

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204103

HAZEL ROACH, EMPLOYEE

CLAIMANT

**DOLLAR GENERAL CORPORATION, EMPLOYER
SELF-INSURED**

RESPONDENT

OPINION FILED OCTOBER 10, 2003

Submitted on the record before Administrative Law Judge Dail Stiles.

Claimant represented by Mr. Thomas W. Mickel, Attorney at Law, Conway, Arkansas.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

The issue to be resolved in this matter is the claimant's entitlement to a four percent whole body physical impairment rating.

The parties stipulate that the claimant sustained a compensable injury to her neck on August 28, 2000. The parties stipulate that the claim was accepted as compensable and appropriate benefits have been paid.

The claimant contends that she is entitled to a four percent physical impairment rating assessed by Dr. James Adametz.

The respondents contend that the claimant cannot meet her burden of showing that her admittedly compensable injury of August 28, 2000, is the "major cause" of the four percent whole body impairment rating assessed by Dr. Adametz. The respondents argue that the impairment is a result of a pre-existing condition.

STATEMENT OF THE CASE

After the claimant's compensable injury of August 28, 2000, she began treating with Dr. Philip Johnson, an orthopedist of Ortho Arkansas. Dr. Johnson saw the claimant the day after her injury and diagnosed her with a cervical

sprain and contusion to her left shoulder. Dr. Johnson ordered an MRI of the cervical spine.

A cervical MRI was performed on the claimant on September 5, 2000. Dr. Johnson stated in a clinic note of September 12, 2000, after reviewing the cervical MRI of September 5, 2000:

She returns today with continued difficulty with her neck. Her MRI did not show any evidence of acute bony injury. There are no disc herniations. She has some bulging disc, but of no concern.

On November 1, 2000, the claimant first saw Dr. Reginald Rutherford, a neurologist. In his initial report of November 1, 2000, Dr. Rutherford stated, *inter alia*:

Ms. Roach's examination is considered within normal limits. Her history is that of head trauma in which she was dazed but not clearly concussed in the aftermath of which she has experienced headache and neck pain accompanied by minor neurological symptoms which are without current clinical counterpart. Her MRI study of the cervical spine does raise the possibility of a mild anterior compression fracture C6. This will be further evaluated by a bone scan with SPECT imaging to ascertain whether or not this is a recent abnormality. If confirmed by bone scan, this would serve to lengthen the probable convalescent period. . . .

On November 17, 2000, an MRI of the brain was performed on the claimant which was normal.

On November 20, 2000, a whole body bone scan with SPECT imaging of the cervical and upper dorsal regions was performed.

On November 20, 2000, Dr. Rutherford, after reviewing the MRI of the brain and the bone scan, stated, in part:

There is no evidence of intercranial trauma on MRI imaging which correlates with Ms. Roach's prior neurological examination. The bone scan would serve to argue that the possible mild anterior compression fracture C6 is a remote rather than current abnormality.

Ms. Roach was advised of the test results when seen.

...

The claimant continued to treat with Dr. Philip Johnson and with Dr. Rutherford until Dr. Rutherford released her as having reached maximum medical improvement with no residual impairments on April 2, 2001.

Dr. Johnson had released the claimant except for special problems on November 28, 2000.

The claimant first saw Dr. James Adametz, a neurosurgeon, on April 9, 2001. Dr. Adametz treated the claimant with a series of epidural injections. Dr. Adametz noted in his report of April 9, 2001, that the claimant had some decreased range of motion of her cervical spine, and she had some crepitation and popping in her neck as she moved it. He noted that her strength was good, and that her sensation was good. Dr. Adametz said that he told the claimant that if she had, "a very slight compression fracture that should have healed by now." Dr. Adametz, as noted above, treated the claimant with a series of cervical epidural steroid injections.

On July 10, 2001, the claimant presented to the Stuttgart Regional Medical Center reporting that she had been involved in an automobile accident, and that the rear of her vehicle was struck. The claimant complained of backache.

On July 25, 2001, or fifteen days after the claimant's motor vehicle accident, Dr. Adametz assessed the claimant as having a four percent permanent partial impairment to the body as whole as a result of what he characterized as, "a very slight compression fracture in her cervical spine." Dr. Adametz went on to say in that clinic note of July 25, 2001, that he did not think the fracture was unstable or that it would require surgical intervention, but he noted the claimant continued to have muscle spasms, stiffness and pain because of it.

The respondent argues in its brief that Dr. Adametz had reviewed only the original cervical MRI and x-ray photographs which were taken within the first couple of weeks of the claimant's injury. Respondents argue that there was no indication that Dr. Adametz had benefit of the bone scan, nor had he benefit of Dr. Rutherford's reports indicating that the compression fracture in the neck was of remote origin as opposed to some recent trauma.

FINDING OF FACT

The claimant fails to demonstrate by a preponderance of the evidence of record that her admittedly compensable injury of August 28, 2000, is the "major cause" of her current physical impairment as assessed by Dr. James Adametz.

DISCUSSION

Ark. Code Ann. §11-9-102(5)(F)(ii) (Repl. 1996) states in pertinent part:

(ii)(a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability.

Dr. Johnson had released the claimant, except for special problems she might encounter, as early as November 28, 2000. Dr. Rutherford, after having seen the claimant on several occasions and having an MRI of the brain and a bone scan of the neck performed, determined that the slight compression fracture in the claimant's cervical spine was not from recent trauma, but rather from a more remote event. After having made that diagnosis, Dr. Rutherford released the claimant without restrictions on April 2, 2001.

Because Dr. Adametz did not have access or did not request all of the previous diagnostic tests and did not have benefit of the reports of Dr. Rutherford, this examiner feels that the greater weight of the medical evidence should be placed

on those reports and opinions of Dr. Johnson and Dr. Rutherford, as opposed to those of Dr. Adametz.

It is significant to this examiner, although not asserted by respondent, that Dr. Adametz assessed no physical impairment rating until after the claimant's motor vehicle accident on July 10, 2001. His assessment of an impairment rating came fifteen days after the claimant's motor vehicle accident.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge