BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H504742

BARBARA COLE, EMPLOYEE	**CLAIMANT**
VS.	
VAN BUREN LEGACY, LLC, EMPLOYER	**RESPONDENT**
SUMMIT CONSULTING, LLC **INSURANCE CARRIER/TPA**	**RESPONDENT**

OPINION FILED OCTOBER 7, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 15th day of September 2026, in Fort Smith, Arkansas.

Claimant is represented by Lauri Thomas, Attorney at Law, of Springdale, Arkansas.

Respondents are represented by Janson M. Ryburn, Attorney at Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 15th day of August 2026, to determine the issues of compensability for an injury to claimant's back, related medical, and attorney fees for a claimed injury on November 25th, 2024, with everything else reserved. The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee/carrier relationship existed on November 25th, 2024, the date of the claimed injury in question. The respondents controverted the claim in its entirety. At the time of the hearing, the respondents modified their contentions and additionally contended that the claimant suffered an idiopathic or non-compensable event on November 25th, 2024.

The claimant's and respondent's contentions are set out in their respective responses to the Pre-hearing Questionnaire and are made part of the record as well as the Pre-hearing Order. The claimant contends she injured her lower back on November 25th, 2024, while in the scope of her employment for the respondent, while repositioning a patient. Additionally, she contends there have been multiple recommendations for further testing which have been controverted by the respondents and that respondents have failed to pay her medical bills. Claimant reserves all other issues. The respondents contend that the claimant did not suffer a compensable injury but suffered an idiopathic or non-compensable event on November 25th, 2024.

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

FINDINGS OF FACT AND CONCLUSSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee/carrier relationship existed on November 25th, 2024.
3. That claimant has proven by a preponderance of the evidence that she suffered a compensable lower back injury on November 25th, 2024, and that the injury is not the result of an idiopathic disease process.
4. That the medical treatment that the claimant received at the Van Buren Emergency Room, CCOH, Synergy Radiology, and Tamera Physical therapy,

and any related treatment in regard to her lower back injury is found to be reasonable and necessary and that the respondents are responsible for these outstanding bills.

5. That the claimant is entitled to additional reasonable and necessary medical testing and treatment as recommended in regard to her lower back injuries.
6. Claimant and her attorney are entitled to legal fees pursuant to A.C.A. §11-9-715.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing questionnaires are attached to and made a part of the record. Claimant submitted 49 pages of medical records that were admitted into the record without objection. Respondents submitted 2 pages of medical records that were also admitted into the record without objection. Additionally, the deposition of the claimant was submitted by the respondents and admitted without objection. The claimant and one other witness testified at the time of the hearing.

The first witness to testify was Ms. Marilyn Richards, who was called out of order, so she could return to work for the respondent employer. Ms. Richards was a fellow employee of the claimant and admitted being claimant's sister. She was working with the claimant on November 25th, 2024. Ms. Richards testified that she was dealing with a resident and called the claimant to assist her in turning the resident who was wet. A draw sheet was placed under the resident and when we turned her, I heard a pop. She stated that at that point, the claimant stated something like "Oh, my God." Ms. Richards testified

that she then obtained a wheelchair for the claimant and contacted the claimant's family to come and get her and take her to the hospital. She went on to testify that she had worked with the claimant for four years and was not aware of the claimant having any difficulty in lifting or turning a patient prior to that event. Ms. Richards also testified that she worked under the claimant and was not aware of the claimant having a previous injury prior to November 25th, 2024. She went on to testify that the claimant continued to be in pain and that she can no long assist in lifting but continued to work. (Tr. 6 – 8)

Under cross examination, Ms. Richards testified the claimant's job normally did not involve rolling the patients but did involve walking and passing out pills. (Tr. 9)

The claimant then took the stand and testified she was sixty-two at the time of the hearing and the mother of three children. She was a high school graduate and had attended Arkansas Valley Vo-Tech, where she obtained her licensed practical nursing license in 2009. She had also obtained a business certificate from Arkansas Valley Vo-Tech. She had previously worked six years for Alma Health & Rehab and sporadically worked for a few months at other facilities. She had worked for the last seven and a half years for the respondent employer and was working there on the date of her injury. She went on to state, "I was called into a room to assist a resident. She had soiled herself and in the process of us turning her, when I lifted to roll her, I felt a pop in my back. And I kind of was debilitated at that moment and I couldn't do anything." A wheelchair was obtained, and the administrator was notified. Her sister took the claimant downstairs and had claimant's daughter pick her up and take her to the Baptist Van Buren ER, where she was examined and x-rayed. She thought she was diagnosed with acute back pain and was instructed to use hot and cold compresses and take Tylenol and ibuprofen. She then

returned to work the next day. She had been instructed to do what her body would allow her to do and admitted her body was hurting the next day. Claimant described her pain since the injury as sometimes sharp and stabbing pain with spasms that varied from day to day in regard to the work she was performing. (Tr. 10 – 14)

She continued to work and one day told her administrator that she could not go any more on that day. Her administrator made her an appointment at CCOH clinic (Conservative Care Occupational Health) and she went there to be examined. She thought that she received an MRI on her first visit. She later returned to CCOH to review the results while still suffering pain which had not improved. She was told she had DDD (degenerative disc disease) but denied any discussion about having an L2-L3 lateral bulging annulus. A CT scan was scheduled after the MRI, and it was claimant's understanding that they were looking for a bowel obstruction. There was no recommended treatment regarding a bowel obstruction. After the CT scan, claimant believed that she went to physical therapy and six sessions were ordered, but claimant admitted she did not attend all the sessions due to severe pain which limited her being able to do her daily life and going to work. She thought that the physical therapy was not helping and actually making things worse.

She did return to CCOH in July due to being assigned an extra workload where she had to work on both the third and first floor with an inoperable elevator. The increased workload and the requirement of going up and down stairs on that day made her pain worse. It was an aggravation of the pain she had been experiencing. (Tr. 15 – 18) She finished the shift for that day, returned the following day, and worked a few hours. She saw her supervisor and told her about the pain and her supervisor made an appointment

for CCOH and she attended. She then returned to work, but a visit to an ortho doctor was recommended. She was given restrictions for not lifting more than 10 or 20 pounds. Her supervisor saw the restrictions and sent her home. CCOH required a follow up for her to return to work, and claimant was off work for three weeks. Claimant testified she used what PTO time she had and additionally stated that they were going to make an appointment for her to see an ortho doctor. She was instructed to use Voltaren gel and alternate between taking Tylenol and ibuprofen. Prior to November 25th, 2024, she never had a problem lifting or turning patients, and did not have pain on stairs or suffer any physical limitations. She admitted falling at a convenience store in the 90's, slipping on a brown liquid on the floor, which resulted in her injuring her left shoulder. She denied ever going to a chiropractor or her PCP for her back. She also denied being in any motor vehicle accident or ever filing a prior workers' compensation claim. She had not attempted to use her private health insurance due to the high deductible. (Tr. 19 – 23)

She was also questioned about her medical records providing she had a palpable nodularity, and she responded that it was a raised area on her back that was not present prior to the injury. The area was the same area where she felt pain which radiated outside that area. On an average day her pain was a five to seven, but by the end of the day could be a 10 plus. She received an injection that helped maybe a day and further stated that for most of her workdays, she was able to limit her activities, and her employer had stated she could request help in lifting. (Tr. 24, 25)

Under cross examination, claimant admitted that she had been diagnosed with degenerative disc disease and that the injury would not have caused her degenerative disc disease. The claimant was not aware spasms were not reported in her medical

records until July of 25. She went on to testify she was aware she had spasms periodically. She admitted her fall in a convenience store had occurred in a Circle S Convenience Store but denied falling at another convenience store and denied hiring a law firm to file a claim against Kum and Go, LLC. She also denied ever being in Benton County, Arkansas. (Tr. 25 – 28)

The claimant was also questioned about her pain being exacerbated on July 16, 2025, while working and walking up and down flights of stairs. She testified that on a normal day, she didn't go up and down stairs. The claimant was then questioned about her deposition testimony where she testified that she did not normally go up and down stairs but normally took the elevator and that she did not recall the elevation being broken on July 16, which was opposite of her testimony at the time of the hearing and she responded, "I must have misspoke on that day when you asked or misunderstood your question. On that day of July 16th, the elevator was broke." When asked how she knew the elevator was broken on that day her response was, "Because we were told to - - well, you couldn't use it. Number one, there was a sign when you entered the building 'Elevator broke. Take stairs.' So we had to take stairs to go to or I had to take stairs to go to the third floor to get to my unit to begin work." She went on to state that your memory could be better one day and not as good the next. (Tr. 29 – 31)

Claimant admitted she did not normally flip or lift patients and generally pushed a cart with medications. She also testified that the nodule on her lower back was not present prior to November 25, 2024, and was located in the area of her pain. (Tr. 33, 34) The claimant admitted that she was working full duty, and had received a raise. She denied

that a bowel obstruction was found with the CT scan. She reiterated that “I’ve got acute back pain. I don’t know the full sentence they wrote.” (Tr. 35 – 37)

On redirect, the claimant was questioned about the possibility she had gotten a little confused about whether she was being questioned about the November incident versus the July incident and she responded, “I believe I got mixed up on that day and time that he was referring to.” (Tr. 38)

The claimant denied ever living in Benton County. (Tr. 43)

Claimant’s medical exhibit consisted of 49 pages. Records provided that the claimant presented to CCOH (Conservative Care Occupational Health) on December 11, 2024, and the report provided that the claimant had been assisting a patient on November 25, 2024, and she felt a pop in her back and was suffering from low back pain. She was diagnosed with right sided low back pain, which was not improving, Tylenol, Ibuprofen, and Aleve were recommended as needed. Ice/heat and topical analgesics were also suggested, and a follow up MRI was mentioned. A Form AR – 3 provided the date of injury was November 25, 2024, when she was assisting a resident and felt a pop in her lower back on the right side. An MRI was ordered. The MRI of the lumbar spine was performed by Synergy Radiology on December 23, 2024, and degenerative changes of the facets were noted at L4 – L5 along with a right lateral bulging annulus at L3 – L4. (Cl. Ex. 1, P. 1 – 8)

Claimant returned to CCOH and Jane Banning, APRN, on January 3, 2025, with her primary problem being pain in her lower back, which was described as stiff, sharp, and burning. The pain seemed to be variable, based upon the claimant’s activity level. No work status limitations were recommended but the report did provide that the problem

seemed to be work related. The Form AR-3 provided there appeared to be no improvement as provided by the claimant. A CT was requested to rule out a bowel herniation. (Cl. Ex. 1, P. 9 – 14) The CT was performed by Synergy Radiology on January 28, 2025, and provided the stomach and bowel were unremarkable with no acute intra-abdominal abnormalities noted. (Cl. Ex. 1, P. 25, 26)

Claimant again returned to CCOH on February 5, 2025, again with the chief complaint of lower back pain and was seen by Dr. K. Berestnev. 400 mg. of Lodine twice a day was ordered for the low back pain. The Form AR – 3 provided claimant stated her lower back was about the same and six sessions of physical therapy were ordered. (Cl. Ex. 1, P. 17 – 22)

Claimant presented to Tamara Physical Therapy for an initial examination on February 25, 2025, with a chief complaint of low back pain. The report provided the claimant demonstrated a positive response to the treatment received. (Cl. Ex. 1, P. 23 – 25) Claimant returned to Tamara Physical Therapy on February 25, 2025; March 7, 2025; March17, 2025; March 21, 2025; and April 21, 2025, for low back pain. The April 21, 2025, report provided that the claimant was discharged from care due to not returning follow up phone calls. (Cl. Ex. 1, P. 26 – 37)

Claimant again returned to CCOH and Jessica Milton, APRN, on July 18, 2025, and the report provided claimant stated her pain had not improved. The claimant had stopped her physical therapy due to her worsening pain. The report further referred to chronic low back pain that began 8 months ago following an injury. Under the examination section of the report, it provided for spasm of the lower lumbar region and that claimant was able to work with slight difficulty. Under the assessment section of the report, it

provided claimant's low back pain had never resolved and the MRI of the lumbar spine revealed underlying degenerative disc disease, and the CT scan was negative for acute bony abnormalities. Pain had improved slightly but remained significant. Claimant exhibited tenderness to palpation over the bilateral paraspinal muscles. An IM injection of methylprednisolone was given. Claimant was prescribed methocarbamol and Lodine. She was instructed to not lift greater than 20 pounds. The Form AR- 3 provided claimant's pain had not improved. (Cl. Ex. 1, P. 38 – 43)

Claimant returned to CCOH on August 8, 2025, was seen Jacee Banning, APRN, and the report provided for lower back pain of her lower left side. It referred to chronic lower back pain and mentioned claimant had not been able to work for the past 3 weeks. This report additionally provided for a referral to orthopedics and stated that the claimant's work status was regular duty. The Form AR-3 provided for a referral to orthopedics. (Cl. Ex. 1, P. 44 – 49)

The respondent submitted medical records that consisted of two pages that were admitted without objection. The claimant presented to the Van Buren Baptist Health Emergency Department on November 25, 2024, where she received X-rays of the lumbar spine and which provided for no fractures noted and mild disc narrowing at L5-S1 with mild spondylosis, which was most pronounced at L4-5 and L5-S1. The report also provided claimant could return to work the following day if the symptoms improved.

The respondents also submitted the deposition of the claimant which was admitted without objection. The claimant denied any prior treatment involving her back and denied any previous treatment by a chiropractor. She admitted previous physical therapy involving her shoulder. The claimant was questioned about her back spasm being

palpated on July 18th, 2025, where the medical report provided that a spasm was present over her lower lumbar spine and she agreed that it was in her lower back (Resp. Ex. 2, P. 21) The claimant was also questioned about events on July 16, 2025, where a note provided she was working and walking up and down multiple flights of stairs. She testified that she was working her floor and another floor downstairs. In regard to the question about walking up and down multiple flights of stairs, claimant responded "Well, I mean, I don't really walk up and down multiple flights of stairs. I take the elevator." "I don't walk up and down multiple flights of stairs. Unless the elevator is broken. I don't recall it being broken that day." (Resp. Ex. 2, P. 22, 23)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for the injuries to her lower back. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann §11-9-704. *Wade v. Mr. Cavanaugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996). The claimant has the burden of proving that her injury was the result of an accident that arose in the course of her employment and that grew out of or resulted from her employment. *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (1987). "Arising out of the employment" refers to the origin or cause of the accident, while "in the course of employment" refers to the

time, place and circumstances under which the injury occurred. *Little Rock Convention & Visitors Bureau v. Pack*, 60 Ark. App. 82, 959 S.W. 2d 415 (1997).

A compensable injury must be established by medical evidence supported by objective findings. A.C.A. §11-9-102(4) (D). "Objective findings" are those findings that cannot come under the voluntary control of the claimant. A.C.A. §11-9-102 (16) (A) (i). Complaints of pain are not considered objective medical findings. A.C.A. §11-9-102 (16) (A) (ii) (a). In the present matter, the testimony of Ms. Richards is found to be credible. Ms. Richards wanted to be the first to testify, so she could return to work for the respondent employer the morning of the hearing, where she had worked a number of years. She admitted that she was the sister of the claimant and testified that in the process of attempting to move a resident who had wet or soiled herself with the assistance of the claimant, she heard a pop, and the claimant cried out immediately complaining of back pain. Ms. Richards obtained a wheelchair and called a family member to pick up the claimant to take her to the local ER. She had worked with the claimant a number of years, had obviously known her longer still, and was not aware of the claimant ever complaining of back pain or being unable to lift.

The claimant's testimony is also found to be credible. There were points where the claimant could have embellished her testimony but did not. She stated that she heard a pop when they attempted to move the resident. She admitted going to the ER that very day and returning to work the day after the incident and that she was still working for the respondent employer. Her demeanor appeared to be one of a responsible person that you would welcome as a nurse caring for you.

In regard to the medical reports of record, the x-rays obtained at the emergency room showed spondylosis, an age-related wear and tear of claimant's lower back discs, which would not be unusual for a person of approximately sixty years of age. The MRI, which was obtained approximately a month later, provided for degenerative changes of the facets at L3 – L4, which again would not be unusual for a person the age of the claimant, but also provided for a right lateral bulging annulus at L3 – L4, which could be the result aging, wear and tear, or an injury. The claimant was eventually prescribed 40 mg. of Lodine twice a day, physical therapy, and an injection of methylprednisolone, a corticosteroid commonly used to reduce inflammation and placed on a lifting restriction of nothing over twenty pounds.

The Arkansas Supreme Court has found that it is reasonable to infer from the chronology of events and the reference to a work-related injury that the ordering of medication and physical therapy to aid the claimant and treat an injury is the result of and supported by objective findings of the health care providers. *Freds, Inc. v. Jefferson*, 361 Ark. 258, 206 S.W.3d 238 (2005). A health care provider also noted spasms of the lumbar back, an additional objective finding. It must be noted that there is no requirement under Arkansas law that a medical care provider actually observe a muscle spasm before an employee's injury can be compensable. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 176 (2000)

The issue of an idiopathic injury was raised by the respondents based upon the claimants age related back issues. An idiopathic injury is one whose cause is personal in nature or peculiar to the individual. *Crawford v. Single Transportation*, 87 Ark. App. 216, 189 S.W.3d 507 (2004). Injuries sustained due to an unexplained cause are different from

injuries where the cause is idiopathic. When a claimant suffers an unexplained injury, it is generally compensable. Because an idiopathic injury is not related to employment, it is generally not compensable.

In the present matter, there is no medical history of the claimant suffering from long established back problems and the credible testimony, both of the claimant and Ms. Richards, denied she had suffered from any back issues. It must be noted that even if the claimant suffered an idiopathic injury, it may be compensable if the employment conditions contributed to the risk or aggravated the injury. Here the sixtyish year-old female claimant was placed in the position of moving and rolling over an adult resident. A basic premise of the Arkansas Workers' Compensation law is that the respondent employer takes the claimant as they find him or her. In order for an injury to arise out of the employment, it must be a natural and a probable consequence or incident of the employment and a natural result of one of its risks. See *J. & G. Cabinets v. Herrington*, 269 Ark. Ark. 789, 600 S.W.2d 916 (Ct. App. 1980). Moving a resident who is unable and incapable of moving on their own is a probable consequence or incident of the claimant's employment and a natural result of the jobs risks involved with her occupation.

In regard to medical treatment, the Arkansas Compensation Act provides that an employer shall promptly provide to an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher*

Oil Co., 81 Ark App. 263, 101 S.W.3d 252 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984). Here the treatment received by the claimant at the emergency room, treatment received at CCOH, imaging performed at Synergy Radiology, and physical therapy at Tamera Physical Therapy, and any related medical treatment for the lower back is found to be reasonable and necessary. Additionally, claimant is found to be entitled to additional reasonable and necessary medical testing and treatment as recommended in regard to her lower back injuries.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has satisfied her burden of proof by a preponderance of the credible evidence that her lower back injury is a compensable work related injury and that the treatment she received at the Van Buren Emergency Room, CCOH, Synergy Radiology, and physical therapy, and any related treatment for her lower back is found to be reasonable and necessary. Additionally, the claimant is found to be entitled to the recommended further testing and treatment of her compensable lower back injury. Claimant and her attorney are also entitled to the appropriate legal fees as spelled out in A.C.A. §11-9-715. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge