

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F201987**

**NANCY SISCO**

**CLAIMANT**

**DAS FAMILY, INC.**

**RESPONDENT EMPLOYER**

**UNION STANDARD INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED SEPTEMBER 24, 2003**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

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

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Jonesboro, Arkansas on August 6, 2003. A prehearing conference was held on June 25, 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 December 13, 2001.
2. The temporary total disability rate is \$175.

The claimant contends that she sustained two slip and fall injuries, one on December 13, 2001, and one on January 4, 2002. The claimant contends she is entitled to medical benefits, including additional medical treatment and temporary total disability benefits from December 13, 2001, except for the approximate one-week

period when the claimant returned to work. Attorney's fees are requested and permanency is reserved.

The respondents acknowledge the claimant had a fall on December 13, 2001, where she reported a thumb injury with no medical treatment or lost time. The respondents are unaware of a January 4, 2002, injury and controvert that injury in its entirety. The respondents contend the medical provides no objective findings on any diagnostic studies and further contend the claimant continued to work until sometime in January 2002, when she voluntarily quit her job.

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 December 13, 2001.
2. The temporary total disability rate is \$175.
3. The claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries, which are supported by objective medical evidence.

**DISCUSSION**

The claimant, 46 years old, began her employment with the respondent in 2000, as a server. According to the claimant, on December 13, 2001, she hit a slick spot in

the back kitchen and she twisted and put all her weight on her hand and thumb. The claimant testified that her thumb swelled and turned blue and purple and she wore an ace bandage for about a month. The claimant testified that she continued working and sustained another slip and fall on a wet floor on January 4, 2002. According to the claimant, she reported the fall to her supervisor, Connie, and she had to have a clean, dry shirt to put on. The claimant testified that she landed on her back when she fell on January 4, 2002. The claimant further testified that she continued to tell her supervisor that she was hurting but the employer did not offer any medical treatment. According to the claimant, she continued working until February and she was unable to walk.

The claimant sought treatment on her own with Dr. Cheryl Rich from the Coming Clinic and received medication. According to the claimant, she finally had a MRI and a myelogram. According to the claimant, she had not previously had back problems even though she had worked in a factory for ten years.

The claimant testified that she had attempted to return to work. She testified that she worked three 12-hour days as a packer at Anchor Packaging and was not successful. The claimant also testified that she worked a week and a half at Flash Market but was unable to stock the coolers and was let go.

The claimant testified that she had stomach surgery in early May 2002. The claimant also has had four C sections, a partial hysterectomy, two bowel surgeries, bladder surgery, stomach surgery and hemorrhoid surgery. According to the claimant, Dr. Rich referred her to Dr. Chan, a neurologist in Jonesboro; however, she did not get to see him because of other health problems.

Under cross examination, the claimant was asked about the AR-C Form she signed on February 22, 2002, which lists only a December 13, 2001, injury. She testified that she thought both falls were listed on the form. The claimant verified that the December 13, 2001, injury involved her thumb and wrist and the January 4, 2002, injury was to her back. The claimant verified that she saw Dr. Rich on January 7, 2002; however, the claimant could not explain why the doctor's report reflects "the patient with back problems ongoing for several years." (T., p. 24.) The claimant verified that the doctor gave her some back exercises and did not take her off work. The claimant verified that she returned to the doctor on January 23, 2002 and complained of chronic low back pain and anxiety. The claimant verified that she did not get an off work slip, since she told the doctor she could not take off work. The claimant underwent a cervical and lumbar MRI in April 2002 and Medicaid paid for these.

The claimant confirmed that she underwent hemorrhoid surgery on December 27, 2002. The claimant also was hospitalized two weeks in May 2003, where she had abdominal surgery. The claimant underwent bladder surgery in March 2003. The claimant testified that the doctor has not released her to return to work following the abdominal surgery.

The claimant confirmed that the medical she sought was paid by Medicaid and she did not take the bills to her employer. She testified that she thought she would be fired, if she asked for any benefits.

Connie Wicker, employer, testified that the claimant reported a December 13, 2001, injury but did not report a January 4, 2002, injury. Ms. Wicker testified that she offered to send the claimant to the doctor following her December 13, 2001 injury but

the claimant declined the offer. Ms. Wicker testified that the claimant continued to work through mid-February 2002 and had complained of some bowel problems. Ms. Wicker testified that the claimant failed to come in one day and she could no longer contact her by telephone and she did not hear from her again. According to Ms. Wicker, other employees had sustained work injuries and had not been fired for filing a claim.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries supported by objective findings. The claimant testified to two specific slip and fall injuries, one on December 13, 2001, where she injured her thumb and hand. She did not seek any medical treatment for this injury. The claimant testified that she slipped and fell again on January 4, 2002 and injured her back. The supervisor, Connie Wicker, denied any report of an injury on January 4,

2002, but did acknowledge the claimant reported the December 13, 2001, slip and fall. Ms. Wicker testified that she asked the claimant about seeking medical treatment following the December 13, 2001, fall but the claimant denied treatment. An AR-C Form was introduced at the hearing and this form was dated February 22, 2002, and was signed by the claimant; however, only the December 13, 2001, incident was reported on this form.

The claimant has the burden of proving, by a preponderance of the evidence, compensability of her claim. *Georgia-Packfic Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). In the present claim, the claimant did seek medical treatment in January 2002 and followed up with some diagnostic testing and the MRI and myelogram were unremarkable. The CT of the lumbar spine post myelogram administered on June 3, 2002, revealed a L4-L5 diffuse bulging disc minimally flattening the anterior thecal sac and also at L5-S1 there was very minimal posterior central broad based disc bulging with minimal indenting the anterior thecal sac, both with the nerve roots exiting without compromise. The April 25, 2002, MRI revealed mild disc disiccation at L5-S1, otherwise normal study. The initial January 7, 2002, doctor's report notes that the patient complains of ongoing back problems for several years.

In the present case, there is no written report of a January 4, 2002, slip and fall incident by the claimant and the supervisor denies any mention by the claimant of a fall on that day. The AR-C completed by the claimant on February 22, 2002, fails to mention a January 4, 2002, fall and the initial medical report on January 7, 2002, does not give any further clarification of a fall on January 4, 2002. Further, the medical does not provide objective findings to support a compensable injury following a slip and fall

incident. The claimant testified that she did not ask the employer for medical treatment initially and only sought reimbursement for the medical care after she left her job with the employer. I was not persuaded by the claimant's testimony regarding the second fall incident and find the medical evidence does not provide objective findings and does not provide a medical opinion within a reasonable degree of medical certainty necessary to address compensability. See, Ark. Code Ann. §11-9-002(16).

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries, which are supported by objective medical evidence. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**