

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E806526

SUSAN ASHCRAFT, EMPLOYEE	CLAIMANT
COMFORT INN, EMPLOYER	RESPONDENT
UNION STANDARD INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 18, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Mountain Home, Baxter County, Arkansas.

The claimant was represented by FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER FILED NOVEMBER 18, 2003

A hearing was held in this matter on August 20, 2003. A prehearing conference was conducted on March 11, 2003, and a prehearing order was filed on March 11, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. An employer/employee/carrier relationship existed on January 14, 1998.
2. The respondents have controverted this claim in its entirety.

During the prehearing conference, the parties also agreed that the

issues to be litigated at the hearing were limited to the following:

1. Whether the claimant sustained an injury arising out of and in the course of her employment.
2. Whether medical benefits remain unpaid which are the liability of the respondents.
3. The claimant's correct compensation rate.
4. Whether claimant sustained a compensable psychological injury.
5. Whether claimant is entitled to continuing medical treatment.
6. Whether claimant is entitled to temporary total disability compensation for the period extending from March 19, 1998, to a date yet to be determined.

At the outset of the hearing the claimant withdrew her claim for psychological treatment and, in addition, the parties stipulated that the claimant's average weekly wage is \$158.38. Therefore, the issue pertaining to the claimant's correct compensation rate was also withdrawn. It was further determined that the claimant is requesting reasonably necessary medical care, and not contending that any specific medical expenses remain unpaid.

From a review of the record as a whole, to include the testimony of the claimant, Andy Trivitt and Greg Shinn, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. I find that a preponderance of the evidence establishes that an incident occurred on January 14, 1998, which resulted in a temporary exacerbation of the claimant's pre-existing back condition.
4. I find that a preponderance of the evidence fails to establish that the condition for which the claimant sought medical treatment in March of 1998, and for which she now claims entitlements to benefits under the Arkansas Workers' Compensation law was causally related to the January 14, 1998 incident.
5. I find that the claimant failed to prove by a preponderance of the evidence that she is entitled to benefits under the Arkansas Workers' Compensation Law.
6. The respondents controverted this claim in its entirety.

DISCUSSION

The claimant was employed by the respondent employer as a housekeeper. According to her testimony she bent down to pick up some sheets on January 14, 1998, when she felt a snap in her back and experienced the onset of intense pain. She reported the incident and an accident report was completed by Greg Shinn. Mr. Shinn did acknowledge that the claimant did report an injury as described by the claimant on that date.

_____Despite the severity of the claim described by the claimant she did not seek medical treatment at that time and she continued to work at her regular duties until March 12, 1998, when she sought treatment at the emergency room. X-rays taken at that time did not reveal any abnormality other than narrowing of the disc innerspace in the lumbo sacral area and an acute lumbar spine was diagnosed. I note that the claimant did attribute her problems to her employment, although the emergency room record indicates that she reported hurting her back approximately one month prior to the March 12, 1999 incident. I also note that the claimant does not appear to be proficient at accurately reporting time periods. The claimant subsequently sought care from Dr. James Crooms, a general practitioner, who saw the claimant on March 19, 1998. His report also indicates that the claimant gave a history of injuring her back at work approximately two months ago. Dr. Croom also diagnosed a lumbar sprain. On April 20, 1998, a MRI was performed. This MRI revealed a “[v]ery focal midline intervertebral disc bulge, perhaps representing an old herniation.” Otherwise the MRI did not reveal any abnormalities other than intervertebral disc space narrowing and early desiccation of the L5-S1 Intraverbral disc. Dr. Peyton treated the claimant conservatively with medication and physical therapy, however, the claimant only appeared for one physical therapy session. According to her testimony

she did not take additional physical therapy because the respondents had denied the claim and she could not afford additional physical therapy.

On January 11, 1999, Dr. Jim Moore, a neurosurgeon, performed an independent medical evaluation at the request of the respondents. Based on his examination of the claimant and his review of the records, Dr. Moore rendered the following opinion:

“On the basis of my examination, I believe this patient’s problems are related to musculoligamentous sprain and strain in the right sacroiliac region. I do not believe she has any traumatically oriented intraspinal disease, nor is there any evidence that anything aggressive, such as a surgical recommendation, would be appropriate to recommend. The patient might benefit from a local block in the area of trigger, but this is not something that I would suggest in a prolonged manner. Current supportive program is though appropriate to continue.”

_____The medical records indicate that the claimant has a history of back problems dating back to at least 1993. On April 2, 1996, claimant sought treatment for low back pain and the medical reports indicate that she sought treatment for low back pain. She again sought treatment for low back pain on July 3, 1997 at the emergency room. Medical report indicates that the claimant was complaining that the pain radiated into her left hip and leg. A MRI was performed on July 15, 1997, and this MRI revealed an abnormal disc at L5-S1 with disc space narrowing and dehydration. The report also revealed small posterior spur formation with disc protrusion and probable small posterior central extrusion.

After being evaluated by Dr. Moore on January 19, 1999, the claimant did not seek medical treatment again until 2001 for complaints of back pain until December 8, 2001. However, the claimant and her husband testified that she has continued to experience significant pain, which has affected her ability to enjoy many of the activities that she enjoyed prior to the alleged January 14, 1998 injury. The claimant denied having any problems with her back prior to January 14, 1998 except for one occasion when she injured her back while working for a nursing home. However, she testified that the problems she experienced then were different from the problems she experienced subsequent to January 14, 1998. Although the claimant's employment with the respondent employment employer was terminated, she worked for a period of time at another motel. She testified that she was not able to continue her employment there and she subsequently worked at a Hardees Restaurant. In addition, she has also worked providing private housekeeping services.

Since the claimant contends that he sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. Consequently, to establish the compensability of the claim, the claimant must satisfy the requirement for establishing one of the five categories of compensable injuries recognized by the amended law, including the requirements common to all categories of injuries. See, Jerry D.

Reed v. Con Agra Frozen Foods, Full Workers' Compensation Commission, Opinion filed Feb. 2, 1995 (Claim No. E317744). Since the claimant in the present claim alleges that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997) are controlling, and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (Cumm. Supp. 1997); see also, Ark. Code Ann. § 11-9-401(a)(1) (Cumm. Supp. 1997));

- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997));

- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury (see, Ark. Code Ann. § 11-9-102(4)(D) (Cumm. Supp. 1997));

(4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. Reed, supra.

This Commission has a statutory duty to decide the issues before it by determining whether the party having the burden of proof on an issue has established it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c)(2) (1987); see, Gencorp Polymer Products v. Landers, 36 Ark. App. 190, 820 S.W.2d 475 (1991). In determining whether the party having the burden of proof on an issue has established it by a preponderance of the evidence, we must weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704(c)(4) (1987); Wade v. Mr. C. Cavanaugh's, 198 Ark. 363, 768 S.W.2d 521 (1989); Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 633 (1987). In this regard, the claimant has the burden of proving by a preponderance of the evidence

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that he sustained an injury arising out of and in the course of his employment. Bates v. Frost Logging Co., 38 Ark. App. 36, 827 S.W.2d 664 (1992). Consequently, the claimant must establish a causal relationship between the employment and the disabling injury. Lybrand v. Arkansas Oak Flooring Company, 266 Ark. 946, 588 S.W.2d 449 (1979); Bates, supra. The mere possibility that the claimant's employment caused or contributed to his condition is not sufficient to support an award of compensation. Instead, the greater weight of the credible evidence must establish that the disabling condition is causally related to the employment. Speculation and conjecture can never be substituted for credible evidence, no matter how plausible. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 151 (1980).

In the present claim I find that preponderance of the evidence establishes that an incident did occur on January 14, 1998, as described by the claimant, however, I find that this incident resulted in a temporary exacerbation of the claimant's pre-existing back condition. In addition, I find that the problems for which the claimant ultimately sought medical treatment in March of 1998, were not causally related to the January 14, 1998 incident and consequently not the liability of the respondents. In reaching this decisions I note that the claimant testified at the hearing that she had not experienced any prior back problems other than what she described as a

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relatively minor strain she experienced while working for a nursing home. However, that testimony is not consistent with the medical records which, as discussed above, indicate that the claimant had experienced problems with her back only six months prior to January 14, 1998, which were severe enough that an MRI was performed. Notably the results of the MRI that was performed in July of 1997, were essentially the same as the results of the MRI performed after January 14, 1998. In short, I find that a preponderance of the evidence establishes that an incident did occur on January 14, 1998, which resulted in a temporary exacerbation of the claimant's pre-existing back problems. However, the claimant was able to continue working and did not seek medical treatment until March of 1998. At that time she was unable to afford medical care and borrowed money from the respondent employer to pay for that medical treatment. Significantly, she did not inform her employer at that time that she felt her condition was work-related and should be paid under the Workers' Compensation Law. Furthermore, the preponderance of the evidence establishes that the claimant was experiencing problems in July of 1997, which are essentially the same as the problems that she continues to experience subsequent to January 14, 1998, including severe pain in her low back which radiated into her left extremity. Accordingly, I find that the claimant failed to prove by a preponderance of the evidence that she is

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entitled to benefits under the Arkansas Workers' Compensation Law.

ORDER

Accordingly, for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. C. MICHAEL WHITE
Administrative Law Judge