Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, **ALLAN B. WEISS** IAS PART 2
Justice

JAMILA MEREDITH

Plaintiff

-against-

SOL WINDER and SONDRA WINDER

Defendants.

Index No: 18495/05

Motion Date: 2/14/07

Motion Cal. No: 14

Motion Seq. No: 1

The following papers numbered 1 to 9 read on this motion by defendants for summary judgment dismissing the complaint on the grounds that plaintiff has not sustained a serious injury within the meaning of Sections 5102 and 5104 of the Insurance Law.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits	1 - 4
Answering Affidavits-Exhibits.....	5 - 7
Replying Affidavits.....	8 - 9

Upon the foregoing papers it is ordered that this motion is granted and the complaint is dismissed.

Defendants have submitted competent medical evidence including the affirmation of his examining orthopedist and neurologist and the plaintiff's deposition testimony which establish, prima facie, that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident. (See, Gaddy v. Eyler, 79 NY2d 955 [1992]; Jackson v. New York City Tr. Auth., 273 AD2d 200 [2000]; Greene v. Miranda, 272 AD2d 441 [2000]). Thus, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact by submitting competent medical proof. (see, Gaddy v. Eyler, supra; Licari v. Elliott, 57 NY2d 230, 235 [1982]; Lopez v. Senatore, 65 NY2d 1017 [1985]). This the plaintiff failed to do.

In opposition, plaintiff submitted her affidavit, the affirmation of her treating physician, Dr. Reddy, and her

radiologist, Dr. Armstrong, who performed and read the plaintiff's cervical and lumbar MRIs. The plaintiff's evidence is insufficient to raise a question of fact as to whether the plaintiffs sustained a serious injury as a result of the subject accident on October 18, 2004.

Dr. Armstrong reported a left sided disc herniation at L5-S1 and only a loss of lordosis with no herniations or bulges in the cervical spine, however, he did not opine that any of the conditions are causally related to the accident.

Although Dr. Reddy quantified limitations in the range of motion of plaintiff's cervical spine he found at his September 23, 2006 examination, such findings appear to be based upon the plaintiff's subjective complaints of pain as there is no objective medical evidence of an injury or condition of the cervical spine to account for these limitations (Duldulao v. City of New York, 284 AD2d 296, 298 [2001]. With respect to plaintiff's lumbar spine, Dr. Reddy reports a limitation only in flexion and only a 5 degree limitation from the 90 degree normal range, which is not of a sufficient magnitude to qualify as a " significant" or "important limitation of use" (see, Kravtsov v. Wong, 11 AD3d 516 [2004]; Ibragimov v. Hutchins, 8 AD3d 235 [2004]; Arrowood v. Lowinger, 294 AD2d 315, 316 [2002]; Georgia v. Ramautar, 180 AD2d 713 [1992]). Insofar as Dr. Reddy opines that the subject accident severely exacerbated plaintiff's prior condition his opinion is merely speculation. , He failed to indicate that he is aware that the plaintiff was involved in another accident on July 5, 2005 (see Luckey v. Bauch, 17 AD3d 411 [2005]), and failed to set forth any objective medical basis for his opinion or to present medical evidence to establish that the subject accident aggravated the plaintiff's prior injuries so severely as to produce a statutory serious injury above and beyond the pre-existing conditions (see, Pommells v. Perez, 4 NY3d 566, 574 [2005]; Franchini v. Palmieri, 1 NY3d 536 [2003]; McNeil v. Dixon, 9 AD3d 481 [2004] Shinn v. Catanzaro, 1 AD3d 195, 198-199 [2003]; Franchini v. Palmieri, supra Lorthe v. Adeyeye, 306 AD2d 252 [2003].) His opinions and conclusions are tailored to meet the statutory requirements and, therefore, insufficient to defeat a motion for summary judgment (see Lopez v. Senatore, supra at 1019; Khan v. Hamid, 19 AD3d 460 [2005]; Paul v. Trerotola, 11 AD3d 441 [2004]; Candia v. Omonia Cab Corp .,6 AD3d 641 [2004]).

In view of the plaintiff's deposition testimony that she returned to work full time after seven weeks, without any change in her duties, her self-serving allegations that she can no longer perform her household chores is insufficient to raise a triable issue of fact as to whether she sustained a medically determined injury of a nonpermanent nature which prevented her

from performing substantially all of the material acts which constitute her usual and customary daily activities for 90 out of 180 days following the accident (see Grant v. Fofana, 10 AD3d 446 [2004]; Vita v. Enterprise Rent-A-Car, 8 AD3d 558 [2004]; Taylor v. Jerusalem Air, Inc., 280 AD2d 466 [2001]).

Dated: March 16, 2007
D# 30

.....
J.S.C.