

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H208338**

CHRISTINE BELL, Employee	CLAIMANT
FIANNA HILLS NURSING REHAB CTR., Employer	RESPONDENT
AMTRUST NORTH AMERICA, Carrier	RESPONDENT

**OPINION FILED JANUARY 28, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On October 31, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 15, 2024, and a Pre-hearing Order was filed on April 23, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on December 30, 2020.
3. The respondents have controverted this claim in its entirety.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$232.00 for temporary total disability benefits and \$174.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to her neck and low back on or about December 30, 2020.

2. Whether Claimant is entitled to medical treatment for her compensable neck and low back injuries.

3. Whether Claimant is entitled to temporary total disability benefits from March 31, 2021, to a date yet to be determined.

4. Whether Claimant's attorney is entitled to an attorney fee.

The claimant's contentions are as follows:

“1. The above listed proposed stipulations.

2. The Claimant was injured on December 30, 2020, when she was helping another staff member lift a patient off the floor and felt a pop in her back.

The Claimant was seen at Baptist Health Medical Center emergency room with complaints of right low back pain. The Claimant was diagnosed with back pain and to follow-up with her primary care physician in five (5) days.

On April 13, 2021, the Claimant was treated at Baptist Health Physical Therapy for continued low back and neck pain. She received therapy, manipulation and evaluations.

3. The Claimant reserves the right to amend and supplement her contentions after additional discovery has been completed.”

The respondents' contentions are as follows:

“The Claimant initially filed a claim alleging an injury date of December 6, 2020. She has now amended it to say December 30, 2020. A copy of the assignment sheet is attached and the Claimant did not work on December 30, 2020. The Claimant went to the doctor at Baptist on December 7, 2020 and underwent an MRI that showed stenosis. She was referred on December 18, 2020 for injections and given medications. Her history to the pain doctor was that her back pain started 6 years ago and had gotten progressively worse. In the last year, it had become severe and conservative treatment had not worked. No history was given of a low back injury at work. On the neck, she reported in March of 2021, she had 8 months of bilateral spasticity of her arm and hands. The history was she injured her low back and neck in a 4-wheeler accident. She reported at least 3 years of pain when asked what caused her problems at Fort Neuro. She was seen on September 1, 2021 at Baptist and gave a history of the neck pain for several years. No mention of a December 30, 2020 injury.”

The claimant in this matter is a 44-year-old female who alleges to have sustained compensable injuries to her neck and low back on or about December 30, 2020. At the hearing in this matter the claimant testified that the injuries she is alleging occurred on December 29, 2020, but her first medical treatment occurred on December 30, 2020. The claimant gave direct examination testimony about the incident she alleges as follows:

Q Okay. Would you tell the Court briefly what you were doing that day and how you came to injure your back and your neck.

A My charge nurse came and got me. A resident had slid out of bed onto the fall mat and she wanted me to help him, help her get the gentleman out of the floor and back onto the bed. We had tried picking him up, which is – Aubrey Adams was my charge nurse at the time, which she was the lady that came and got me.

We had tried to pick the gentleman up. Could not. Put the gait belt around him. We dug down real deep and finally got him up and about that time I felt a pop in my lower back.

Q Okay. Now, specifically, if you were describing this to someone who couldn't see, where would you describe where you felt a pop in your back?

A I would say right above your butt crack.

Q Okay.

A That lower area.

Q Okay. Did it tend to be more on the left side right above your butt crack or to the right side or in the middle?

A In the middle.

Q In the middle?

A Yes.

The claimant then testified that her charge nurse sent her to report her injury to Kim Butler, who is in charge of the respondent's human resources department. Following is the claimant's testimony about her interaction with Ms. Butler on December 29, 2020:

Q Okay. All right. And just take us through that notification, that conversation.

A I told her that I had hurt myself. She had told me to have a seat. She had left the facility. Went out back. She had come back in and told me that I –

Q Let me stop you there. So you had a seat. Were you in her office?

A No. I was outside of her office when I had spoke to her.

Q In a chair?

A Yes.

Q Okay. And she left her office?

A Yes.

Q Did you see where she went?

A Down the hall.

Q Okay. About approximately how long was she gone?

A About 10, 15 minutes.

Q Okay. Did she come back?

A Yes.

Q Okay. And what conversation ensued after she returned?

A She told me I needed to get up and get back on the floor and help, that we were shorthanded.

Q Were you shorthanded?

A Yes.

Q Okay. Were you asked to fill out any paperwork?

A No.

Q Were you asked to fill out a report?

A No.

Q Were you asked to sign a form?

A No.

Q Okay. Did she ask about your condition?

A No.

Q Okay. So her only statement to you was, "We are shorthanded. I need you back out of the floor."?

A Yes.

Q Did you do that?

A Yes.

Q Okay. So did you finish your shift that day?

A Yes, I did.

Ms. Butler was called as a witness by the respondent. Following is her testimony about the notification of the claimant's alleged injuries:

Q All right. You heard her testify today that on December 29<sup>th</sup> she reported an injury to – first of all, were you there that day?

A Yes.

Q Do you have an office?

A Yes.

Q Was any report of an injury done to you that day?

A No.

Q Did you refuse to fill out any paperwork?

A No, I did not refuse.

Q Now, she continued to work for three months. At any time during those three months did you see her?

A Yes.

Q How often?

A Usually any day that was Monday through Friday and if she worked and she was there.

Q At any time during those three months, did she indicate to you that she had injured herself on December 29<sup>th</sup>?

A No.

Q When was the first time that you were notified that there was a claim being made due to any injury?

A I was not notified.

Q Okay. Well, that's a poorly-worded question on my part. When did you first know that there was a claim being made?

A I was not aware.

Q Okay. In your deposition you indicated that you were notified by my office. That is why I am saying it was poorly worded.

A Oh, by your office, yes.

Q I am not talking about by the Claimant. I am talking about anybody.

A By you, yes.

The claimant was seen at Baptist Health Family Clinic South on December 30, 2020, by APRN Julie Rowland. Following is a portion of that medical record:

Reason for Visit:

Back Pain

40 year old female patient in today with complaint of increased low back pain. States she was at work yesterday and tried, with another CNA, to pick a large man up off the floor. She states after she did this her pain intensified greatly. She went to the ER this morning because the pain was so intense and her pain medication was “not touching it.” A CT lumbar spine was completed; no new findings. She was instructed to follow up with primary care. Was given morphine in ER and states this did not help the pain either. She has an appointment with neurosurgery on 1/7/2020 and interventional pain management on 1/7/2020 as well. She states she is unable to sleep since incident yesterday, due to pain. She does have a medical marijuana card however states she has not been using it since she started seeing Psychiatry. Also, the cares is an Oklahoma card and she lives in Arkansas. She is adamant that she has not been taking Xanax since she started with pain medication.

The claimant also underwent a CT scan of her low back on December 30, 2020, at Baptist Health. Following is a portion of that diagnostic report:

FINDINGS:

Vertebrae: No acute bony injury or malalignment.

Disc/Spinal canal/Neural foramina: Mild degenerative change and multilevel disc bulging. Mild central canal stenosis at the L3-L4

and L4-L5 levels; due to combined disc bulging, ligamentous hypertrophy, and facet arthropathy. Note that assessment of disc, spinal cord, and nerve root pathology is limited in the absence of intrathecal contrast.

Stomach and bowel: Questionable wall thickening in the nondistended and incompletely visualized stomach.

Soft tissues: Unremarkable appearance of the paraspinous and tissue.

**IMPRESSION:**

Mild central canal stenosis at the L3-L4 and L4-L5 levels; due to combined disc bulging, ligamentous hypertrophy and facet arthropathy.

On direct examination the claimant was asked about pain after her alleged December 29, 2020, lifting injury as follows:

Q What kind – well, let me ask you this: Was there any pain –

A Yes.

Q -- associated with that?

A Yes.

Q What kind of pain?

A It was burning and it was going down this side (indicating), like down the left side.

Q Okay. How far down? I take it it went into your butt checks?

A Yes.

Q Did it go down past your butt check?

A Yes. Into my thighs.

Q Into your thighs?

A Yes.

Q Into both thighs or just down the left?



A Down both of them.

The claimant testified on direct examination that she had a prior incident on a four-wheeler over 20 years ago where she injured her neck and back but testified that those injuries did not require surgery or continued medical treatment. The claimant began to work for the respondent in the middle of October of 2020. On direct examination the claimant was asked about low back problems during the period of time between being hired by the respondent and the December 29, 2020, incident she alleges as follows:

Q Okay. Now, we know that after you got hired, but before the 29<sup>th</sup>, you were having problems in your low back. Talk about that.

A I was staying late, working extra hours, working my eight-hour shift and then they would need people to stay over after and needing volunteers. And I was staying over quite a bit afterwards, whether it was a few hours or another shift to help out because we were so shorthanded.

Q Okay.

A And I had done that for several months up until I got injured.

Q Okay. So when do you think that the back pain started again? After you started at Fianna Hills in the middle of October, when did you begin to experience back pain?

A Probably a couple of weeks after starting.

Q Okay.

A Lifting patients and stuff, sometimes didn't have the equipment, the right equipment to use at the time. Sometimes some of the equipment was down, so it would take me and another person to pick someone up, put them in bed, and put them in their chair, whatever needed to be done.

Q Okay. So within two weeks of you starting as a CNA at Fianna Hills, you began to experience low back pain?

A Yes.

Q Did you go see a doctor for that?

A No. I just took Tylenol.

Q Okay. All right. Was it radiating into your buttocks or down your legs prior –

A No.

Q Let me finish. Was it radiating into your buttocks or legs prior to December 29?

A No.

Q Okay. Did it get worse as your time at Fianna Hills went on?

A Yes.

Q Okay. Did you ultimately prior to the 29<sup>th</sup> seek medical attention for pain in your low back?

A Yes.

Q And where did you go?

A I went to my PCP.

Q Who is that?

A At the time I think it was Julie Rowland or Bao Dang.

Q So you saw Dr. Bao Dang?

A Yes.

Q And you were complaining of low back pain?

A Yes.

On December 7, 2020, twenty-one days before the claimant's alleged incident, the claimant was seen at Baptist Health Family Clinic South by APRN Julie Rowland. Following is a portion of that medical record:

Reason for Visit:

Back Pain

40-year-old female patient in today with complaint of low back pain. States she has been having low back pain off and on for the last 8 years however over the last several months is has gotten increasingly worse. No known new trauma in the last couple months. States that she is having pain in the lower back and the pain radiates down bilateral buttocks down to bilateral feet. States her bilateral feet and toes also go numb. She reports her bilateral hips also hurt and at times "locked up." When this happens she is unable to bear weight on her extremities and her husband has to help her walk. She is a CNA and is on her feet a lot. Reports she had a car accident many years ago and this is when her initial back pain began. She has been taking Tylenol without relief. She has in the past tried relaxers however reports she did not get any relief from those at the time. She has taken hydrocodone in the past without any problems. She does have a history of anxiety and takes Xanax while she is taking pain multiple days without having to take this as needed medication. She is aware she cannot be on pain medication while taking Xanax due to increased sedation. She states she is willing to stop the pain Xanax while she is taking pain medication due to her high discomfort level. She has had x-rays of her lower back completed approximately 3 years ago. She has also had x-rays of her hips completed many years ago and states they were out alone. She tried chiropractic work however it did not help with either pain.

The claimant underwent an MRI of her lumbar spine on December 17, 2020, at Baptist Health, which was eleven days prior to the incident she alleges. Following is a portion of that diagnostic report:

**FINDINGS:** 5 lumbar vertebral bodies are present. A small hemangioma is present in the T12 vertebral body. The vertebral bodies are well aligned. There is no evidence of subluxation. No acute compression fracture identified. Conus medullaris terminates at L1 and is unremarkable in appearance. Paravertebral soft tissues

are grossly unremarkable. Epidural lipomatosis is present. There is mild congenital canal stenosis.

T12-L1: No significant abnormality.

L1-2: There is mild facet degeneration.

L2-3: Minimal annular disc bulge is present with mild left neural foraminal stenosis. No significant central canal stenosis.

L3-4: Annular disc bulge, bilateral facet degeneration and thickening of ligamentum flavum result in mild central canal stenosis with moderate bilateral neural foraminal stenosis, left greater than right.

L4-6: Disc bulge osteophyte complex and bilateral facet degeneration result in mild central canal stenosis with mild facet degeneration.

L6-S1: Bilateral facet degeneration is present.

**IMPRESSION:**

1. Multilevel disc and facet degeneration is superimposed upon mild congenital central canal stenosis.
2. Epidural lipomatosis.
3. At L3-4, there is moderate bilateral neural foraminal stenosis. Mild central canal stenosis is present at multiple levels as detailed above.

On December 18, 2020, medical records indicate that APRN Rowland left a voicemail for the claimant in an attempt to discuss her MRI results. Following is that medical note:

Called patient to discuss MRI; results left on voicemail. Patient called yesterday asking about her referral for pain injections and her oral medications. Left message informing patient that the pain injections are in addition to the oral medications however if the oral medications are going to end up having to be long term, I will have to send her to pain management for the prescribing of those. Patient appointment with Dr. Miller is January 7<sup>th</sup>. Will also refer to neurosurgery for consultation.

On December 28, 2020, the day prior to the claimant's alleged injuries, she is seen by APRN Rowland for "chronic bilateral low back pain with bilateral sciatica." The claimant was

referred at that time to a pain clinic and a neurosurgeon. The claimant was prescribed gabapentin and hydrocodone.

On January 11, 2021, the claimant was seen at Transcend Pain, PA by Dr. Miller, to whom the claimant was referred by APRN Rowland on December 18, 2020, ten days prior to her alleged compensable injuries. Following is a portion of that medical report:

Chief Complaint: Back Pain and Leg Pain

History of Present Illness: Back Pain and Leg Pain

HPI: the patient is a pleasant 40-year-old female referred in with low back pain going down both buttocks all the way down occasionally to her feet. Started six years ago out of the blue and has been progressively worse. In the last year it has become severe and her conservative measures which are usually nonsteroidals at prescription strength, including ibuprofen 600mg three times a day and heat have not worked that well. She is now having pain 10/10 even though she can stand up with some moaning and groaning her pain is probably 7-8/10. Antalgic gait. Sleep is very disrupted. Weather changes do not affect it but it is worse with walking, standing, and sitting for long periods. Better with changing positions. She is largely inactive and is requesting an injection for improved relief and activity level. She is set up to see Dr. Johnson with neurosurgery in three months. The patient denies any recent falls. The patient denies any recent changes in strength or coordination. It was explained to the patient that we will minimize but cannot eliminate the risk of the patient and family potentially encountering exposure and infection with Covid 19 virus by being here, being evaluated and receiving an injection. The patient (and family) agreed to accept this risk due to the severity of pain complaints.

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs*

*and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

It is the claimant's burden to prove that she sustained a compensable low back injury during the patient lifting incident she describes as having occurred on December 29, 2020.

The claimant, while admitting prior back difficulties, downplays the severity in her testimony, including denying in testimony to the Commission that she had radiating pain in her lower extremities prior to her alleged December 29, 2020, incident. The medical record of APRN Rowland dated December 7, 2020, clearly states, "She is having pain in the lower back and pain radiates bilateral buttocks down to bilateral feet." In that same record, the claimant reports, "low back pain off and on for the last 8 years however over the last several months it has gotten increasingly worse." The claimant's December 17, 2020, low back MRI shows derangement that is for all practical purposes identical to the derangement in her low back from her December 30, 2020, lumbar spine CT scan.

Prior to her alleged December 29, 2020, injuries the claimant had already been referred to a pain clinic and a neurosurgeon for her low back difficulties. In fact, she reported to Dr. Joseph Miller at Transcend Pain, PA, that her back pain "started six years ago out of the blue and has been progressively worse."

The credibility of witnesses and the weight to be given to their testimony are matters solely within the province of the Commission. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993).

The claimant's testimony does not align with the medical records in evidence. I do note that when she was seen by APRN Rowland on December 30, 2020, the medical record states that she picked a large man up off the floor at work which increased her pain greatly. The claimant testified that she reported that injury to Ms. Butler, the respondent's human resources supervisor.

Ms. Butler denies any report of injury from the claimant on that day or any other, testifying that she was first notified of the claimant's allegations by the respondent's attorney.

The claimant is unable to prove that she sustained a compensable injury to her low back on or about December 29, 2020. The claimant's low credibility leads me to believe that no such incident even occurred on December 29, 2020.

The claimant also alleges a compensable cervical spine injury in that same December 29, 2020, incident. In the claimant's description of the incident, she mentions no mechanism of injury to her cervical spine. "We had tried to pick the gentleman up. Could not. Put the gait belt around him. We dug down real deep and finally go him up and about that time I felt a pop in my lower back."

The claimant testified on direct examination about when her cervical spine began as follows:

Q Okay. Let's talk about your neck, Now, initially even in the weeks before your felt the pop in your back and when you went the next day, there was no mention of neck pain.

A No.

Q Okay. When did the neck pain begin?

A A couple of days after getting hurt.

Q After the incident?

A Yes.

Q So this would have put us around New Year's Day?

A Somewhere around there.

On direct examination the claimant was asked about prior neck pain as follows:

Q Okay. Again, let's talk about the previous pain of your neck prior to the date of the incident. Okay? And we will go back to three-wheeler accident again.

You indicated you did not see a doctor in those subsequent years.

A No.

Q You were on no medication?

A No.

Q You had no surgeries or treatment?

A No.

Q But you did indicate in some of the medical records that it would be on and off. Would it resolve itself?

A Yes.

Q Do you recall prior to the date of the incident when the last time was that you had had several neck pain?

A Years. Ten, 15 years.

Q Okay. So you hadn't had any neck pain in a very long time?

A Correct.

On March 16, 2021, the claimant was seen by APRN Rowland. Following is a portion of that medical report:

Reason for Visit:

Headache

40-year-old female patient in today with complaint of severe headache and occipital area with radiates up her head and down to her eyes. States "I feel like I am getting my eyes gouged out." Reports she has had regular headaches and migraines in the past however she has never had a headache like this before. The headache is pulsating, she is not sensitive to light or sound. She has been prescribed Flexeril for cervical pain and her headaches. She



also has numbness/tingling down bilateral arms. Was given Flexeril at her last 2 appointments. Reports the Flexeril “helps some” however does not take the headache or pain fully away. She rotates the Flexeril with her Hydrocodone, which she takes BID. She states she does best with her pain and headaches if she could take a Flexeril in the morning, one in the afternoon and one at bedtime. She states if she does not take one before bed she will wake up with an excruciating headache and the morning one usually has worn off by the afternoon. She has been getting lumbar spinal injections per Dr. Miller; she states he recommended getting an MRI of her neck. She also reports for the last 8 months she has had intermittent spasticity to her bilateral arms/hands. When she is holding onto something all of a sudden her arm will jerk and the item she is holding will fly out of her hand. She also reports dizziness, even when sitting still. “Feels like the room is spinning.” This has been occurring for the last 3 weeks. She does also report some congestion for the last 3 days.

On March 23, 2021, the claimant underwent an MRI of the cervical spine. Following is a portion of that diagnostic report:

Impression:

Spondylosis at C3-4, C4-5, and C5-C6 levels with posterior disc bulging causing spinal canal stenosis and neural foraminal narrowing as described above.

On September 1, 2021, the claimant was seen at Baptist Health by APRN Billie Jo Nelson with a chief complaint of neck pain. Following is a portion of that medical record:

Christine Marie Bell is a 41 y.o. year-old female seen at the request of Dang, Bao N, MD who comes to us with a history of neck pain for about several years on and off, this episode started last year. The pain starts at the base of her skull, bil. shoulder pain and left suprascapular area. No arm pain but she has bil. tingling sensation and numbness at times. Looking up increases her pain, no problem reaching up. She reports dropping things frequently. No physical therapy, has seen a chiropractor in the far past. No CESI.

Again, the claimant’s testimony does not align with the medical records. The claimant denied recent neck pain prior to her injury but tells APRN Nelson that she has had neck pain on and off for several years. The claimant’s testimony about the incident she alleges does not

include any causal connection between the lifting incident and her neck derangement. The claimant's testimony was she just started having neck pain "a couple of days after getting hurt," which is in stark contrast to her report to APRN Nelson of neck pain for several years on and off. Here the claimant is unable to prove that she sustained a compensable cervical spine injury on or about December 29, 2020.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 15, 2024, and contained in a Pre-hearing Order filed April 23, 2024, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her neck and low back on or about December 29, 2020, and/or December 30, 2020.
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her alleged neck and low back injuries.
4. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits from March 31, 2021, to a date yet to be determined.
5. The claimant has failed to prove by a preponderance of the evidence that her attorney is entitled to an attorney's fee.

**ORDER**

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

**IT IS SO ORDERED.**

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**HONORABLE ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**