

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H404336**

NANCY VALENCIA, Employee	CLAIMANT
WASHINGTON REGIONAL MEDICAL CENTER, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

**OPINION FILED FEBRUARY 10, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On November 12, 2024, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 16, 2024, and a Pre-hearing Order was filed on September 17, 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 June 21, 2024.
3. The respondents have controverted the claim in its entirety.

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

1. Whether Claimant sustained a compensable injury to her low back on or about June 21, 2024.

2. Whether Claimant is entitled to medical treatment for her compensable low back injury.

3. Whether Claimant is entitled to temporary total disability benefits from June 22, 2024, to October 1, 2024. Other temporary total disability periods are reserved.

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

5. Respondents raise lack of notice as a defense in that June 24, 2024, was the first notice of the alleged work-related injury sustained on or about June 21, 2024.

6. The claimant’s weekly compensation rates.

The claimant's contentions are as follows:

“Claimant contends she is entitled to medical treatment, and to TTD from 6/22/2024 to date yet to be determined, for her compensable back injury. Claimant reserves all other issues.”

The respondents’ contentions are as follows:

“Respondents contend that Claimant did not sustain a compensable injury to her lower back on 6/21/24 or at any other time while working for Respondent/Employer. Claimant did not sustain an injury in the course and scope of her employment, and she has preexisting issues with regard to her lower back. Respondents contend that there was no notice of the alleged injury given until 6/24/24.”

The claimant in this matter is a 43-year-old female who alleges to have sustained a compensable low back injury on or about June 21, 2024. The claimant was employed by the respondent at that time as a CNA working with elderly adults. On direct examination the claimant gave testimony about how the alleged injury occurred.

Q Okay. So what happened on June 21<sup>st</sup> of 2024?

A I was at work since 8:00 in the morning. I was hurting – prior to that I had some pain, but that day I did my normal work during the morning. Then we got this patient, Mr. Parker, who

came in and I was assigned to help him change his brief. He was – because he is no longer alive. He passed away. He was wheelchair bound completely, so we had to use a Hoyer to help him.

But that day his wife did not put the sling under him, so we had to improvise. We had to transfer him manually. So it took three of us to help him. We took him to a quiet room, which we had a bed in there to change the patients, and we transfer him. I was in the front; my coworker CNA, she was in the back; and the PT occupational therapist was on the left of him helping. And we tried to transfer him. When we lift, we transfer him to the bed. I immediately felt something broke in my back.

Q And what other symptoms did you have besides the feeling in your back?

A Radiating pain from my back all the way down to my leg. Tingling, numbness.

Q Which leg was it?

A Right leg.

Q And how far did the pain go down?

A All the way to my toes.

The claimant testified that she informed a coworker named “Patrice” at the moment of her alleged injury. The claimant completed her work with the patient and was then assigned to work at the front desk and did so for the remainder of her workday. Front desk work was not in the claimant’s normal course of work duties but the employee who does that work was absent that day. During cross examination the claimant admitted that she was not working the front desk because of her injury, but instead it was simply her turn to do so. The claimant testified on cross examination about not reporting her alleged injury on June 21, 2024, as follows:

Q I asked you what you are supposed to do if you had an injury and you said you guessed you would need to report it to your immediate supervisor; is that correct?

A That is correct.

Q So on that day it would have been Lucy or Jason?

A That is correct.

Q But you did not do that that day; did you?

A I did not.

Q Why not?

A I was hoping that I was going to feel better. I was hoping that I will go home, take something for the pain, and the next day I was going to be okay.

Q And you already had pain medication at home?

A No. I had some Tylenol. They didn't give me – when I went to the doctor that day, they gave me some – the prior week before, they gave me some prednisone, so I finished that prednisone. I don't remember if they gave me pain meds. I don't believe so.

Q So you are saying that when you went to Mercy Urgent Care is when you got medication?

A The prednisone.

Q Prior to June 21<sup>st</sup>, though?

A Yes. Before.

Late in the night on June 21, 2024, the claimant sought medical care at Northwest Medical Center, Bentonville, emergency department. Following is a portion of that medical record:

Basic Information

Time seen: Date & time 06/22/2024 00:50:00, Initial Time Seen  
Time Initially Seen: 06/22/2024 00:51 by GARIBALDI, BYRON  
T MD

History source: Patient

Arrival mode: Private vehicle, walking. Private vehicle

History limitation: None

Additional Information: Chief Complaint from Nursing Triage

Note: Chief Complaint

6/21/2024 22:22 CDT. Chief Complaint. Pt states she has had sciatic pain x 2 weeks and it got worse today. Pain is in rt lg.

#### History of Present Illness

The patient presents with lower extremity pain. The onset was 2 weeks ago. The course/duration of symptoms is constant. Type of injury: none. The character of symptoms is pain. The degree at present is moderate. The exacerbating factor is none. The relieving factor is none.

The patient presents with back pain and lumbar pain. The onset was 2 weeks ago and gradual. The course/duration of symptoms is constant. Type of injury: none. Location: Right lumbar sacral. Radiating pain: right lower extremity. To the right foot. Right buttock. The character of symptoms is sharp and achy. The degree at onset was moderate. The degree at present is moderate. There are exacerbating factors including movement and bending over. The relieving factor is none. Risk factors consist of none. Therapy today: see nurses notes. Associated symptoms: none. See na. Patient reports that she started having low back pain rating down to the right foot 2 weeks ago. She states she has been to Mercy Hospital twice for the same problem. She was placed on tramadol, Medrol Dosepak and cyclobenzaprine. She states none of these medications have helped. She continues having pain in the lower back rating down to her right foot. She states she went to work yesterday and seem to make the pain worse. Patient denies any fever or rash. She denies any abdominal pain. She denies any incontinence. She denies any other neurological changes. She denies any previous medical problems. She still has some cyclobenzaprine at home. She states she finished her Medrol Dosepak already.

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#### Impression and Plan

Diagnosis

Acute right sciatica; low back pain.

Plan

Condition: Stable.

Disposition: Discharged: Time 06/22/2024 01:02:00, to home.

Prescriptions: Prescriptions

Pharmacy:

Narcan 4 mg/0.1 mL nasal spray (Prescribe): 4 mg Nasal, Once use as directed; may repeat every 2 to 3 minutes until patient responds, 2 EA, 1 Refill(s)

Indomethacin 25 mg oral capsule (Prescribe): 1-2 cap(s), Oral, TID, PRN PAIN, TAKE with food or milk, 15 cap(s), 1 Refill(s).

oxycodone 5 mg oral tablet (Prescribe): See instructions, ½ tab(s) Oral q6H SEVERE PAIN, PRN, for pain, 20 tab(s), 0 Refill(s).

Limitations: No work for 5 days.

Follow up with: CHRISTOPHER HARDIN Within 1 to 2 days; SCOTT MUSICK Within 2 to 4 days. Call for follow up appointment.

Counseled: Patient, Family, Regarding diagnosis, Regarding diagnostic results, Regarding treatment plan, Regarding prescription, Patient indicated understanding of instructions.

Orders: ADT Order

Admit/Transfer/Discharge:

Discharge patient (Order): 6/22/2024 01:10, CDT, to Home/Self Care.

On June 23, 2024, the claimant returned to Northwest Medical Center, Bentonville, emergency department. Following is a portion of that medical record:

Additional information: Chief Complaint from Nursing Triage

Note: Chief Complaint

6/23/2024 00:23 CDT. Chief Complaint: right sciatic pain seen here last night for same, also seen at Mercy 3 times.

History of Present Illness

Patient is a 43-year-old female who presents with right sciatic pain. Patient was seen here last evening for the same and also has been seen at Mercy Urgent Care several times over the last 2 weeks. She describes constant, aching, severe pain radiating down her right lower extremity. She notes some numbness and tingling to her right lower extremity. She denies loss of bowel or bladder control. Pain is worse with walking. She has not been to see her primary care physician during the several weeks. Patient notes a similar episode about 4 years prior which resolved spontaneously.

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Differential Diagnosis: Back pain, lumbar strain, disc herniation, sciatica, spinal stenosis.

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Reexamination/Reevaluation

Patient was treated with IM pain medication and given another Decadron shot IM. She noted some relief from her pain. I explained to the patient she needs to go see her primary care physician who will decide upon MRI versus physical therapy. She may need a recommendation to the pain clinic. At this time there is no evidence of impending neurologic compromise.

Impression and Plan

Diagnosis

Right sciatica

Plan

Condition: Improved.

Disposition: Discharged: to home.

The claimant was seen at Advanced Orthopedic on June 24, 2024. The medical visit represents the first time the claimant's medical records make any mention of a work-related injury.

Note:

HPI:

Pain started 3 weeks ago the significantly worse with acute RIGHT L5 radio after lifting patient at work.

Seen in wheelchair due to severe pain today.

Initially managed with prednisone (no relief).

ER visit 1 week later, prescribed tramadol (no relief).

Unable to put pressure on leg, feels like needles in foot.

Numbness and weakness RIGHT L5 pattern.

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Chief Complaint: back pain

HPI: This is a 43 year old female who is being seen for evaluation of back pain. Onset or Duration: 6/5/2024. The patient reports back and leg symptoms of equal intensity. Symptoms began after ambulating a patient at work. At their worst, symptoms are rated as 10 out of 10. Symptoms include numbness or tingling and pain, and in the right leg. Symptoms are aggravated by all activities. Symptoms improved with: prescription pain medication, steroid injection, and 6/21/2024. She has had no diagnostic studies.

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Impression/Plan:

1. Lumbar Radiculopathy

Radiculopathy, lumbar region (M54.15)

Associated diagnoses: Low Back Pain and Intervertebral Disc Degeneration, Lumbar

Plan: Counseling – Sciatica

Musculoskeletal Care: Most patients get better with conservative care and no surgery. NSAIDS, hot or cold therapy, physical therapy, and spine injections are typically recommended. Surgical intervention is reserved for patients that fail conservative treatment. The surgery entails decompression and possible removal of some bone from around the spinal canal. Most patients are able to resume a normal, active lifestyle after appropriate treatment for sciatica.

Expectations: Sciatica is a condition where the sciatic nerve is irritated. It is a nerve that travels from the lower part of your spine to your feet. Patients typically feel cramps, pins and needles, or shooting pains in their legs. An increase in intrathoracic pressure from coughing or sneezing may aggravate the nerve further. A herniated disc caused by degeneration of the spine is a common cause of this condition. In addition to the pain, there may be weakness or loss of bowel or bladder control. While sciatica is a very common condition, a minority of people actually experience symptoms for longer than 6 weeks.

Contact Office if pain worsens. If numbness and tingling become more severe, or if you notice any change in your bowel or bladder control. Patient has failed healthcare provider directed conservative care (PT, medications) for over 6 weeks without significant change in pain and symptoms.

The claimant was also ordered an MRI of the lumbar spine at that time. It is the same day, June 24, 2024, as the claimant's first mention of a work-related injury to her medical providers that she first reports a work-related injury to her employer. A document found at Claimant's Exhibit 2, pages 3-4, records her reporting of the incident and injury she alleges to have occurred on June 21, 2024. I note the claimant's testimony indicates that she did not report the injury to a respondent supervisor until June 25, 2024, but the documentation indicates it was done on June 24, 2024.



On June 26, 2024, the claimant underwent an MRI of the lumbar spine without contrast at Northwest Health Physicians Specialty Hospital. Following is a portion of that diagnostic report:

**IMPRESSION:**

Prominent right foraminal disc extrusion at L5-S1 causing severe right foraminal stenosis.

On July 1, 2024, the claimant was seen by Dr. Larry Armstrong, a neurosurgeon.

Following is a portion of that medical record:

**History of Present Illness**

**Lumbar Spine Intake (Brief):** the patient is being seen for an initial lumbar spine evaluation and is referred by a physiatrist and Dr. Kent Hagen referred this 43-year-old female who is a Washington Regional employed as a CNA who was lifting a patient last week and had a severe onset of pain in her back, gluteal area with paresthesias down the right leg. By that evening the pain was intolerable. She has actually been to the ER 2 times and has seen Dr. Hagen in consultation for the severity for pain as well as the weakness in his right leg. She is unable to dorsiflex the right foot has footdrop on the right side and can not walk without assistance. She is in a wheelchair for evaluation today. Her pain and weakness the most bothersome things for her as well as severe paresthesias in the right L5 distribution. Her pain follows L5 classically and the big toe was completely numb with painful dysesthesias. She is unable to dorsiflex the right foot. She cannot walk again without assistance. Her lumbar spine MRI scan reveals intra foraminal disc herniation L5-S1 with severe compression of the exiting L6 nerve root on the right side with severe foraminal stenosis creating severe L5 nerve root compression. There is some disc space collapse at L5-S1. The indication for this visit is low back pain, herniated lumbar disc, lumbar degenerative disc disease, sciatica and spinal stenosis, back pain, buttock pain, lower extremity pain, back stiffness, weakness, numbness, paresthesia, no bladder dysfunction, no bowel dysfunction, depressed mood, sleeping problems and difficulty concentrating. The patient is currently experiencing symptoms.

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**Assessment**

1. Depression (311) (F32A)
2. Endometriosis (617.9) (N80.9)
3. Fibromyalgia (729.1) (M79.7)

4. Prolactinoma (227.3) (D35.2)
5. Herniated nucleus pulposus, L5-S1, right (722.0) M51.27)
6. Lumbar radiculopathy (724.4) (M54.16)
7. Nural foraminal stenosis of lumbar spine (724.02) (M46.061)
8. Right foot drop (736.79) (M21.371)
9. Low back pain (724.2) (M54.50)

Plan

1. Posterior Lumbar Lateral Fusion w/Instrumentation; Status: Complete. Done: 28 June 2024.
2. Start: oxycodone HCI; 5 MG Oral Tablet; TAKE 1 TO 2 TABLETS EVERY 4 HOURS AS NEEDED FOR PAIN.
3. XR Spine Lumbosacral 2 Or 3 Views; Status: Hold for – Manual Activation; Exact Date: Requested for: Before next appointment.

On that same day, Dr. Armstrong performed surgical intervention on the claimant's lumbar spine. Following is a portion of that operative report:

Procedure: TLIF L5-S1 utilizing Zimmer 10x22 mm interbody expandable cage filled with allograft between L5 and S1. Zimmer 5.5 x 40 mm screws in L5 and 6.5 x 40 mm in S1 bilaterally, rods, crosslink, lumbar decompressive laminectomy with full right-sided facetectomy L5-S1 excision of large intra and extraforaminal disc herniation L5-S1 on the right, posterior spinal fusion L5-S1 utilizing autograft and allograft, C-arm fluoroscopic guidance 1g vancomycin powder, drain, SSEP.

The claimant was asked on direct examination about prior lumbar spine difficulties as follows:

Q Okay. And before this accident on June 21<sup>st</sup>, had you ever contemplated or thought about having back surgery?

A Never. I never thought that I was going to be going through something like this.

Q So prior to this accident on June 21<sup>st</sup> of this year, had you had back problems?

A I have back problems, yes. Also shoulder problems and hips. I have fibromyalgia, so, yes, I have pain.

Q And had you always been able to work with that?

A Yes.

Q It looks like from some of the evidence that has been introduced that a week or two before this accident happened you had to leave work early one day. Do you recall that?

A I did, yes.

Q And why did you need to leave?

A Like I said, I was having pain, sciatic pain those two weeks prior, so I wanted to go and see the doctor.

Q And did you return to work the next day?

A Yes, I did.

Q And were you able to continue working?

A Yes, I was able to continue working. I was actually feeling relief with – when I went that day, I was prescribed some prednisone and I was taking Tylenol, pain meds, and I was –

Q So prior to the day of this accident, had you been able to continue to work?

A Yes.

Q Okay. Now, when you would have the issues with the fibromyalgia, the shoulder, the knee or the back, did you see a chiropractor?

A I have, yes.

Q Okay. And would you only see the chiropractor when you were having pain?

A Not necessarily. I like going to the chiropractor for general wellness, also. For pain, yes, it helps me a lot.

Q And you had had a couple of car accidents. Is that true?

A Yes. I have had car accidents.

Q Okay. And after those car accidents, had you ever experienced symptoms like you did when this incident occurred on June 21<sup>st</sup>?

A Never.

Q Were you able to continue working through those times?

A Yes, I was able to continue working. The chiropractor was my treatment after the car accidents.

Q Okay. Do you recall ever having – when you would have leg pain prior to this accident, do you ever recall it going all the way to your toes?

A No. Never.

Q How far would it go down?

A Just sciatic pain down behind my leg, but never numbness or tingling all the way to my toes.

Q At what part of your leg would it stop?

A Probably in the back part of my – how do you call this (indicating).

Q Calf?

A Yes.

The claimant's testimony regarding lumbar spine difficulties affecting her right leg only to her calf but never to her toes is directly contrary to the medical evidence submitted into the record. In fact, the claimant had been seen at Mercy GoHealth Urgent Care on June 9, 2024, twelve days prior to her allegations of suffering a compensable low back injury on June 21, 2024. The medical report from that visit states:

Back Exam:

Symmetric hip hight, normal curvature. NO CVA tenderness. Pain is reproducible with palpation over the right sciatic nerve root. Pain radiates down the posterior right leg. Pain is exacerbated by

walking – standing does not cause increased pain. Reports transient numbness and tingling in the toes of the right foot.

The report also states, “Reports she has been applying ice and been taking ibuprofen without improvement. She has had this before and requires a steroid for resolution. Is having difficulty sleeping at night due to the pain. Has missed some work due to pain also.” The claimant was prescribed prednisone during that visit.

Medical records introduced by the respondent certainly show the claimant to have had long-standing, chronic lumbar spine difficulties. A July 7, 2017, record from MANA Fayetteville Diagnostic Clinic discusses the claimant’s chronic low back pain but does note “no radiation.” A Washington Regional emergency department record dated September 18, 2020, states:

**Chief Complaint**

Co right sided low back pain, saw back doctor “only gave my meloxicam...not helping” pain ongoing for months, this week “constant pain.” Denies known injury or urinary issues.

**History of Present Illness**

Chief complaint: Back pain.

Historian: History provided by patient. Patient is a 39-year-old female in today for evaluation of back pain. Patient states she has a history of sciatica as well as fibromyalgia is states for last month she has had constant pain. She has seen and evaluated by her orthopedic surgeon who is a back specialist inserted meloxicam as well as started physical therapy 2 days ago. She states physical therapy she has had difficulty with the pain. She has had no fever or shills. Denies nausea vomiting. Denies any loss of bowel or bladder and denies any unilateral pain or weakness. Movement makes his symptoms worse and nothing seems to make better. Patient is a nondiabetic.

Mechanism of injury: No injury.

Location: Right back.

The claimant was examined on April 6, 2021, at Fir Chiropractic as a result of an April 1, 2021, motor vehicle accident. The medical records show complaints of cervical pain and

lumbosacral pain/spasms. The claimant treated with Fir Chiropractic more than ten times between April 6, 2021, and June 4, 2021.

On June 16, 2021, the claimant was again seen at Fir Chiropractic as a result of another motor vehicle accident that occurred on June 9, 2021. The claimant complained of cervical and lower lumbar pain. The claimant treated at least ten times with Fir Chiropractic between August 16, 2021, and September 14, 2021.

The claimant, for a third time, began to treat with Fir Chiropractic on March 27, 2023, for a motor vehicle accident that occurred on March 23, 2023. The claimant complained of lower lumbar pain and right lumbosacral pain/spasms. The claimant received treatment at Fir Chiropractic at least 22 times between March 27, 2023, and July 7, 2023.

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 without question that the claimant does have objective findings of derangement in her lumbar spine. Both the June 26, 2024, MRI results and Dr. Armstrong's July 1, 2024, operative report bear that issue out. However, in review of the evidence in its totality, I do not believe that the claimant's current condition is the result of any event or incident that occurred on or about June 21, 2024, while performing employment services for the respondent.

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, who clearly has long-standing, chronic back problems, did not report the incident when or shortly after it occurred, even though she had the opportunity to do so as she remained at work the rest of that day. The claimant then reports late that same night to the emergency department for sciatic pain and reported an onset of that pain two weeks prior and denied any injury. The claimant then returns the next day to the emergency department and still fails to report any injury as the source of her problems, much less a work injury. Instead, she states:

Patient is a 43-year-old female who presents with right sciatic pain. Patient was seen here last evening for the same and also has been seen at Mercy Urgent Care several times over the last 2 weeks.

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She has not been to see her primary care physician during the several weeks. Patient notes a similar episode about 4 years prior which resolved spontaneously.

On June 24, 2024, the claimant does mention a work lifting incident but says the pain started three weeks ago.

The claimant's testimony regarding her history of "back problems" is concerning. The claimant does admit prior back problems which she certainly had but downplays the seriousness of her condition prior to her alleged June 21, 2024, injury. Specifically, the claimant denies any history of her back pain causing her difficulties that radiate to her toes, testifying on direct examination that she did have sciatic pain but that would only go to her calf. However, just twelve days prior to her allegations of a compensable back injury, which causes radiation down her right leg and to her toes, the claimant reported to Mercy Urgent with back pain with

“transient numbness and tingling in the toes of the right foot.” The claimant is unable to prove that she sustained a compensable low back injury on or about June 21, 2024. The claimant’s current condition appears to be a continuation of her long-standing, chronic low back difficulties and not the result of any work-related incident on or about June 21, 2024, as the claimant is unable to prove that that incident occurred.

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 witness and to observe her 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 September 16, 2024, and contained in a Pre-hearing Order filed September 17, 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 low back on or about June 21, 2024.
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment.
4. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits.
5. The claimant has failed to prove by a preponderance of the evidence that her attorney is entitled to an attorney’s fee in this matter.
6. The respondent’s lack of notice defense is moot.
7. The issue of the claimant’s weekly compensation rates is moot.



**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**