

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F301891

DORIS CIENFUEGOS, Employee	CLAIMANT
SUPERIOR INDUSTRIES, Employer	RESPONDENT
CROCKETT ADJUSTMENT, Carrier	RESPONDENT

OPINION FILED JULY 23, 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 CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On June 18, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 26, 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 existed between the parties on or about June 1, 2002.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$253.00 for total disability benefits and \$190.00 for permanent partial disability benefits.
4. The respondent has controverted this claim in its entirety.

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

1. Compensability of injury to claimant's back.

2. Temporary total disability benefits from November 1, 2002 through a date yet to be determined.

3. Medical.

4. Attorney fee.

The claimant's contentions as set forth in her pre-hearing questionnaire are as follows: "Claimant was injured approximately during the last week of May or the first week of June of 2002 while washing wheels. Claimant caught a wet wheel that had fallen off line. Claimant called Superior to request the exact date that the injury happened and they informed the claimant that that information had been deleted, but the injury was reported on November 1, 2002."

The respondents' contentions as set forth in their pre-hearing questionnaire are as follows: "The respondents contend that the claimant has not sustained a compensable injury as defined by the Arkansas Workers' Compensation Act."

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 witnesses and to observe their 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 March 26, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her back while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a very nice lady who received her high school education in El Salvador. She has lived in the United States for approximately eleven years and began her employment with respondent on October 12, 2001. At that time her primary job was performing a leak test which required her to take a wheel, put it in a leak test machine, test the wheel, and then place the wheel back onto a line. Evidence was presented indicating that these wheels weighed 25 to 27 pounds and that claimant would perform this operation approximately 46 times per hour. Claimant testified that on or about May 21, 2002, she was picking up a wheel to put it on the line when the wheel began falling. Claimant caught the wheel as it fell and felt a pulling sensation in her back. She also testified that she had sharp pain in her back for a few minutes. Claimant reported this injury to her supervisor, Wayne Edens, but did not seek any medical treatment from a physician at that time. Instead, claimant worked the remainder of her shift and drove home where she had trouble getting out of her car due to back pain.

Following this incident, claimant continued working for respondent and in fact worked other jobs on the respondent's production line. Claimant testified that even though she continued working that her back pain gradually worsened until she again complained of back pain to the respondent in November 2001. As a result of those complaints claimant was given the name of Dr. Larry Weeks, a chiropractic physician. Claimant was evaluated by Dr. Weeks on several occasions. Claimant has also been evaluated by Dr. Weum, another chiropractic physician; Dr. Thorn; Dr. Morse, a neurologist; and Dr. Hendricks, an orthopaedic surgeon in Tulsa.

Since November 2001, claimant has missed some work as a result of her complaints of back pain. Claimant has filed this claim contending that she suffered a compensable injury to her back in May 2001. She seeks payment of temporary total disability benefits, medical benefits, and a controverted attorney fee.

ADJUDICATION

The claimant contends that she suffered a compensable injury to her back when she caught a wheel which was falling on or about May 21, 2001. Therefore, claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (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;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (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.

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 proving by a preponderance of the evidence that she suffered a compensable injury. Specifically, I find that claimant has offered medical evidence supported by objective findings establishing an injury.

It appears that the incident testified to by claimant occurred on or about May 21, 2002. Claimant testified that after the incident occurred she reported the injury to Wayne Edens, her supervisor. Edens testified at the hearing indicating that while he was making rounds, Grace Blackburn, a co-worker of the claimant's, pointed at the claimant and motioned him to come over. According to Edens, Blackburn indicated that claimant had injured herself but was afraid to report it. Edens then asked claimant about the injury and

claimant said that she had injured her back while catching a falling wheel. Edens testified that when asked if she needed to see a physician the claimant said no. Nevertheless, Edens testified that he called over Colin Olsen, a supervisor and a certified EMT.

As a result of this incident Edens completed an incident report containing a history of the injury. Edens testified that after that initial period of time claimant did not make any additional complaints of pain or indicate that she needed to seek medical treatment until November 2002.

While this evidence would indicate that the incident described by the claimant did occur, in order to be compensable claimant must offer medical evidence supported by objective findings establishing an injury. Objective findings are those findings which cannot come under the voluntary control of the patient. A.C.A. §11-9-102(16)(A)(1)(i)(Supp. 1999). In this particular case, an MRI scan was performed on December 20, 2002 at the request of Dr. Michael Morse. Dr. Morse interpreted the claimant's MRI scan as within normal limits. Specifically, Dr. Morse's MRI report states:

FINDINGS:

The spinal cord ends at the L1 level and is normal in appearance. The lumbar vertebral bodies appear well aligned and demonstrate normal marrow signal intensity. The facet joints appear well aligned. There is no focal disc protrusion identified. The intervertebral disc spaces and intervertebral body heights are well maintained. The neural foramina appear patent bilaterally at all image levels with no evidence of abnormal contrast enhancement.

IMPRESSION:

1. This MRI of the lumbar spine is within normal limits.

In March of 2003 claimant was also evaluated by Dr. Randall Hendricks, an orthopaedic surgeon in Tulsa. Dr. Hendricks also reviewed the MRI scan and determined that it was within normal limits.

I have had the opportunity to review the MRI of the

lumbar spine. This study is essentially within normal limits. The patient has normal hydration to each and every lumbar level. No annular disruption is identified. The nerves are free from compression and exit the spinal canal without compromise. I do not see any destructive lesion in the bony structures themselves and alignment is satisfactory. No tear of the musculature is identified.

CLINICAL IMPRESSION: This MRI is normal.

In addition to the MRI scan, a bone scan of the claimant's entire body was performed on March 13, 2003. That bone scan was read as normal and specifically, with respect to claimant's spine, stated "There are no focal areas of increased activity in the spine to suggest an active process or recent trauma. Uptake throughout the axial skeleton is normal."

In reviewing this case, I do note that Dr. Weum, a chiropractic physician, did diagnose the claimant as suffering from a disc bulge with a lumbar strain/sprain. However, this appears to be a diagnosis made by Dr. Weum, not an objective finding based upon testing. To the contrary, the MRI scan was interpreted as normal with no evidence of protrusion or any other abnormality by both Drs. Michael Morse, a neurologist, and Dr. Hendricks, an orthopaedic surgeon.

In addition, I also note that initial x-rays taken of the claimant's lumbar spine were interpreted as showing degenerative disc disease at the L5 level with mild facet arthrosis. However, these x-rays were taken prior to the more sophisticated testing of the MRI scan.

In short, I find that the test results from the MRI scan and the opinions of Dr. Michael Morse and Dr. Hendricks to be entitled to great weight. Both of those physicians are specialists who have reviewed the MRI scan of the claimant's lumbar spine and have found it to be within normal limits with no findings of a disc bulge, degenerative disc disease, or facet arthrosis. To the extent that the medical opinions of Drs. Morse and Hendricks conflict with the medical opinions of the other treating physicians in this case including the

chiropractic physicians, Drs. Weeks and Weum as well as Dr. Thorn, I find that the medical opinions of Drs. Morse and Hendricks are entitled to greater weight.

In making my finding, I also note that various medical reports refer to tenderness in the claimant's lumbar spine. However, muscle tenderness is not considered an objective finding. *Kimbrell v. Arkansas Department of Health*, 66 Ark. App. 245, 989 S.W. 2d 570 (1999).

In summary, in order to prove that she suffered a compensable injury, claimant has the burden of offering medical evidence supported by objective findings establishing an injury. Here, an MRI scan performed on the claimant's lumbar spine has been interpreted as normal by two specialists, Dr. Morse and Dr. Hendricks. In addition, a bone scan performed indicated no active process or recent trauma in the claimant's lumbar spine. Based upon these test results and the interpretations of the treating physicians whose opinions I find are entitled to great weight, I find that claimant has failed to offer medical evidence supported by objective findings establishing an injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her back while employed by respondent. Claimant has failed to offer medical evidence supported by objective findings establishing an injury. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE