

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300724

LINDA BRASWELL, EMPLOYEE

CLAIMANT

COMMUNITY COUNSELING SERVICES, EMPLOYER

RESPONDENT

**COMMERCE & INDUSTRY INSURANCE CO./
AIG CLAIM SERVICES, INC. (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED AUGUST 25, 2003

Hearing before Administrative Law Judge Dail Stiles on July 25, 2003, in Hot Springs, Garland County, Arkansas.

Claimant represented by Mr. William K. Moritz, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by Mr. John P. Talbot, Attorney at Law, Pine Bluff, Arkansas.

A hearing was held on July 25, 2003, to determine the compensability of the claim filed herein.

It was stipulated that the employer/employee relationship existed on June 13, 2002, and that the claimant was earning sufficient wages to entitle her to weekly indemnity benefits of \$342.00 for temporary total disability benefits and \$257.00 for permanent partial disability benefits. The claim was initially accepted and some medical benefits were paid.

The claimant contends she sustained an injury arising out of and during the course and scope of her employment on June 13, 2002. The claimant contends she is entitled to temporary total disability benefits from June 13, 2002 through a date yet to be determined, along with attendant medical benefits and attorney's fees.

The respondents controvert the claim after initially accepting it, contending there is no causal connection between the claimant's physical complaints and the incident or injury she sustained on June 13, 2002.

STATEMENT OF THE CASE

The claimant worked in a supervisory position for Community Counseling Services in Hot Springs.

On June 13, 2002, as the claimant was entering the employer's building, she was struck in the back by a heavy metal-framed glass door. The push bar on the door struck the claimant in the hip. The claimant said she was carrying a box, and that the way the door struck her caused her to be pushed into a door frame or wall and the box pressed against her abdomen.

The claimant was initially experiencing pain with her head, low back and hips.

The claimant later developed bladder difficulties and contends that those problems with her bladder are directly related to her injury of June 13, 2002.

The claimant was initially treated by a general practitioner, Dr. Michael Garrett, in Hot Springs. The claimant continued working on a part-time basis until the end of November, 2002. The claimant testified that she was paid full wages until she terminated her employment in November of 2002, although, she worked some on a part-time basis but was able to draw full wages by using up sick and vacation leave time.

The claimant first saw Dr. Garrett on June 14, 2002, and Dr. Garrett assessed her as having a contusion to the right buttock.

Dr. Garrett noted in his June 14, 2002 clinic note that the claimant had suffered a hip fracture in an injury which occurred in October of 2001. The claimant stated at hearing that she was helping her mother move a clothes washer when she

had some mishap in that move and fell to the floor on her buttocks and was told by her physician at the time that she had fractured her hip. The claimant stated that she felt she was totally healed from the October, 2001 hip fracture.

After her initial visit with Dr. Garrett, the claimant returned to see him on several occasions, and Dr. Garrett ultimately diagnosed the claimant as having a contusion to the right buttock, pelvic torsion and right sacroiliac joint dysfunction.

In a July 22, 2002 office note, Dr. Garrett noted that, "The patient has strong evidence of symptom magnification and in fact has only had SI joint dysfunction and pelvic torsion as objective findings, which may or may not have been acute related to this process." Dr. Garrett stated in that same note that he wanted to refer the claimant to Dr. Ross Hardy, a physiatrist. Dr. Garrett released the claimant from his care on July 22, 2002. The claimant was then referred to Dr. Hardy and was also seen by Dr. Charles Wright, a urologist.

On November 7, 2002, in a handwritten note, Dr. Ross Hardy stated: "I talked to Dr. Wright – bladder doesn't (illegible). No way to find reason why – no treatment. She completely empties – no reason to send her to neurologist." Dr. Hardy was seeing the claimant for complaints relative to her bladder.

In an outpatient clinic note dated October 24, 2002, Dr. Hardy stated:

Dr. Wright suggested the possibility of motor neuro-vesicle dysfunction possibly at S2-3-4, and neurological evaluation was recommended. His impression was that she did have a motor dysfunction of the bladder, but he could not relate her bladder dysfunction to a specific event.

In an outpatient clinic note of Dr. Hardy's, dated January 2, 2003, he stated in part:

As previously reported, MRI of the lumbar spine revealed levoscoliosis and mild degenerative changes of the lumbar spine with minimal bulging at L4-5 and L5-S1. Ms. Braswell was also found to have a motor dysfunction of the bladder of undetermined etiology.

MRI of the pelvis and sacrum was unremarkable. She has been evaluated by Dr. Wright, a urologist. Based on her description of the injury, I cannot see how her injury caused this problem with her bladder.

On that date and in that note, Dr. Hardy released the claimant to return to work without restrictions.

On October 1, 2002, Dr. Wright, the claimant's treating urologist, stated, as noted in a later report by Dr. Hardy: ". . . I told her I could not definitely relate her bladder dysfunction to a specific event, however she does appear to have motor dysfunction of the bladder. . . ."

Subsequent to the hearing, pursuant to directions given by me at the hearing, respondent objected to two specific medical reports introduced by the claimant at hearing. One was a report from Dr. Jansen dated November 22, 2002 and another from Dr. Elkins dated November 25, 2002. The respondent asserted in a letter to me on August 12, 2003, that those two medical reports were not provided to respondent within seven days prior to the hearing as required by the Act. By letter of August 13, 2003, the claimant's attorney stated that the two medical reports in question were provided to Scott Morgan at the time the claimant's deposition was taken, which was April 25, 2003. For the record, it should be noted that I am overruling the respondent's objection to the introduction of those reports, and the report from Dr. Jansen dated November 22, 2002 and the report from Dr. Elkins dated November 25, 2002, are considered as evidence in this matter.

Dr. Jansen, who is a general practitioner in Arkadelphia, stated that he had reviewed previous medical records of the claimant and found no discussion of any pre-existing functional or physical abnormality of her bladder prior to June 13, 2002.

Dr. Elkins, the claimant's treating gynecologist in Arkadelphia, in his letter of November 25, 2002, states that the claimant has had no prior bladder problems.

FINDING OF FACT

The claimant does not satisfy the requirement of establishing a claim for compensability because there are no "objective findings" in the medical evidence to sustain and support a claim for compensability.

DISCUSSION

Ark. Code Ann. §11-9-102(D) is controlling and states:

A compensable injury must be established by medical evidence supported by "objective findings" as defined in subdivision (16) of this section.

Subdivision 16 states:

"Objective findings" are those findings which cannot come under the voluntary control of the patient.

In this case, absent the bladder dysfunction the claimant is experiencing, there are no "objective findings" in the medical evidence. A review of all the medical evidence and particularly diagnostic testing, simply does not demonstrate any "objective findings" attributable to the incident at work on June 13, 2002. Objective medical evidence is necessary to establish the existence and extent of an injury but not essential to establish a causal connection between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

The claimant does not establish by a preponderance of the evidence of record that her bladder dysfunction is related to the incident of June 13, 2002. Although the claimant's treating general practitioner and gynecologist in Arkadelphia both state that they find no evidence of bladder problems prior to June 13, 2002, the claimant's treating urologist and physiatrist both are of the opinion that the

claimant's subsequent bladder dysfunction cannot be causally attributable to the incident of June 13, 2002. I choose to give the greater weight to the reports of Dr. Hardy and Dr. Wright, because their treatment is more contemporaneous to the date of injury, June 13, 2002, than that treatment which had previously been afforded by Dr. Jansen and Dr. Elkins.

Relative to the claimant's bladder dysfunction, as stated above, it is not essential that the causal relationship between the accident and the disability complained of be established by medical evidence. See Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). It is essential that the claimant supply affirmative proof of a distinctive employment risk as the cause of the injury or complained-of disability. The connection with the employment cannot be supplied by speculation. See Gerber, supra.

In the instant case, while the claimant's previous treating general practitioner and previous treating gynecologist make the statement that a review of their records show no complaints of bladder difficulties prior to June 13, 2002, the treatment by Dr. Wright and Dr. Hardy show that the causal connection between the claimant's injury of June 13, 2002 and her bladder dysfunction simply cannot be established.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge