

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F203572/F205316

VIRGINIA MADEWELL, Employee	CLAIMANT
THE MORNING NEWS, Employer	RESPONDENT
CHUBB GROUP OF INSURANCE COMPANIES, Carrier	RESPONDENT

OPINION FILED DECEMBER 4, 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 CAROL LOCKARD WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 5, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 2, 2003, and an amended pre-hearing order was filed on August 14, 2003. A copy of the amended 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 on March 2, 2002 and March 14, 2002.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$70.30 which would entitle her to compensation at the rate of \$47.00 per week for temporary total disability benefits and permanent partial disability benefits.

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

1. Compensability of injuries to claimant's back on March 2, 2002 and March 14, 2002.
2. Temporary total disability benefits.
3. Medical.
4. Attorney fee.
5. Notice.

The claimant contends she injured her back on March 2, 2002 and March 14, 2002 due to lifting stacks of papers weighing from 10 to 30 pounds. She contends she is entitled to temporary total disability, medical and an attorney fee.

The respondents contend the claimant did not suffer a compensable injury while working for respondent employer. In addition, it is the respondents' contention that they did not receive notice of an injury until August 13, 2002.

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 July 2, 2003, and contained in an amended pre-hearing order filed August 14, 2003, are hereby accepted as fact.
2. The parties' stipulation that claimant earned an average weekly wage of \$70.30 which would entitle her to compensation at the rate of \$47.00 per week for temporary total disability benefits and permanent partial disability benefits is also hereby accepted as fact.
3. 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 60-year-old woman who is visually impaired. Claimant began working for respondent on June 21, 1999. One of the jobs claimant performed for respondent was as an assistant inserter. This job required claimant to move stacks of paper inserts from “cages” and place them on a table for someone who would put them into a machine to be placed in newspapers. Claimant testified that she had to stand, bend, and twist to perform her job. Claimant testified that during the week of March 14, 2002, she began having severe pain in her left leg and as a result, sought medical treatment from Dr. Johnny Adkins on March 18, 2002. Claimant was diagnosed as suffering from cellulitis of the left leg and was hospitalized. After her release from the hospital the claimant continued to complain of leg pain and was again admitted to the hospital in April 2002. While hospitalized in April 2002 an MRI scan was performed which revealed herniated discs at several levels. In addition to Dr. Adkins, claimant was also evaluated by Dr. Blankenship and Dr. Davis. In March 2003 claimant sought medical treatment from Dr. Raben who performed surgery on claimant’s lumbar spine in July 2003.

Claimant has filed this claim contending that she suffered a compensable injury to her back while working for the respondent. She seeks payment of medical benefits, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

The pre-hearing order indicates that claimant was contending that she suffered compensable injuries to her back on March 2, 2002 and again on March 14, 2002. At the hearing claimant contended that her back injury occurred during the week of March 14, 2002. At one point claimant testified that on March 14, 2002 her left leg began hurting. This testimony would seem to support a claim for a specific injury. On the other hand, claimant also testified on cross examination that her job activities over the period of the

week of March 14, 2002 caused her back injury. For either a specific injury or a gradual onset injury claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her back which arose out of and in the course of her employment with the respondent.

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 to her back while employed by the respondent.

Testifying on behalf of respondent was Joyce Eaton, the human resources administrator for the respondent. Eaton testified that claimant called her office on March 18, 2002, and indicated that her leg had begun swelling at work on the night of March 14, 2002. Eaton testified that claimant indicated that she did not know why the swelling occurred. Eaton went on to testify that she learned in May of 2002 that claimant was alleging an injury to her ankle as a result of striking it against a metal cart. Indeed, an AR-C form completed by the claimant dated May 12, 2002 indicates that claimant was alleging an injury to her leg caused by a scratch from a cart on March 14 and a second injury to her ankle resulting from her hitting it against a cart. The AR-C does not mention an injury to the back. Furthermore, Eaton testified that she did not have knowledge of any alleged back injury until July or August of 2002.

On rebuttal, claimant contended that she contacted Eaton from the hospital during the week of April 20, 2002, and informed her that she had a back injury. However, this was still more than one month after the alleged injury had occurred.

Significantly, the medical evidence in this case does not support claimant's contention. As previously noted, claimant initially sought medical treatment from Dr. Adkins on March 18, 2002. Dr. Adkins' medical report of that date indicates that claimant was complaining of lower leg pain and swelling in her leg. Dr. Adkins diagnosed claimant

as suffering from cellulitis and hospitalized the claimant. Significantly, Dr. Adkins' report of that date does not mention any back pain or a work-related history. Several reports of Dr. Adkins subsequent to that date also reflect complaints related to cellulitis but do not mention a back injury or a work-related injury.

After her March hospitalization, claimant continued to complain of pain in her left leg and she was hospitalized again in April 2002. In a letter dated November 13, 2002, Dr. Adkins indicated that the pain claimant was complaining of in April 2002 was a different type of pain than she had complained of previously. Significantly, Dr. Adkins indicated that claimant could remember no injury associated with her April pain.

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Over the next several weeks she developed a different type pain in left thigh and lower extremity as well as hip area. She was readmitted to the hospital for pain control and work up. In April of 2002 she was found to have a herniated disc at L-3/L-4 and L4/L5. Each was obviously significant. Especially noteworthy was the L4 disc with impression upon the L-3 nerve root. She had no substantial neurological findings at the time. The prognosis for surgery was guarded. She was treated conservatively. Her discomfort has been slow to improve, but she has improved. She remembers no outstanding injury with her April pain. (Emphasis Added.)

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While hospitalized claimant was evaluated by Dr. Blankenship, a neurosurgeon, on April 22, 2002. Dr. Blankenship's medical report of that date indicates that the claimant had a new onset of left lower extremity pain which began on Friday, April 19, 2002. This was more than one month after claimant last worked for respondent on March 18, 2002. In addition, Dr. Blankenship also noted that claimant denied "any known injury or known exacerbating factors." While Dr. Blankenship in his report does mention claimant's standing on her feet at work, as previously noted, claimant indicated to Dr. Blankenship that her pain began on April 19, 2002 and she had not worked for respondent since March 18, 2002. Furthermore, according to Dr. Blankenship's medical report, claimant did not attribute her back pain to any injury or know exacerbating factor.

Also while claimant was hospitalized in April 2002 she was evaluated by Dr. David Davis who gave a history of claimant's pain beginning as follows: "This patient is a 58-year-old white female who began to have left leg pain the day before yesterday in the early morning while she was walking around her house."

In summary, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her back which arose out of and in the course of her employment with the respondent. Here, Joyce Eaton testified that claimant did not report an injury to her back in March of 2002. According to claimant's testimony on rebuttal, she did not report a back injury to Eaton until April 2002. Nor does the medical evidence support claimant's contention. Claimant has not worked for respondent since March 18, 2002, the date she first sought medical treatment from Dr. Adkins. Dr. Adkins' initial medical reports do not mention any back pain or work-related injury. When claimant was hospitalized for a second time in April 2002 Dr. Adkins was of the opinion that the pain claimant was experiencing at that time was different than the pain she had previously experienced as a result of her cellulitis in March. Dr. Adkins indicated that claimant could remember no injury associated with her April 2002 pain. Claimant was also evaluated by Dr. Blankenship on April 22, 2002, and denied any known injury. In fact, Dr. Blankenship indicated that claimant had a new onset of left lower extremity pain which had begun on April 19, 2002, more than one month after claimant last worked for respondent. In addition, claimant was also evaluated by Dr. David Davis on April 21, 2002. Dr. Davis' medical report of that date indicates that claimant gave a history of her leg pain having begun on April 19, 2002 while walking around her home.

In finding that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury, I do note that claimant was evaluated and had surgery performed by Dr. Raben. Dr. Raben has authored a report indicating that claimant had a lifting/twisting injury at work. He also indicated in a letter

report dated August 5, 2003, that claimant had a pre-existing condition that was exacerbated by an on the job injury in March 2002. I find that Dr. Raben's opinion is entitled to little weight. First, Dr. Raben did not evaluate claimant until March 28, 2003, more than one year after her alleged injury. Furthermore, while claimant obviously gave a history of a work-related injury to Dr. Raben in March 2003, claimant did not relate a work-related history to either Dr. Adkins, Dr. Blankenship, nor Dr. Davis in April 2002. Instead, claimant denied any known injury and according to Dr. Davis indicated that her pain began while she was walking around her house. Given this evidence, I find that Dr. Raben's opinion is entitled to little weight.

Accordingly, for the foregoing reasons, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury which arose out of and in the course of her employment with the respondent.

#### 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. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE