

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214222

JESSIE COTTON, EMPLOYEE	CLAIMANT
CENTRAL ARKANSAS TRANSIT AUTHORITY, EMPLOYER	RESPONDENT
XL SPECIALTY INSURANCE CO. CARRIER	RESPONDENT

OPINION FILED AUGUST 18, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on July 23, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant appeared Pro Se.

Respondents appeared by the HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine claimant's entitlement to workers' compensation benefits.

On June 10, 2003, a prehearing conference was conducted in this claim, from which a prehearing order of June 17, 2003, was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and parties' respective contentions relative to the issue. The prehearing order is herein designated a part of the record as Commission's Exhibit #1.

The testimony of Jessie Cotton, the claimant, coupled with the deposition testimony of Delora Garland, along with medical reports and other documents comprise the record in this claim.

DISCUSSION

Jessie Cotton, the claimant, with a date of birth of November 25, 1947, is a high school

graduate with one year of post-secondary education. Claimant commenced her employment with respondent as a bus driver on January 11, 1994.

The claimant, whose employment history includes that of a bus driver for Central Transit Authority in Chicago prior to her employment with respondent denies, that she experienced complaints relative to her neck or left upper extremity prior to her employment by respondent. Claimant noted that the buses she drove with CTA in Chicago had power steering, however the same not the case when she began her employment with respondent in 1994. Claimant's testimony reflects that respondent started getting buses with power steering in 1995 or 1996, and by 1996 all the buses had been converted to power steering.

Claimant's testimony reflects that her shift commenced on her regular route at 5:30 a.m. until 12:15 p. m. She would return at 4:25 p.m. and get off at 6:00 p.m. The testimony of the claimant reflects that the bus she operated had power steering, automatic transmission, rear view mirror and side mirrors.

Claimant does not attribute her present claim for workers' compensation benefits to a specific incident identifiable by time and place of occurrence, but rather as a gradual onset. In that regard, the testimony of the claimant reflects that around the month of November or December 2001, after getting off work she experienced pain in her neck and left upper extremity. Claimant is left hand dominant. Claimant testified that she relayed her complaints of pain in her neck and shoulder to the dispatcher, however she did not relate same to her employment activity at the time. Claimant took over-the-counter medication, Advil, to address her complaints of pain and soreness in her neck and shoulder. In describing the location of her symptoms, claimant's testimony reflects:

Well, at first it started - - I didn't have no idea it was

from my neck. I had no idea. All I know is it would be a lot of pain right up around here (indicating) and under my arm and down my arm. and down my shoulders.

* * *

My left arm.

* * *

Yes. And it was just right up under here (indicating) and it was just like when I move the pain would go down my back, you know, my shoulder blades, it was like my shoulder blades and then it would go all the way down my arm and it would be like a catching in my left pit of my arm and it would just stay in there for awhile and then after awhile it would move on down to the middle finger and then it was like an explosion and when that pain would hit it was just, you could feel it all, you know, under my chest. (T. 9-10)

The testimony of the claimant reflects that she continued to discharge her regular employment duties as a bus driver for respondent following the onset of her symptoms. Claimant noted that on occasions she would miss time from work:

Well, off and on I did. That's what this is related to. During the time, I had to use a lot of my sick days and I had to, even during vacation time when I would be - - I would be in a lot of pain and when I'm getting right up in time to go on vacation, I asked Mr. Gillerson, I said, is there any way that I can waive my vacation and just go ahead on and go in the sick book. He said, no, I had not use my vacation first and then go, after that then go into the sick book. (T. 13)

With respect to when she first received medical treatment, claimant testified:

January, when they finally gave me an appointment.

* * *

2002. I went to my appointment and I was in a lot of pain and when I got there they had me to go in and lay down, pretty much the doctor examined me and she said that she was going to admit me into the hospital. So, that was January 24th or 25th, somewhere she admitted me into the hospital because of the pain.

* * *

Right I was into the hospital for two days. They were making sure that it wasn't a heart attack, that I was threatening a heart attack, so then that's when they found out it was not a heart attack so then they released me and they gave me the different medication and then I would go back like every two weeks and the medicine wasn't doing any good. (T. 13-14)

Claimant acknowledged that the arm pain experienced during the January 2002, hospital admission was in her right arm rather than her left arm. Claimant explained that during that time she was bowling and that she bowled with her right hand. (T. 22)

Claimant continued to work following her discharge from the hospital in January 2002. With respect to the events which prompted the filing of a workers' compensation claim, claimant's testimony reflects:

Well, no, that's when the pain started was around somewhere in there. November 2002, oh yes. In October they finally did an MRI and that's when they detected the cavity, I don't even know how to pronounce the work, anyway, they detected what was going on with me. Then that's when I found out, when they gave me the appointment to go see my doctor and she told me that I would have to, she was going to schedule me to see a surgical doctor and they then could decide was I going to take the treatments or the surgery? And, that's when I went to Mr. Gillerson

and told him that I wanted to fill out the workmen's comp claim. (T. 15)

Claimant's testimony reflects that she and Mr. Gillerson attend the same clinic and that she frequently discussed her complaints of pain and soreness with him. The testimony in the record reflects that Mr. Gillerson is the director of transportation for respondent-employer.

Claimant acknowledged that she received information from respondent regarding the procedure for filing workers' compensation claims. Claimant's testimony reflects that it was her understanding that in order to file a workers' compensation claim she had to know the date of the injury. Nevertheless, claimant's testimony reflects that after receiving the results of the MRI and the recommendation for surgery to her cervical region, she did complete a claim for workers' compensation benefits with respondent-employer. Claimant acknowledged that she was referred by respondent to its designated medical provider after she filed her workers' compensation claim. Further, claimant acknowledged that Dr. Pahls, the physician selected by respondent to examine her with respect to her workers' compensation claim informed her and completed documentation reflecting that her complaint was not a work-related injury.

After respondent denied the compensability of the claim, claimant proceeded with the February 3, 2003, surgery under the care of Dr. Ali Krisht, at UAMS. Claimant was released by Dr. Krisht to return to work effective June 18, 2003, with restrictions on her employment activities to include no lifting, pushing or pulling objects greater than fifteen pounds. As of the date of the hearing, July 24, 2003, claimant had not returned to work because respondent have sought clarification from the claimant's treating physician relative to the claimant's limited duty restrictions. Claimant did receive short-term disability benefits through her group health insurance with

respondent in the amount of \$100.00 per week.

Ms. Delora Garland, the payroll and benefits coordinator for respondent-employer, testified that she had been acquainted with the claimant since claimant commenced her employment in 1994. Ms. Garland acknowledged having conversations with the claimant wherein claimant relayed complaints of pain in her neck and shoulder, however claimant did not relate the same to her employment duties with respondent. Ms. Garland testified regarding her conversation with the claimant wherein claimant discussed her physical problems prior to November 20, 2002:

She talked to me about the medication she was taking and how bad she was hurting and all. But so far as it being caused from the physical driving, I can't recall her specifically saying it was caused from the driving. But, you know, we talked about the problems that she was having.(RX. 1, p8)

The testimony of Ms. Garland, which was obtained during the July 14, 2003, deposition, reflects with respect to the filing of a workers' compensation claim by employees of respondent:

When someone files a workers' comp claim, the first thing that we do is to send them to our workers' comp doctor, which is the emergency room at one of the Baptist hospitals. And most of the time, we send them to Memorial. But Ms. Cotton lives in West Little Rock, so she went to Baptist on Kanis and saw Dr. Pauls. And the next step would be to follow up with our work injury clinic. (RX. 1, p6)

Ms. Garland noted that at the time claimant requested to file a workers' compensation claim, claimant was furnished a Form N and completed same. At the same time Ms. Garland completed the

First Report of Injury. The afore was done on November 20, 2002. At the time claimant requested the filing of a workers' compensation claim the surgery had already been scheduled for February 3, 2003. Claimant preceded with the scheduled surgery after being seen by respondent

designated medical provider and being informed that the condition was not work-related.

The record reflects that claimant completed the Form N on November 20, 2002. In completing the Form N claimant indicated that the date of the accident was 2002, the form reflects “unknown” with respect to the time of accident and the date and time the employer was notified of the accident. In discussing the cause of the injury, the Form N reflects “when driving bus turning, not being able to adjust seat, have to sit in one position for over four or five hours each day.” (Respondent #1, Exhibit #1)

Medical in the record reflects that claimant was seen at Baptist health on November 21, 2002, by Dr. Wendell L. Pahls, pursuant to the direction of respondent in connection with the filing of her November 20, 2002, workers’ compensation claim. The November 21, 2002, Fitness for Duty report completed by Dr. Pahls, relative to the claimant during the visit reflects, in pertinent part:

Not a work-related condition. Need to go through
personal insurance. (RX. 1, Exhibit No.2)

From all of the evidence, I make the following:

FINDINGS

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On November, 2002, the relationship of employee-employer-carrier existed among the parties.
3. On November, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$422.00/\$316.00.
4. On November 20, 2002, the claimant did not sustain an injury arising out of and in the course of her employment , pursuant to Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

CONCLUSIONS

Claimant asserts that as a result of her employment duties with respondent she suffered an injury arising out of and in the course of her employment with same which culminated the need for medical treatment in the form of cervical surgery, and resulted in a period of temporary total disability from November 20, 2002, through June 18, 2003, and continuing the date of hearing, July 24, 2003. Respondents deny that the claimant suffered a compensable injury in the employment of same.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. Claimant does not attributes her workers' compensation of claim or injury to a specific incident identifiable by time and place of occurrence, but rather as a gradual onset. Further, claimant maintains that the injury was to her neck and that she is entitled to the payment of workers' compensation benefits relative to same.

Ark. Code Ann. §11-9-102(4)(A)(ii) provides:

A compensable injury means an injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place occurrence, if the injury is:

A. Caused by rapid repetitive motion. . .

In the instant claim, claimant assert an injury to her neck arising out of her employment with respondent and which is not identifiable by time and place of occurrence or by a specific incident.

As a consequence of the afore, in order to establish the injury as compensable, as a gradual onset

injury to her neck, the claimant must prove a by a preponderance of the evidence that the injury arose out of and the course of her employment; caused internal or external physical harm to the body requiring medical services; was caused by rapid-repetitive motion; and was the major cause of the disability or need for treatment. Hapney v. Rheem Manufacturing Company, 342 Ark. 11, 26 S. W. 3d 777 (2000).

Claimant has been employed by respondent since 1994 as a bus driver. Buses driven by the claimant in her employment with respondent have been equipped with power steering since 1996. Additionally, the bus is equipped with automatic transmission, rear view mirror and side mirror. Claimant is left hand dominant. During her employment with respondent claimant drove a bus five days a week on a regular route. Claimant commenced her shift at 5:35 a.m. and drove until 12:15 p.m. Thereafter, claimant was off work until 4:25 p.m. when she reported back to work and work until 6:00 p.m. While an operator of a mass transit bus for respondent, claimant job duty may very well be repetitive motion, however there is no evidence to reflect that the same as rapid. Further, the only medical in the record relative to causation is the November 21, 2002, report of Dr. Wendell Pahls which concluded that the claimant's condition was not work-related. It is not disputed that claimant underwent surgery on her cervical spine under the care of Dr. Krisht on or about February 3, 2003, however there is not a medical report in the record from Dr. Krisht addressing the causation issue.

The claimant has failed to sustained her burden of proof by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment with respondent to her cervical spine which was caused by rapid repetitive motion. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge