

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210279

TAMMY L. OLDAKER, EMPLOYEE	CLAIMANT
ELLISON ENTERPRISES, INC., EMPLOYER	RESPONDENT
BENCHMARK INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

**OPINION FILED NOVEMBER 26, 2003**

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Russellville, Pope County, Arkansas.

The claimant was represented by NEAL L. NART, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by DAVID LANDIS, Attorney at Law, Jonesboro, Arkansas.

**OPINION AND ORDER**

A hearing was held in this matter on August 29, 2003. A prehearing conference was conducted on April 15, 2003, and a prehearing order was filed on April 1, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The employer-employee-carrier relationship existed between the parties at all relevant times.
2. Claimant was earning an average weekly wage of \$300.00.
3. Respondents have controverted this claim in its entirety.

4. That claimant received \$600.00 in short term disability benefits while she was off.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether the claimant sustained a gradual onset back injury that is compensable under the Arkansas Workers' Compensation Law;
2. Whether the claimant is entitled to temporary total disability compensation for the period extending from July 23, 2002, through September 16, 2002;
3. Whether the claimant is entitled to medical benefits, and;
4. Whether the claimant is entitled to compensation for a permanent physical impairment.

From a review of the record as a whole, to include the testimony of the claimant, Angelia Cothren, Bill Sallee, and Tony Austin, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

#### **FINDINGS AND CONCLUSIONS**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that her back condition was caused by rapid and

repetitive motion.

4. The claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury.
5. The respondents controverted this claim in its entirety.

### **DISCUSSION**

\_\_\_\_\_The claimant is the bakery/deli manager for the respondent employer. She contends that she sustained a gradual onset back injury that culminated in disability in July of 2002, and she contends that this injury is compensable under the Arkansas Workers' Compensation law.

Since the claimant contends that he sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. Consequently, to establish the compensability of the claim, the claimant must satisfy the requirements for establishing one of the five categories of compensable injuries recognized by the amended law, including the requirements common to all categories of injuries. See, Jerry D. Reed v. Con Agra Frozen Foods, Full Workers' Compensation Commission, Opinion filed Feb. 2, 1995 (Claim No. E317744). In the present claim, the claimant does not contend that his injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, he contends that he sustained an injury as a result of repetitive motion. Consequently, the

requirements of Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Cumm. Supp. 1997) are controlling, and the following must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of an in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(ii) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(ii) (Cumm. Supp. 1997); see also, Ark. Code Ann. § 11-9-401(a)(1) (Cumm. Supp. 1997));
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body (see, Ark. Code Ann. § 11-9-102(4)(A)(ii) (Cumm. Supp. 1997));
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury (see, Ark. Code Ann. § 11-9-102(4)(D) (Cumm. Supp. 1997));
- (4) proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion (see, Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Cumm. Supp. 1997));
- (5) proof by a preponderance of the evidence that the injury was the major cause of the disability or need for treatment (see, Ark. Code Ann. § 11-9-102(4)(E)(ii) (Cumm. Supp. 1997)).

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If the employee fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. Reed, supra.

In the present claim I find that the claimant failed to prove by a preponderance of the evidence that her back condition was caused by rapid repetitive motion. In this regard the claimant testified that her employment duties included all aspects of ordering merchandise, the unloading of all supplies, preparation of bread and occasionally preparation of donuts, all catering, and the supervision of employees. According to claimant's testimony supply trucks arrived on Tuesdays, Thursdays and Saturdays, and each truck contained anywhere from fifty (50) to one hundred (100) pieces that are boxes that had to be unloaded. These boxes ranged in weight from five (5) to fifty (50) pounds. The boxes were placed onto a six-wheeler and taken to her department where they were placed in a freezer. She also testified that the time required for this activity ranged between a half hour to two hours each day. In addition, she testified that the activity involved lifting the boxes from one level to another. Dr. Wilbur Giles, the Neurosurgeon who performed surgery on the claimant's back, has opined that this heavy lifting was the cause of her disc herniation and subsequent surgery. However, Dr. Giles

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opinion is not sufficient to satisfy the requirement that the injury be caused by rapid and repetitive lifting. Moreover, there is no medical evidence suggesting that the claimant's injury was in fact caused by any sort of rapid repetitive motion related to her employment. Accordingly, I find that the claimant failed to prove by a preponderance of the evidence that her back condition was caused by rapid and repetitive motion. Therefore, I find that the claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury.

**ORDER**

\_\_\_\_\_Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

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HON. C. MICHAEL WHITE  
Administrative Law Judge