

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F212600

LISA BARR, Employee	CLAIMANT
C.L. SWANSON, Employer	RESPONDENT
CINCINNATI INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 25, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 3, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 12, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked 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 the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her back on November 6, 2001.
4. The respondents accepted and paid compensation benefits until March 2002.

At the time of the hearing the parties also agreed to stipulate that claimant earned an average weekly wage of \$247.00 which would entitle her to compensation at the rate of \$165.00 for temporary total disability benefits and \$154.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical and temporary total disability as a result of her compensable injury on November 6, 2001.

2. Attorney fee.

The claimant contends she is entitled to additional medical and temporary total disability benefits as a result of her compensable injury of November 6, 2001, as well as a controverted attorney fee.

The respondents contend the claimant is not entitled to any additional benefits as a result of her compensable injury of November 6, 2001.

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 May 12, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage which would entitle her to compensation at the rate of \$165.00 for temporary total disability benefits and \$154.00 for permanent partial disability benefits is also hereby accepted as fact.

3. The claimant has failed to prove by a preponderance of the evidence that her back problems subsequent to March 7, 2002 are causally related to her original compensable injury.

FACTUAL BACKGROUND

The claimant is a 33-year-old woman with a high school education. She worked for the respondent which provides food and drinks to various businesses. Claimant was assigned by the respondent to work at its food operation at the McKee Baking plant in Gentry.

On November 6, 2001, claimant was using a cart to move Cola-Cola products which had been delivered. As claimant was going down a slope in front of the product trying to keep it from running over her she felt a pop in her back.

The medical evidence indicates that claimant saw Dr. David Tucker on November 7, 2001. Dr. Tucker prescribed medications and exercise. Dr. Tucker also returned claimant to work with limitations of avoiding lifting, bending, and twisting. Dr. Tucker diagnosed claimant's condition as spondylolysis with spondylolisthesis and degenerative disc disease.

After treatment with Dr. David Tucker, claimant also sought medical treatment from Dr. Guy Tucker, a chiropractic physician. Dr. Guy Tucker continued to treat the claimant until he released claimant from his care on March 7, 2002. Shortly thereafter on March 18, 2002, claimant terminated her employment with the respondent and went to work directly for McKee Baking packing Little Debbie cakes.

Beginning September 2002, claimant sought additional medical treatment for back pain including both Dr. Guy Tucker and Dr. David Tucker. In addition, claimant has also been evaluated by Dr. Tony Raben, Dr. Christopher Boxell, and Dr. Whitelaw.

The respondent accepted claimant's initial back injury as compensable and paid compensation benefits through March 2002. Claimant has filed this claim contending that her subsequent back problems beginning in September 2002 are the result of her compensable injury of November 6, 2001. As a result, claimant seeks payment of additional medical benefits and temporary total disability benefits.

ADJUDICATION

When a primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury and the basic test is whether there is a causal connection between the injury and the subsequent consequences. *Wackenhut Corporation v. Jones*, 73 Ark. App. 158, 40 S.W. 2d 333 (2001); *K II Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W. 3d 414 (2002). Thus, claimant has the burden of proving by a preponderance of the evidence that her subsequent back problems beginning in September 2002 are the direct and causal result of her November 6, 2001 compensable injury.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proof.

The medical evidence indicates that claimant initially had back complaints in July 1990 when she fell at work causing low back pain. Claimant was prescribed medication and rest. The medical evidence indicates that this pain lasted until August 1990.

As previously noted, after claimant's most recent compensable injury she sought medical treatment from Dr. David Tucker. Dr. Tucker diagnosed claimant's condition as spondylolysis with spondylolisthesis and degenerative disc disease. Dr. Tucker prescribed medications and exercise and placed limitations on the claimant's ability to work. Following that evaluation by Dr. Tucker, claimant sought medical treatment from Dr. Guy Tucker, a chiropractic physician. The medical evidence indicates that Dr. Guy Tucker continued to treat the claimant beginning in December 2001 and continuing through March 7, 2002. At the time of the visit of March 7, 2002, Dr. Tucker noted that the claimant was doing well and released her from his care to return as needed. In addition, Dr. Tucker completed a progress questionnaire indicating that claimant classified her improvement under his care as excellent. He also noted that on a scale of 1 to 10, claimant rated her improvement as a 10. Claimant also indicated that she had no pain in her legs and no lower back pain.

In fact, claimant indicated that she had no symptoms as of that date. This progress report was signed by the claimant on that date.

Subsequent to this release by Dr. Guy Tucker on March 7, 2002, claimant began working for McKee Baking. Claimant also returned to Dr. Guy Tucker for other medical treatment for her neck. The medical records indicate that claimant sought medical treatment from Dr. Guy Tucker for her neck on May 9, May 10, and May 13, 2002. Despite claimant's current testimony that she continued to have low back pain during this period of time, Dr. Guy Tucker's medical reports do not indicate a complaint of low back pain. Furthermore, on June 14, 2002, claimant saw Dr. David Tucker, her family physician, for her yearly exam. Again, while claimant contends that she continued to have low back pain during this period of time, Dr. David Tucker's medical report from that date fails to mention any complaints of low back pain.

Complaints of additional low back pain did not occur until claimant returned to Dr. Guy Tucker on September 6, 2002. Dr. Guy Tucker's medical report of that date indicates that claimant was complaining of low back pain with an onset of one week ago. Claimant was asked at the hearing what she was doing that caused the onset of the back pain in September 2002.

Q. And what were you doing that caused the onset of the back pain in September of '02?

A. What was I doing in '02? When I went and seen him and I told him - - it was the weekend when it came back. We had went camping that weekend.

Claimant's low back pain has continued since the time of the September 6, 2002 visit and she has received medical care from several physicians including both Drs. Tucker, Dr. Raben, and an evaluation by Dr. Boxell.

In short, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her back problems subsequent to March 2002 are

causally related to her November 6, 2001 compensable injury. Claimant was released by Dr. Guy Tucker on March 7, 2002 from his care. A progress report was completed by Dr. Tucker and signed by claimant on that date indicating that claimant's improvement had been excellent, that she rated her improvement as a 10, that she had no pain in her legs or lower back and had no symptoms. Claimant went to work for another employer after her release and sought medical treatment from Dr. Guy Tucker and Dr. David Tucker on four separate occasions in May and June of 2002. Those medical reports do not mention any additional complaints of low back pain. Additional low back pain is not noted in the medical records until September 6, 2002, when claimant sought additional medical treatment from Dr. Guy Tucker. At that time, claimant indicated that her back pain had begun one week earlier. When asked at the hearing what she was doing at the time the back pain began, claimant indicated that she was on a weekend camping trip. Given this evidence, I find that claimant has simply failed to establish a causal connection between her back problems subsequent to March 2002 and her compensable injury of November 6, 2001.

In reaching this decision, I do note that Dr. Guy Tucker in a letter dated December 11, 2002 indicated that claimant's injuries at work were responsible for her injured disc and resulting pain. I have chosen to assign little weight to Dr. Tucker's opinion. First, there is no indication that Dr. Tucker was aware that claimant's onset of back pain in September 2002 occurred while on a weekend camping trip. Furthermore, there is no indication that Dr. Tucker was aware that claimant had terminated her employment with the respondent and had been working for another company performing physically intensive work since March 2002. Accordingly, based upon these factors and the remaining evidence presented, I have accorded Dr. Tucker's opinion in his letter of December 11, 2002 little weight.

ORDER

For the foregoing reasons, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her back problems subsequent to March 2002 are causally related to her original compensable injury. Therefore, her claim for additional medical treatment and additional temporary total disability benefits for her November 6, 2001 compensable injury is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE