2, 2009." The claimant testified that she did not work for the respondent-employer after February 12, 2009.

Dr. Raymond Greaser noted on February 17, 2009, "New patient consultation requesting diagnostic/therapeutic interventional pain management....The patient reports 'bilateral lumbar back pain with pain radiation to both legs.' ... Patient reports that she was stacking part filled 28 lb. boxes on top of one another. The boxes were being stacked to a level higher than she was tall. At the end of the day she noticed that her back was hurting very bad and has progressively worsened." Dr. Greaser assessed lumbago, lumbar disc degeneration, lumbar spondylosis, and chronic pain syndrome.

Dr. Greaser performed lumbar discography on March 11, 2009. The claimant followed up with Dr. Tonymon on March 17, 2009, after discogram/CT had been performed. Dr.

Tonymon's assessment was:

1. L4-5 annular tear with concordant discogenic pain on diagnostic discography.
2. L5-S1 degenerative disc disease.

Dr. Tonymon's treatment plan included surgery at L4-5 and L5-S1. Surgery was scheduled for April 30, 2009. The claimant testified that she had not undergone surgery.

A human resources manager corresponded with the claimant on May 11, 2009:

I hope this letter finds you recovering well. You have been absent from work for over 12 weeks and have exhausted all your leave of absence granted you. You are ineligible for any additional leave of absence as required by state and federal laws or under any company policy. As there is no leave status available for a continued absence and you are unable to return to work at this time, we must regrettably terminate your employment effective Monday, May 11, 2009. Information regarding your rights under COBRA will be sent to you separately. Attached is a form containing other insurance continuation information. When you are able to return to work and should you be interested in future employment with Anchor Packaging, please contact us for a list of current openings. We appreciate your service to the company and certainly wish you well in the future.

On June 25, 2009, Dr. Tonymon checked a space beside the following statement: "It is my opinion to a reasonable

degree of medical certainty based upon the information presented to me, including a history given by the patient, that Lueretta Crow's work accident in January of 2009, resulted in a back injury which has made back surgery reasonably necessary."

A pre-hearing order was filed on October 26, 2009. The claimant contended, among other things, that "in early January of 2009, she injured her lower back as the result of a specific incident and gradual onset conditions." The claimant contended that Dr. Tonymon took her off work on February 12, 2009, and "no TTD benefits have been received since that date and no medicals have been paid other than the initial treatment by the company physician. The claimant contends that she is entitled to additional medical benefits, TTD benefits, and attorney's fees. Furthermore, Dr. Tonymon has recommended surgery as outlined in the attached statement."

The respondents contended that the claimant "allegedly became sore from her 'front to back of her waist and stomach' due to gradual movements in January of 2009. There is no objective medical evidence of an injury. The activity at work is not the major cause of any condition. The

claimant has pre-existing back problems but apparently did not injure her back at work.”

The parties agreed to litigate the issues of “compensability (temporary total and medical benefits) and controverted attorney fees.”

A hearing was held on January 15, 2010. At that time, the claimant contended that she had sustained a compensable injury as the result of a specific incident or alternatively a gradual-onset injury.

An administrative law judge filed an opinion on March 4, 2010. The administrative law judge found that the claimant sustained an injury to her lumbar spine which arose out of and in the course of employment. The administrative law judge found that the claimant was entitled to reasonably necessary medical treatment and temporary total disability benefits. The respondents appeal to the Full Commission.

## II. ADJUDICATION

### A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

- (A) “Compensable injury” means:
  - (i) 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;

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.] ...

(D) A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section.

(E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:

(i) For injuries falling within the definition of compensable injury under subdivision (4)(A)(i) of this section, the burden of proof shall be a preponderance of the evidence; or

(ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

An administrative law judge found in the present matter, "3. On or about January 20, 2009, the claimant sustained an injury to her lumbar spine as a result of a specific incident, identifiable by time and place of occurrence, arising out of and in the course of her employment which required medical treatment and resulted in disability and is supported by objective medical finding

(sic).” The Full Commission does not affirm the administrative law judge’s finding that the claimant sustained an injury resulting from “a specific incident.” The evidence does not demonstrate that the claimant sustained an injury which was caused by a specific incident, identifiable by time and place of occurrence. The parties stipulated that an employment relationship existed in January 2009. The claimant testified that she began suffering from back pain as the result of “constant bending backwards ... pulling in my lower back.” The claimant sought medical treatment beginning January 23, 2009. It was reported that the claimant complained of back pain from “lifting heavy boxes at work.” No specific incident was identified. Dr. Lack noted on January 30, 2009, “She hurt her back while lifting boxes.” No specific incident was reported by Dr. Lack. Dr. Lack noted on February 4, 2009 the claimant’s description of injury, “Lifting boxes that were too heavy and straining to stack them over my head on line #38.” No specific incident was shown. Additionally, Dr. Greaser noted on February 17, 2009, “Patient reports that she was stacking part filled 28 lb. boxes on top of one another....At the end of the day she noticed that her back

was hurting very bad and has progressively worsened." Dr. Greaser did not report a specific incident identifiable by time and place of occurrence.

The probative evidence of record does not support the administrative law judge's finding that there was "a specific incident, identifiable by time and place of occurrence." However, the probative evidence of record does demonstrate that the claimant sustained a compensable back injury which was not caused by a specific incident and was not identifiable by time and place of occurrence. The claimant began working as a packer for the respondent-employer in November 1994. The claimant testified that she began suffering from back problems in 1998 as the result of lifting boxes for the respondents. The claimant received medical treatment for chronic work-related back problems in 1998, 1999, 2002, 2003, and 2008. The claimant testified that she began suffering from acute back pain as the result of lifting, bending, and stacking boxes in January 2009. Dr. Lack, the company physician, assessed acute lumbar strain and chronic low back pain on January 30, 2009. The respondent-carrier controverted the conservative treatment recommendations of Dr. Lack beginning February 4, 2009.

The claimant therefore began treating with Dr. Tonymon on February 12, 2009. Dr. Tonymon noted that the claimant's acute and chronic back pain was related to her work for the respondent-employer. Dr. Tonymon immediately recommended consideration of surgery. Dr. Greaser performed lumbar discography on March 11, 2009. Dr. Tonymon reviewed this diagnostic testing and assessed "1. L4-5 annular tear with concordant discogenic pain on diagnostic discography. 2. L5-S1 degenerative disc disease."

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable back injury which was not caused by a specific incident and was not identifiable by time and place of occurrence. The claimant proved that the compensable injury caused physical harm to the body and arose out of and in the course of employment. The claimant established a compensable injury by medical evidence supported by objective findings not within the claimant's voluntary control, namely the L4-5 annular tear shown on discography. The Full Commission finds that the L4-5 annular tear was a result of the compensable injury rather than a nonwork-related pre-existing condition. The claimant proved that

the compensable injury was the major cause of the disability and need for treatment. The compensable injury was "more than fifty percent (50%) of the cause." Ark. Code Ann. §11-9-102(14) (A) (Repl. 2002).

Based on our *de novo* review of the entire record, the Full Commission affirms as modified the administrative law judge's finding that the claimant sustained an injury. The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4) (A) (ii) (b) (Repl. 2002). The claimant proved that all of the medical treatment of record was reasonably necessary in connection with her compensable injury, in accordance with Ark. Code Ann. §11-9-508(a) (Repl. 2002). There are no medical reports of record contradicting Dr. Tonymon's opinion that surgery was reasonably necessary. The claimant proved that she remained within a healing period and was totally incapacitated from earning wages beginning February 12, 2009 until a date yet to be determined. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant therefore proved that she was entitled to temporary total disability benefits beginning February 12,

2009 until a date yet to be determined. The respondents are entitled to an appropriate credit pursuant to Ark. Code Ann. §11-9-411 (Repl. 2002).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715 (Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority's findings that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on January 20, 2009, and awarding medical benefits and temporary total disability benefits. Based upon my de novo review of the

record, I find that the claimant has failed to meet her burden of proof.

The evidence demonstrates that the claimant has an extensive history of back problems. The claimant had three MRI's, numerous doctor visits, and was taking muscle relaxers and pain medication for her other pre-existing conditions prior to her alleged January of 2009 injury. In fact, the claimant admitted she had these medications on hand at the time of the alleged injury. She also admitted that she took them "to keep working."

The first of the claimant's three MRI's of her lumbar spine was done in 1998. The medical records indicate that the claimant had bulging discs at all three lower levels and specifically at L5-S1.

On July 10, 2008, the claimant sought treatment from Dr. Calin Savu. Dr. Savu opined that the claimant has a combination of SI and facet arthropathy and initiated a series of medial branch and SI joint injections. He counseled the claimant on the importance of physical therapy which he stated "she hasn't performed in the recent couple of years, a fact that may have contributed to her

recurrence." The claimant testified that these injections made it where she could work.

The claimant testified that the back problems she has had for many years have never stopped. The following testimony is enlightening:

Q. Well, what happened to those back problems that you had for all these years, since 1998? Did they stop in 2009?

A. No, they didn't stop. They got worse.

Q. Got worse.

A. It ruptured.

Q. Now, you've had some tests since these previous tests I'm talking about. You've had some tests since January the 20<sup>th</sup> of 2009 - is that right - to show what's wrong with your back?

A. Yes, on the 24<sup>th</sup>, cause I went in on the 23<sup>rd</sup> to the family doctor, and I told him it was hurting and what I had done and that it was going around my waist; I hurt from my navel all the way around to the other side; and I had trouble breathing. And he said that he would set up a CAT scan that Saturday. That's when I found out, you know - anyway, it wasn't nothing to do like before.

Q. And aren't the findings at the very same level as before?

A. The bottom levels, yes.

Q. L4-5 and L5-S1?

A. Yes.

Q. And that's exactly the levels that they mentioned in all these previous MRI's. That's where your level of your previous problem was - is that right?

A. Yes.

When I consider the fact that the claimant had pre-existing lumbar problems documented as early as 1998, the fact the claimant admitted she had long-standing lumbar problems and the fact that the claimant present problems are in lumbar area of her back in the same area she has previously had problems, I cannot find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. Accordingly, for all the reasons set forth herein, I must dissent from the majority's award of benefits.

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KAREN H. MCKINNEY, COMMISSIONER