

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F113627**

**JOYCE CHILDS, EMPLOYEE**

**CLAIMANT**

**S. E. ARKANSAS HUMAN DEVELOPMENT  
CENTER, EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER**

**RESPONDENT**

**AMENDED OPINION FILED JULY 22, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on April 4, 2003,  
at Monticello, Drew County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock,  
Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical  
expenses and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark.  
Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either  
party, Ark. Code Ann. §11-9-704, I find the respondents are liable for expenses associated with  
treatment provided by the company doctor.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on November 25, 2001  
at which time the claimant was earning sufficient wages to entitle her to a compensation rate of  
\$219.00, in the event this claim is found to be compensable. Some medical expenses were paid

before this claim was controverted on December 21, 2001. The claimant resigned January 13, 2002.

The claimant contends she hurt her back during the night shift on November 25-26, 2001 while lifting a patient. She seeks payment of medical expenses and temporary total disability benefits from November 26, 2001 to December 4, 2001. The injury was reported to supervisors David White and Clara Carney.

The respondents contend the claimant cannot meet her burden of proving a compensable injury pursuant to Ark. Code Ann. §11-9-102. There is no objective medical evidence to substantiate the injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript. After the hearing, the record was supplemented with the respondents' correspondence of July 10, 2003 which is incorporated by reference.

The claimant and her husband, Willie Childs, were the only witnesses to testify at the hearing.

The claimant age 44 (D.O.B. March 5, 1959), has a high school education. She began work for the respondent-employer in September 1997, caring for disabled residents. Her job duties included cleaning the building, taking out trash, checking on patients, and washing clothes. Her shift is from 10:00 p.m. to 6:00 a.m.

The claimant experienced back pain performing her job duties and mentioned it to her supervisor, David White. Billing records indicate she was treated for backaches by her family physician, Dr. Chambers in January and February 2001, and by Dr. Foscue in May 2000.

On November 26, 2001, at 4:30 a.m. the claimant lifted a patient and her back pain became worse, radiating down her legs. She reported the incident to David White and filled out an accident report form. No AR-N was introduced into evidence. Apparently her supervisor also made a tape recording. She requested medical treatment and was sent to the company physician, Dr. Joe Wharton. He prescribed medication for a pulled muscle. The claimant tried to return to work but was physically unable (Tr. p. 15, 19-21). She resigned January 13, 2002. The claimant's attendance records were not introduced into evidence.

The claimant used her husband's group health insurance, USAble to see her family physician, Dr. Chambers, after Dr. Wharton released her. The claimant testified she remains symptomatic with low back and thigh pain.

The claimant applied for unemployment benefits but was denied and her application for Social Security benefits is still pending.

### **MEDICAL EVIDENCE**

The company physician, Dr. Wharton, apparently approved the claimant for employment in a report dated September 11, 1997, despite the fact that she complained of occasional low back pain.

The claimant returned to Dr. Wharton three years later, on Monday, November 26, 2001 complaining of back pain after lifting an HDC resident on Saturday (November 24, 2001) night. Dr. Wharton diagnosed a muscle strain, prescribed medication and excused her from work for one week. His physical examination of the claimant describes pain, tenderness, reduced range of motion, and negative straight leg raising. No diagnostic testing was performed and there is no mention of muscle spasm.

The claimant was released to regular duty on December 10, 2001, with no anatomical impairment rating. She returned to the doctor and was placed on light duty December 11, 2001. The claimant was provided with a job (wheelchair maintenance) which she felt unable to perform. She was again released to full duty on December 13, 2001. The claimant was placed on light duty again from December 17, 2001 to December 27, 2001. The claimant was again provided with a light duty job (laundry worker) which she felt unable to perform.

In January, 2002, Dr. Wharton prescribed four weeks of physical therapy. According to the claimant, the workers' compensation carrier refused payment.

The claimant was also treated by her family physician, Dr. David Chambers who prescribed medication. The claimant used her husband's group health insurance carrier, USAble, to see Dr. Chambers and pay for physical therapy. Dr. Chambers' medical records were not introduced into evidence. It is evident from his billing records that he continued to treat the claimant for back problems, however, his diagnosis is unknown.

### **FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993, which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717.

In order to be compensable, the claimant must prove the following by a preponderance of the evidence of record pursuant to Ark. Code Ann. §11-9-102:

1. proof of an injury arising out of and in the course of employment.
2. proof that the injury caused internal or external harm to the body which required medical services or resulted in disability.

3. proof establishing the injury by objective medical findings. Objective findings are those findings which cannot come under the voluntary control of the patient. When determining physical or anatomical impairment, neither a physician... (or) the Workers' Compensation Commission, nor the courts may consider complaints of pain; for the purpose of making physical or anatomical impairment ratings to the spine... Range of motion tests shall not be considered objective findings.
4. proof that the injury was caused by a specific incident identifiable by time and place of occurrence.

As I interpret the testimony and documentary medical evidence, the claimant suffered an aggravation of a preexisting condition lifting a patient at work. She reported the incident to her supervisor and received medical treatment from the company physician, incurring expenses for office visits, mileage, prescription medication and physical therapy. The company physician also recommended light duty and the claimant's supervisor did make an effort to find other work for her. The respondents initially accepted the claim and directed her medical care and paid some benefits before the claim was controverted.

It is true, however, that Dr. Wharton's records contain no objective medical findings to support the injury. His records mentioning "pain" and "tenderness" are subjective complaints from the claimant. Therefore, the claimant cannot meet her burden of proving an injury established by objective medical evidence. Because the claimant cannot meet this third element of proof, she cannot prove a compensable injury.

After the respondent notified the claimant that the claim was controverted, she began treating with her family physician, Dr. Chambers. As I interpret the claimant's testimony, Dr. Wharton did not refer the claimant to Dr. Chambers. He merely indicated he would no longer be able to treat her

since the claim was controverted, and the claimant would need to see her family physician for any further treatment. Dr. Chambers, however, is not an authorized physician and the respondents are not liable for expenses associated with his treatment. From the billing records, it appears the claimant received physical therapy from January 8, 2002 to January 11, 2002 and was discharged January 14, 2002. She then began treating with Dr. Chambers on January 26, 2002. It should also be noted that the claimant has included in her exhibit packet medical expenses for abdominal treatment provided by Dr. Chambers which would not be causally related to this claim for a back injury.

Without a stipulation or the claimant's attendance records, it is difficult to determine when the claimant actually worked based on her testimony and the claimant's release slips. Based on the evidence of record, I find the claimant was in her healing period from the date of the injury to a date yet to be determined, however, she attempted to return to light duty December 12, 13, 19 and 20<sup>th</sup>, 2001.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on November 25, 2001 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$219.00.
2. The claimant reported an injury and the respondents directed her medical treatment through the company physician, honoring his recommendations regarding light duty. Respondents are therefore liable for medical and mileage expenses associated with Dr. Wharton's treatment from November 2001 through December 21, 2001, the date the claim was controverted. These expenses are to be paid within thirty days of receipt pursuant to Commission Rule 30.

3. Based on the medical records introduced into evidence, there are no objective medical findings substantiating an injury causing internal harm. Therefore, the claimant has not proved by a preponderance of the evidence of record that she sustained a compensable injury.

This claim for additional benefits and continuing medical treatment is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge