

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H404478**

MARILYNN G. VANDEVER, EMPLOYEE	CLAIMANT
HOMEBOUND MEDICAL, EMPLOYER	RESPONDENT
SUMMIT CONSULTING LLC, CARRIER/TPA	RESPONDENT

OPINION FILED **JUNE 20, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

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

Respondents represented by ZACHARY F. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 15, 2025, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 24, 2025, before Judge Kennedy, and a pre-hearing order was filed on that same date. After the entry of that order, this matter was transferred to the Springdale Division of the Arkansas Workers' Compensation Commission and assigned to this judge. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 employee/employer/carrier relationship existed on or about June 12, 2024.
- 3 The parties will be required to stipulate to the applicable TTD/PPD rates or submitting briefs relative to any conflicting contentions concerning the average weekly wage, seven days prior to the hearing.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing

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were limited to the following:

- 1 Compensability of an injury to the low back.
- 2 Medical treatment in regard to the low back injury.
- 3 Temporary total disability benefits from June 12, 2024, to a date to be determined.
- 4 Attorney's fees
- 5 All other issues are reserved.

At the hearing, claimant announced she wished to reserve issues #3 and 4, and the matter was tried on the issues of whether claimant suffered a compensable injury to her low back and if so, if she was entitled to medical treatment for that injury.

As modified, the claimant contends that "She injured her low back while working and is entitled to medical treatment. The claimant reserves all other issues."

As modified, the respondents contend that "This claim is denied. There are no objective findings to substantiate the alleged injury. The claimant was not injured at work."

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant 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 a pre-hearing conference conducted on February 24, 2025, and contained in a pre-hearing order filed on that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable low back injury on June 13, 2024.

HEARING TESTIMONY

Claimant was the only witness to testify. She stated that on June 12, 2024, she worked for respondent Homebound Medical as a private duty nurse taking care of a 5-year-old girl. The client weighed between fifty and fifty-five pounds, and required total care which included dressing her, giving her a bath in the bed, taking her from the bed to put her in her chair, and then administering respiratory treatments. Claimant's shift was ordinarily from 9:00 a.m. to 7:00 p.m. She testified that on June 12, 2024, she twisted her upper torso while getting the child out of bed and had a sharp pain in her lower back and buttocks. After resting for a few moments, she got the client into the chair and did the necessary breathing treatments. That night claimant sent an e-mail to her employer, not to make a workers' compensation report but to have the matter on record if she did not get better. The few days after the alleged incident, claimant said she was getting progressively worse and at some point, asked respondent Homebound Medical to send her to a doctor. She believes that happened within two to four days after the incident she described. She related a conversation that she had with a supervisor identified only as Gayla in which claimant requested to see a doctor and was asked what pain medications she was taking. When claimant said that she took Hydrocodone to treat fibromyalgia and osteoporosis. Claimant testified that Gayla said, "If you want to file, go ahead and file, but I am going to turn you into the board of nursing if you do for taking drugs." Claimant stated that respondent Homebound Medical knew that she had this prescription when she was hired, but upon hearing this, claimant said she panicked and told Gayla to forget it and did not file a workers' compensation claim. Claimant denied taking Hydrocodone during the day while she was working as a nurse.

Claimant said she sought legal services when she was not improving. She did not use her personal insurance because she did not think it was legal to use that on a workers' compensation case.

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Once the claim was filed, the respondent's carrier sent claimant to MedExpress for an evaluation. However, when claimant was referred to an orthopedic doctor, she said the carrier told her to go for such a visit, but she could not get in. She eventually went to the West Washington County Clinic where she received an MRI on her back and neck as well as some physical therapy. Dr. Brent Weilert administered an injection in the SI joint. She said that she received some relief from that treatment as well as physical therapy but as of the hearing, she testified that she has to be careful and limit her activities. She still has an occasional pain in her buttocks and does not believe that she could do the lifting that was required to perform her duties as a nurse. Claimant testified that she had not been able to go back to work, although at one point it was discussed with Gayla that she could review charts from home.

Claimant said that prior to the incident she described, she had not had any low back pain like what she is now suffering. It differed from the fibromyalgia in that the pain following the lifting incident was like an electrical shock pain stemming from her back to her knee on her left side. She testified that she took hydrocodone at night as well as during the night or early morning hours if she woke up and needed it. If she stayed busy, her muscles did not hurt as much as when she was idle.

Claimant concluded her direct testimony by referring to an e-mail (Cl. NMX 1), in which she asked for a lift to get the child out of bed.

On cross-examination, respondent pointed out that claimant listed fifty-three active medical problems for which she was treating before this incident. Among other conditions, claimant had been treated for anxiety, arthralgias of both hands, osteoarthritis, bursitis in her hips, leg cramps, and fibromyalgia before June 12, 2024. She said that the treatment for cervical radiculopathy and chronic low back pain began after the lifting incident¹. Claimant said prior to June 12, 2024, she had been

¹ As set forth in the issues to be tried, claimant did not seek any benefits for a cervical injury in this hearing.

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treated by her rheumatologist for right hip and left hip.

Regarding reporting the injury, claimant acknowledged that she sent an e-mail on the night of June 12, 2024, at which time she thought that she had more than a strained muscle. She was provided workers' compensation paperwork on the morning of June 13, 2024, to begin a workers' compensation claim. However, she e-mailed the respondent Homebound Medical to state that she did not want to file a workers' compensation claim. Claimant testified:

“I thought I just had a strained muscle, and I think that is what I sent is, ‘I talked to Gayla. I don’t want to file’ that was after Gayla threatened the board of nursing. ‘I don’t want to file now. Just talked to Gayla.’ She coerced me and threatened me not to file a workers’ compensation claim so I didn’t.”
(TR.25)

Claimant was read a portion of the e-mail she sent to Gayla:

“I sent an injury report this morning and I think it was misunderstood. I got a message from workers’ comp, and I was surprised, as I didn’t mean I wanted to file a claim. I appreciate the concern, but I’m sure I have just pulled a muscle. I don’t want to file a claim. I just needed to let you all know I couldn’t work today and why. Please retract the report to summit because I don’t need medical attention. I’m off until next Friday, so between now and then I’m sure I’ll be back to normal period I’m sorry for the misunderstanding.”
(Cl. NMX. 6)

She was then asked:

Question (By Mr. Ryburn) But are you saying this e-mail was done under threat or coercion; is that correct?

Answer (By claimant) No sir that’s not what I said.

Q. Okay so you meant to retract your claim and not make a claim on June 13, 2024.

A. Yes because that was – I was just filing a report of injury. I wanted it on record in case I didn’t get better. It’s to cover me and to cover them.

Claimant said on June 21, 2024, that she was offered a night shift job in a different home but

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could not take that because she has to care for her husband at night. On July 9, claimant sent a text message stating that she could not come back to work because of her injury that read as follows:

“I am sorry I haven’t contacted you both. I am not able to stand very long, nor can I get up without help at times. I am some better, though. I am trying to recover on my own. This is just hard to do. I have had more improvement this week than any other week since my injury.”

Claimant explained that when she was offered a night job, she reminded her employer that when she was hired, she was not available for such work.

Claimant acknowledged that she received treatment for pain in her left and right hip on February 21, 2024. Claimant was first referred to an orthopedic doctor for low back pain, left hip pain, bilateral left butt/hip pain. The orthopedic doctor’s office told her that she needed to go to a neurologist. She had an x-ray on her hips and lower back which showed mild degenerative disc disease of the lumbar spine with no acute findings. Claimant testified that she had an MRI on December 30, 2024, and understood that the findings were that there were no acute paraspinal abnormalities seen. Claimant said that she believed Dr. Brent Weilert made an objective medical finding as to her injury on June 12, 2024, because he would not have injected her as he did if she didn’t have something wrong with her back.

Claimant was asked about a discrepancy in her initial evaluation at Star Physical Therapy on January 2, 2025, which listed the date the condition began as June 6, 2024, and stated that it was not a work-related injury. Regarding Claimant’s Medical Exhibit pages 32 and 33, claimant had the following exchange with the Court:

Question. (The Court) She definitely says on page 32 that she was lifting and transferring a patient, but on 33 it says the condition began six days earlier and wasn’t a work-related injury and she said no, according to this, so I would like to hear her explanation.

Answer. (By claimant) You are asking about is this is a work-related injury, and

I said no. I did say that, but I was using my private insurance, and I didn't want to get in trouble. Because they wouldn't help me, I had to use my private insurance and I wanted it to keep going because it was helping, so I lied. I said, "No, it's not work-related," but he knows it is.

The Court. You have answered the question. I just wanted to make sure that whoever entered this did not enter it wrong and you are telling me that they did not because it is what you said.

A. Yes. I am not going to lie about it.

Respondent resumed its cross-examination:

Question. (By Mr. Ryburn) So you have no problem in your words, lying to make an insurance company pay for an injury based on a lie; is that correct?

Answer. (By claimant) Listen. I was miserable. My company wouldn't help me get any help. I needed to get some therapy. I have been a nurse for thirty-seven years. Therapy would have made me well and it is working. So, yes, I lied to keep myself out of trouble because you can't use your private insurance, I thought. So, I am sorry I did that, but I do have a problem with lying. It is eating me up.

Q. Would you lie to obtain workers' compensation benefits?

A. No. Never.

Q. You retracted your injury. When you first reported it, you retracted it fearing for, I guess your license. And then you were going to take off work because of your husband's condition. And then you came back saying now yes, I do have an injury. Are you manipulating the facts to make it fall within workers' compensation?

A. No. I explained about the thing about my husband's injury. I used it in a reminder that I can't work nights, and they wouldn't leave it alone. So, I didn't mention anything about not having an injury there. They wanted to send me to another home to another client that doesn't need anything, just sit there for six hours a night. That is bull because why are they on the service if they don't need help? He was a trachea patient, a little boy. So, I told them when I went to work there that I wasn't working nights. And I retracted the claim because I am not going to be yelled at and abused and coerced and threatened over an injury that – my license means a lot to me. It's thirty-seven years of exemplary service.

Claimant said she had finished her course of physical therapy and on the day that she was

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discharged, said she was doing pretty good; as of the day of the hearing, she said that she was not the same, but she used her back brace when she worked.

When asked about a conversation with the owner of the company, the following exchange took place:

Question (By Mr. Ryburn) You talked about threatening to report a drug report to the nursing board, is that correct?

A. (By claimant) Yes sir.

Q. The e-mails you submitted into the record do not reflect this conversation at all. Is that your understanding as well?

A. Well, it was a telephone conversation.

Q. I am saying that they don't reflect the conversation occurred. In fact, they seem to be trying to hire you back. Is that what happened?

A. They were going to put me in a different placement but then they dropped me. I didn't drop them. They dropped me.

Q. When you say dropped, you mean like didn't schedule you?

A. Right, I haven't heard from them since, like I said, that day they were going to set me up in my home to do medical record review until I could get back to work.

Claimant understood that she worked in a field that was in high demand but did not think that anyone would hire her until she received a full release. She conceded she had not attempted to return to work, even at a desk, because she did not have a doctor's release. When asked who or which doctor had taken her off work, claimant simply said that she could not work and is not sure that she could work now.

On redirect-examination, claimant stated that the date of the injury on the physical therapy intake form that said June 6, was incorrect. She had not had the symptoms of muscle spasms in her back and buttocks or stool leakage prior to June 12, 2024. There was then this exchange between

claimant and her attorney:

Question. (By Ms. Brooks) Earlier Mr. Ryburn was asking you about these e-mails. On June 12, you emailed. On June 13, you e-mailed saying I don't want to file a formal claim. At what point did you have the conversation with Gayla about her threatening to turn you into the license board?

A. I think it was between the 12TH and the 13TH. It could have been the morning of the 13TH or whenever because I remember telling them to talk to Gayla. "You need to talk to Gayla. I am not going to file a claim."

Claimant said that about a week or so after her initial report, she called Gayla and told her she thought she needed to go to a doctor and Gayla said "no."

The Court then questioned claimant to establish the timeline of the events of June 12 and 13, 2024. This exchange will be set forth in the adjudication section of this opinion.

REVIEW OF THE EXHIBITS

Claimant submitted eighty-seven pages of medical records, including thirteen pages of records predating her alleged date of injury, June 12, 2024. The progress notes from February 21, 2024, of Dr. Song Zang recorded that claimant had bilateral hip pain which was consistent with hip bursitis. She was given steroid injections in each hip.

Consistent with claimant's testimony, she did not seek medical treatment for her alleged injury until September 12, 2024, when she saw APRN Donna Long at MedExpress. APRN Long diagnosed claimant with lower back pain and left hip pain with radiculopathy. She ordered x-rays which showed "No focal area of soft tissue swelling is appreciable. No acute fracture or subluxation is evident on provided views. There are no advanced degenerative changes are evident. No radial dense foreign bodies are identified." The impression was: "No acute osseous abnormality." APRN Long referred claimant to an orthopedic surgeon.

Although there was not a contemporaneous medical record with claimant's visit to

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Washington Regional Medical Center on November 7, 2024, claimant was again x-rayed at the request of Dr. Jennifer Cheatham. The findings were, "Two view lumbar spine demonstrates mild degenerative disk disease. Atherosclerotic calcification of the abdominal aorta. Mild facet joint arthropathy of the lower lumbar spine. No compression fracture." The impression was, "Mild degenerative disc disease and facet joint arthropathy of the lumbar spine. No acute findings."

On December 19, 2024, claimant was seen at West Washington County Clinic in Lincoln, Arkansas where she presented with a history of illness of low back pain with radiculopathy into her lower left extremity which began on June 12, 2024, when she was lifting a patient. Claimant related that the pain radiated into her left buttock and down the posterior thigh but did not radiate past her knee. The examination of claimant's lumbar/sacral spine demonstrated tenderness at the left sciatic notch but not the lumbar spine, the left paraspinal, the right paraspinal, or the right sciatic notch. The SLR test and the Faber test was both positive on the left side. The assessment was that claimant had low back pain radiating into her lower left extremity and sacroiliac joint pain. The plan was for claimant to begin a course of physical therapy and have an MRI on her spine. Claimant was treated that day by Physician's Assistant Kacy Enlow and the report was reviewed by Dr. Cheatham.

On December 30, 2024, claimant was seen at Washington Regional Medical Center for an MRI of her lumbar spine. The findings were as follows:

The vertebral bodies of the lumbar spine maintain normal height and alignment. No fracture seen. There is normal marrow signal. The conus medullaris terminates at L 1-2 and is normal in signal and morphology. There is no acute paraspinal abnormality seen.

At L 1-2, no abnormality.

At L2-3, mild loss of disc height and disc desiccation is seen. There is mild annular disc bulging. There is thickening of the ligamentum flavum. No significant neural foraminal narrowing or central canal stenosis.

At L3-4, disc desiccation is demonstrated with annular disc bulge. There is left foraminal disc fissuring. No central canal stenosis or neural foraminal

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narrowing. Mild bilateral facet osteoarthritis.

At L4-5, there is mild posterior disc bulge. There is mild thickening of ligamentum flavum and mild facet hypertrophy and osteoarthritis. There is no significant central canal stenosis seen. There is mild left neural foraminal narrowing.

At L5-S1, no disc herniation. No central canal stenosis or significant neural foraminal narrowing.

The impression was mild lumbar spondylosis without evidence of high-grade central canal stenosis or neuroforaminal narrowing.

Claimant began her physical therapy at STAR on January 2, 2025. As was brought out during her testimony, claimant gave the history of her current condition was “Picking up something heavy and she had to put it down quickly, so she twisted to put it on the counter.” However, in the subjective portion of the report, claimant stated that she was lifting and transferring a patient when she twisted her back, causing instant pain to her low back and left hip.

Claimant returned to the West Washington County Clinic on February 17, 2025. The examination of claimant’s lumbar/sacral spine shows, “A left SI joint TTP and compression. Extension was painful. Lateral left flexion was painful. Rotation to the left was painful. Special test positive hip thrust, faber.” Claimant was given a SI joint injection.

Claimant returned to see PT Wewers on February 28, 2025, and said that the injection provided a slight change. On March 14, 2025, claimant stated that she did not think there had been any improvement in the past week but there was improvement after the injection. On March 26, 2025, claimant reported that she had not had any glute pain since her last appointment of March 17, 2025, although she still had pain in her back at that visit. PT Britney Wewers discharged claimant on April 23, 2025; during that final visit, claimant stated that she was doing a lot better and denied any pain down in her glutes since February. PT Wewers stated in her assessment that “The patient’s discharge

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prognosis is good. Patient is improved a full ROM of the lumbar spine without limitations. She continues to report fatigue of her low back and at times and requires a back brace. Patient has met her goals at this time.”

Claimant submitted nine pages of non-medical evidence which consisted of e-mails dated from May 6, 2024, through June 24, 2024, and a text message of July 9, 2024. The relevant e-mails and texts will be discussed below in the Adjudication section of this Opinion.

ADJUDICATION

To prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in Ark. Code Ann. § 11-9-102(16) establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). I find claimant has failed to meet her burden of proof that the alleged injury caused harm that required medical services.

On direct examinations, claimant said she withdrew her claim for benefits because Gayla had threatened to report her to the nursing board for drug use. (T.10-11) During cross-examination, claimant then said she did not send the email to Gayla under threat or coercion (T.27) but then repeated that she had been coerced into not filing a claim, (T.42). Because I had heard contradictory statements from claimant on this critical issue, I requested that she clarify the sequence of events that occurred on June 12 and 13, 2024. From her testimony, I determined this was the timeline:

1. 10:11 p.m. June 12, an email was sent to Brook Buchanan an employee of respondent.

2. 10:24 a.m. June 13, claimant received a form from Rachel Miller that needed to be returned.
3. 11:55 a.m. June 13, claimant sent an e-mail to Gayla saying, "I sent an injury report this morning and I think I was misunderstood."
4. 11:57 a.m. claimant sent an e-mail to Rachel Miller that said "Please talk to Gayla. I am not, nor do I need to file a workers' compensation claim."
5. A few days after numbers 1-4, claimant had her telephone conversation with Gayla. (T.49-50)

I simply do not believe claimant was threatened with the loss of her nursing license by Gayla or anyone else associated with respondent Homebound Medical to get her to retract her claim. The sequence of the events of June 13, 2024, shows that claimant had sent an email after normal business hours on June 12, 2024, and the next morning, respondents acted appropriately in providing claimant the information she needed to begin her workers' compensation claim. Claimant's testimony was that after she declined to pursue the injury claim, Homebound Medical offered to send her to another job; no one raised an issue about claimant's medications. Claimant declined because it was an overnight position, but the fact remains that instead of trying to jeopardize her nursing license over drug use, respondents were willing to continue to use her services.

Because I have questions about claimant's veracity as to the circumstances around her alleged injury and her failure to complete the forms to report it, her testimony failed to persuade me that the injury for which she eventually sought treatment was more than the pulled muscle she related to her employer on June 13, 2024. The Arkansas Supreme Court in *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 447, 990 S.W.2d 522, 524 (1999) stated:

"The plethora of possible causes for work-related injuries includes many that can be established by common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be

necessary to establish that a particular injury resulted from a work-related incident but not in every case." (Emphasis added.)

Because of claimant's inconsistent statements and her delay in seeking medical treatment, a medical provider needed to opine that what was being treated was the probable result of the alleged injury of June 12, 2024, in order for her to establish the connection between her alleged work-related injury and the low back injury for which she was treated. I recognize the records contain numerous accounts from claimant as to how the injury took place, but none of the medical providers expressed an opinion that what claimant was being treated for was connected to that incident. Additionally, the radiographic evidence as set forth above is inclusive for the necessary objective finding of a compensable injury.

Based on the foregoing, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her lower back while working for respondent on June 12, 2024.

ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back on June 12, 2024. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$ 623.00.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE