

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F011611/F207852

SHEILA MORRIS, Employee	CLAIMANT
HOLIDAY INN EXPRESS, Employer	RESPONDENT #1
UNION STANDARD INSURANCE CO., Carrier	RESPONDENT #1
CANNON COCHRAN MANAGEMENT SERVICES	RESPONDENT #2

OPINION FILED DECEMBER 3, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondent #1 represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

Respondent #2 represented by MICHAEL E. RYBURN, 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 August 25, 2003, and a pre-hearing order was filed on August 27, 2003. 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. Union Standard Insurance Company (Respondent #1) was the employer's workers' compensation carrier on August 21, 2000.
3. Cannon Cochran Management Services (Respondent #2) was the employer's workers' compensation carrier on January 18, 2002.
4. The claimant suffered compensable injuries to the left side of her body on January 18, 2002 for which respondent #2 has paid some medical benefits.

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

1. Compensability of injury on August 21, 2000.
2. Claimant's entitlement to additional medical treatment as a result of the August 21, 2000 or January 18, 2002 injuries.
3. Attorney fee.

At the end of the hearing on November 5, 2003, claimant's attorney indicated that the only benefits being requested at this time are unpaid medical benefits which were accrued after her alleged injury in August 2000 and before her second injury in January 2002. Specifically, the unpaid medical bills consist of approximately \$2200.00, of which \$1400.00 is attributable to a cervical MRI scan and \$800.00 to physical therapy. With respect to these unpaid medial bills, claimant has been sued for payment of those bills in the District Court of Benton County, Arkansas. Claimant requests an order staying all proceedings for collection pursuant to A.C.A. §11-9-118(e). Claimant specifically reserved the issue of her entitlement to future medical expenses for either the August 2000 or January 18, 2002 injuries.

The claimant contends that she suffered a compensable injury on August 21, 2000 when she fell and injured her neck and right hand. As a result of that compensable injury claimant has received medical treatment which remains unpaid.

Respondent #1 contends that claimant did not suffer a compensable injury while it was the employer's workers' compensation carrier on August 21, 2000. Respondent #1 contends that there is a lack of objective findings.

Respondent #2 originally contended that it had paid claimant all benefits to which she was entitled as a result of her January 18, 2002 compensable injury. Since the issue in this case is limited to compensability and unpaid medical treatment relating to the August 2000 injury, respondent #2's liability is not at issue at this time.

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 witness and to observe her 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 August 25, 2003, and contained in a pre-hearing order filed August 27, 2003, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by respondent in August 2000.

3. Respondent #1 is liable for all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes unpaid medical of a cervical MRI scan and physical therapy.

4. Respondent #1 has controverted claimant's entitlement to all unpaid medical treatment.

#### FACTUAL BACKGROUND

The claimant went to work for respondent in March 2000 as an assistant general manager. Claimant testified that approximately three weeks prior to August 23, 2000, she was coming out of a bathroom when she slipped and fell on the floor. Claimant testified that as a result of this incident she had pain in her neck, low back, arm, leg, and right hand. Claimant testified that she reported the incident to Joseph Ness, the general manager, and completed a form. Claimant did not seek medical treatment until August 23, 2000, when she was evaluated by Dr. Beeman. At that time claimant informed Dr. Beeman that she had fallen three days earlier instead of three weeks earlier. Claimant testified that she gave this history to Dr. Beeman because Ness had informed her that she could not report

her injury. Claimant testified that Ness informed her that he had never had a workers' compensation claim and wasn't going to have one now.

Dr. Beeman's medical report of August 23, 2000 indicates that he evaluated the claimant's neck, knee, and right ankle. Dr. Beeman noted no bruising, erythema, or bony deformity. Dr. Beeman performed x-rays of the claimant's cervical spine and noted some irregularities in the spinous process of C3 to C5. He also noted an irregular curvature of the claimant's cervical spine and noted that x-rays of the claimant's right leg were normal. Dr. Beeman diagnosed claimant as suffering from a neck strain and right knee strain. He prescribed medications, placed claimant on light duty, and indicated that he would send claimant's x-rays to radiology for a reading.

The radiologist report of August 28, 2000 also notes some reversal of the normal cervical lordosis at the mid portion of claimant's cervical spine with some degenerative disc disease present. The report notes that this may be degenerative in nature or it may be due to the position of claimant's head during the x-ray study. The radiologist indicated that if there was a clinical history of trauma that a ligamentous injury could not be excluded and that flexion-extension views would be beneficial.

Claimant was next evaluated by Dr. Beeman on September 12, 2000. Dr. Beeman again diagnosed claimant's condition as neck pain secondary to a strain. Dr. Beeman also requested the extension-flexion cervical spine views as recommended by the radiologist. In addition, Dr. Beeman scheduled claimant for physical therapy.

The flexion and extension x-ray views of claimant's cervical spine were performed on September 12, 2000. The report indicates that no evidence of ligamentous instability was seen. The report does note that mild spondylosis was present at C5-6 which consists of disc space narrowing, eburnation, and small marginal osteophyte formation. The report notes that no bony abnormality is present or soft tissue swelling.

Claimant returned to Dr. Beeman on September 25, 2000 for a recheck of her neck

pain. Dr. Beeman's assessment at that time was neck pain with a new onset of bilateral paresthesia radiculopathy. Dr. Beeman ordered an MRI scan of the claimant's cervical spine and noted that claimant might need a referral to a neurologist.

The MRI scan of claimant's cervical spine occurred on September 26, 2000. The report indicates the following impression:

IMPRESSION:

1. Reversal of the normal cervical lordotic curve may be due to muscle spasm. Mild central and right lateral recess stenosis is identified at the C5-6 cervical level secondary to the combination of a diffuse disc bulge and ventral spondylitic ridging. There is mild right neural foraminal encroachment at this level secondary to uncovertebral and facet joint hypertrophy.
2. Small central focal disc protrusion at C6-7 resulting in mild spinal stenosis. The thecal sac is deformed anteriorly without effacement of the ventral cerebro-spinal fluid space.
3. Minimal diffuse disc bulge at C4-5, not resulting in any significant spinal stenosis.
4. The remaining cervical levels are unremarkable.

The next medical report is from the physical therapist dated October 25, 2000 indicating that claimant's last visit occurred on October 4, 2000. It also notes that claimant had canceled her appointment on October 6, 2000 because insurance would no longer pay for medical treatment. As a result, claimant was discharged from physical therapy with the notation that claimant did not meet any of her physical therapy goals.

Throughout this period of time claimant continued to work for respondent and continued to receive her regular salary. Claimant testified that she was unable to perform some of her job functions due to physical pain. In December 2000 claimant was promoted to general manager of the respondent.

According to claimant's testimony she continued to have complaints of pain throughout the calendar year of 2000 and 2001. However, claimant apparently did not

seek any additional medical treatment until after she suffered another compensable injury on January 18, 2002, when she slipped and fell while coming out of a laundry room. At the time of this injury respondent #2 was the employer's workers' compensation carrier. According to the parties' stipulation, respondent #2 accepted this injury as compensable and has paid some medical benefits. In fact, at the end of the hearing the parties indicated that respondent #2 had paid all medical benefits subsequent to January 18, 2002 through September 20 of 2003.

Claimant testified that some of her medical bills after the fall in August 2000 were paid for by respondent #1. However, she has filed this claim seeking payment for unpaid medical benefits, including the MRI scan and physical therapy. Respondent #1 contends that claimant did not suffer a compensable injury.

### ADJUDICATION

The claimant contends that she suffered a compensable injury identifiable by time and place of occurrence while working for respondent in August 2000. 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 met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by respondent in August 2000.

Initially, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury was caused by a specific incident identifiable by time and place of occurrence and that the injury arose out of and in the course of her employment with respondent. Here, claimant testified that as she was coming out of a bathroom she slipped and fell onto her right side. Claimant testified that this incident occurred approximately three weeks prior to the date she first sought medical treatment from Dr. Beeman. I note that a claimant does not have to identify the precise time and numerical date upon which an accidental injury occurred; instead, the statute only requires that the claimant prove that the occurrence of the injury is capable of being identified. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W. 2d 369 (2001). Here, claimant testified that this incident occurred approximately three weeks prior to her visit with Dr. Beeman on August 23, 2001. Claimant testified that two individuals were present at the time of her fall and that she reported the incident to her manager, Joseph Ness. Claimant also testified that she completed an injury form after reporting this incident. Based upon claimant's testimony which I find to be credible, I find that claimant has proven by a preponderance of the evidence that her injury was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury arose out of and in the course of her employment with the respondent. With respect to this issue, it should be noted that respondent is not alleging that claimant was not performing employment services as she was coming from the bathroom. Accordingly, based upon the claimant's testimony which I again find to be

credible, I find that claimant has met her burden of proving that the injury arose out of and in the course of her employment with respondent.

I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal or external physical harm to her body which required medical services and that she has offered medical evidence supported by objective findings establishing an injury. With respect to this issue, I note that claimant testified that she suffered compensable injuries to her neck, back, arm, right leg, and right hand. However, after my review of the evidence, I find that claimant suffered a compensable injury only to her cervical spine. I find no medical evidence supported by objective findings establishing an injury to claimant's knee, low back, arm, or right hand. X-rays of the claimant's right knee were reported as normal as reflected in Dr. Beeman's report of August 23, 2000. Dr. Beeman's medical reports also note a lack of swelling or bruising with respect to these areas of claimant's body.

On the other hand, I do find objective evidence establishing an injury to claimant's cervical spine. Dr. Beeman in his report of August 23, 2000 noted irregularities in the spinous process of C3 to C5. In addition, flexion and extension x-ray views of September 12, 2000 revealed mild spondylosis at C5-6 which consisted of disc space narrowing, eburnation, and a small marginal osteophyte formation. Finally, an MRI scan was performed on claimant's cervical spine on September 26, 2000. That report indicates that the reversal of claimant's lordotic curve may be due to muscle spasm. It also notes that claimant has a mild central and right lateral recess stenosis at C5-C6 which is secondary to a disc bulge and ridging. The report also indicates that there is a mild right neural foraminal encroachment at that level. The report also indicates that there is a small disc protrusion at C6-7 which is resulting in mild spinal stenosis. I find that these are sufficient objective findings establishing an injury. I also find based upon the medical records presented, specifically the medical reports of Dr. Beeman, that the injury to claimant's

cervical spine caused physical harm to her body which required medical services.

Accordingly, for the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by respondent in August 2000. Having found that claimant suffered a compensable injury to her cervical spine, respondent #1 is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's cervical spine injury. This includes payment of the MRI scan and physical therapy.

Respondent #1 has controverted claimant's entitlement to all unpaid medical expenses.

During her testimony claimant also attributed her elevated blood pressure in part to the August 2000 injury. I find insufficient evidence that claimant's elevated blood pressure was caused or aggravated by her compensable injury. Therefore, I do not find this condition compensable.

Finally, as previously noted, a civil action has been filed against claimant and garnishment requested for payment of these medical bills. As a result, claimant has requested an order from this Commission staying all proceedings for collection. Having found that these unpaid medical bills are the liability of respondent #1, all proceedings against claimant for collection of this debt should be stayed pursuant to A.C.A. §11-9-118(e).

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical spine while employed by respondent in August 2000. Respondent #1 is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes unpaid medical services for an MRI scan and physical therapy. Respondent #1

has controverted claimant's entitlement to all unpaid medical benefits.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half to be paid by the respondents but with no fee forthcoming from the claimant since no benefits are being paid directly to the claimant.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE