

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306427

LISA M. ROLLF

CLAIMANT

QUAPAW HEALTHCARE, INC.

RESPONDENT EMPLOYER

PACIFIC EMPLOYERS INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED DECEMBER 4, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE WILLIAM K. MORITZ, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The claim in the above matter came on for a hearing in Hot Springs, Arkansas on October 31, 2003. A prehearing conference was held on August 26, 2003 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. There was an employer-employee relationship on November 4, 2002.
2. The compensation rate is \$174.

The claimant contends that she suffered an on-the-job injury caused by gradual onset based on the tasks she was performing and that she is entitled to medical benefits and temporary total disability benefits from December 2, 2002, to a date to be determined.

The respondents contend the claimant cannot prove by a preponderance of the evidence that there was a compensable consequence or problem that arose out of her employment. The respondents further contend that the problems were pre-existing in nature and there is no evidence of any major cause or causal connection from any medical physician indicating the claimant's condition is work related. The respondents further assert that notice was not provided until June 2003. The claim has been controverted in its entirety.

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 Ark. Code Ann.

§11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on November 4, 2002.
2. The compensation rate is \$174.
3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual onset injury arising out of and in the course of her employment caused by rapid repetitive motion.
4. The claimant has also failed to prove by a preponderance of the evidence that she sustained a compensable specific incident injury.

DISCUSSION

The claimant, 38 years old, began her employment with the respondent employer in September 2002, as a CNA. In this job, the claimant assisted patients in bathing, dressing, feeding and personal care. Lifting and moving patients was a regular job duty. The claimant asserted that before her employment with the respondent that she had no problems with her neck, head or back. According to the claimant, she began experiencing neck problems in October 2002, shortly after her employment. The claimant testified that she presented her employer with a MRI report and a doctor's note to be off work in November 2002 and has not returned to work.

According to the claimant, she experienced pain in her neck after she attempted to hold a patient, Dorothy Weston, in her geri chair as the patient was falling. The claimant testified that her neck continued to get worse after that incident and she went to a chiropractor first. The claimant next sought medical with her doctor and at the emergency room and has undergone a MRI.

Since ending her employment with the respondent, the claimant has been a homemaker taking care of her family and doing household chores. She has not sought outside employment.

Under cross examination, the claimant testified that she has pain in her neck, shoulders, she gets a headache and her arm becomes numb. According to the claimant, the incident with the patient slipping happened around the end of October 2002. The claimant confirmed she previously worked for another nursing home from February 2001 until July 2001 and was off work a little over a year before starting work for the respondent employer.

The claimant was questioned about a doctor's visit in May 1999, with Dr. Richard Gardial where she complained of neck and left shoulder pain. The medical evidence also provides the claimant was seen in June 1999, for neck and left shoulder pain and was seen in the emergency room in March 2000, for mid-back and shoulder pain. The claimant explained that was when she was having pancreas problems. The medical evidence reflects an emergency room visit in February 2001, with neck pain noted and a January 25, 2002, visit with Dr. Richard Finch, noting pain in the neck, arms, shoulder and back. The claimant was questioned about a fall when she received x-rays of her cervical spine at the emergency room at National Park Medical Center on February 22, 2002. The claimant could not remember much about the pain but did not believe she was having neck pain. On March 13, 2002, the claimant presented to the doctor with neck pain radiating into her shoulders. The claimant verified that the pain then is similar to her pain now.

The claimant was questioned about her treatment with Dr. Rose Livingston, a chiropractor. The medical evidence reveals the claimant saw Dr. Livingston on September 23, 2002, for neck and shoulder pain and headache. The medical further reveals the claimant indicated her symptoms were not because of an accident. The claimant was questioned about a questionnaire she completed on September 23, 2002, for Dr. Livingston where she indicated that her major symptom was neck pain that keeps her up all night and this began about one year ago. The claimant verified that those symptoms then are similar to her problems now. The claimant also verified that she did not tell Dr. Livingston or Dr. Finch that her problems were from a work-related incident. The claimant sought emergency room treatment on November 16, 2002, and

described neck pain for the past several months; however, she verified that she did not advise the medical staff her problems were due to a work incident.

The claimant verified that Dr. Finch took her off work for two weeks on December 4, 2002, but no one took her off work after that. The claimant verified that she did not tell Dr. Finch her condition was work related because she did not know what actually happened to her neck. The claimant verified that she did not tell either Helen Wyble or Linda from the respondent employer that her condition was work related. The claimant testified that she was not sure the slipping patient incident was what caused her neck pain. She testified there were a few instances of lifting and carrying patients. The claimant confirmed that she made a written report or claim of a work injury when she filed an AR-C on June 19, 2003.

Helen Wyble, director of nurses for the respondent employer, testified that the procedure when there is a work injury is to complete an incident and accident report and the claimant did not make a report of a work injury during her employment. Ms. Wyble testified the first notice of the claimant's injury was when the AR-C form was filed on June 19, 2003. Ms. Wyble further stated that when the claimant presented some off work notices in October or November, there was no mention of a work-related incident.

The claimant contends that she sustained a neck injury while employed with the respondent and that her condition gradually became worse. In order for the claimant to prevail with a compensable specific incident injury, she must prove by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence and supported by objective findings. Ark. Code Ann. §11-9-102(4)(A)(i) and (D). While the claimant testified at the hearing about one specific

incident, this was not documented in an incident report to the supervisor nor does the medical evidence indicate a particular incident. The claimant's credibility was certainly questionable, as she presented testimony that she had no previous neck and shoulder problems. However, the medical evidence documents numerous doctors' visits noting neck and shoulder problems, long before the claimant's employment with respondent. The claimant has failed to provide sufficient evidence to prove by a preponderance of the evidence that she sustained a specific incident injury. The claimant further indicated at the hearing and in her AR-C filing that her injury was a gradual onset injury.

In order for the claimant's cervical injury to be accepted as a compensable gradual onset injury, the claimant must satisfy the requirements of Ark. Code Ann. §11-9-102(4)(A)(ii), which defines a "compensable injury" as:

(ii) 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 of occurrence, if the injury is:

(A) caused by rapid repetitive motion.

Since there is no real dispute by the claimant and respondent that the claimant's neck problems at issue were not caused by a specific incident and were not identifiable by time and place of occurrence, the claimant can only establish a compensable gradual onset neck injury if she can establish the statutory requirements for an injury caused by rapid repetitive motion. See, *Hapney v. Rheem Mfg., Co.*, 342 Ark. 11, 26 S.W.3d 122 (2000).

In determining the definition of "rapid repetitive motion," the Commission must consider that multiple tasks involving different movements can be considered together

to satisfy the repetitive element of rapid repetitive motion. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). The Arkansas Supreme Court has devised a two-part test to determine whether an injury is caused by rapid and repetitive motion: (1) the tasks performed must be repetitive and (2) the repetitive motion must be rapid. *Id.*; *Hapney, supra*.

In the present case, the claimant described her job duties of assisting the patients with their grooming and eating, as well as personal care of the patients. While these tasks are repetitive, there was not a rapid element presented. Without a doubt, the claimant performs repetitive tasks on a daily basis for the patients in her care; however, this type work is difficult to perform in a rapid manner, certainly rapidly enough to satisfy the statutory requirements.

The claimant in the present case also had a history of neck and shoulder problems as well as headaches, the same symptoms that she has related to her condition that she relates to her work with the respondent. As is commonly stated, the employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. App. 985, 588 S.W.2d 462 (1979). However, the claimant must still prove by a preponderance of the evidence that her condition is aggravated or worsened as a result of the work and must still prove by a preponderance of the evidence the elements to prove she sustained a compensable injury. The claimant has failed to satisfy the statutory requirements for a compensable injury as a result of a gradual onset neck injury, since the rapid repetitive requirement has not been met.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual onset injury arising out of and in the course of her employment and caused by rapid repetitive motion. The claimant has also failed to prove by a preponderance of the evidence that she sustained a compensable specific incident injury. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**