

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202168

JANET STALLINGS

CLAIMANT

TENNECO AUTOMOTIVE, INC.

RESPONDENT EMPLOYER

**PACIFIC EMPLOYERS INSURANCE CO.
SECOND INJURY FUND**

**RESPONDENT CARRIER NO. 1
RESPONDENT NO. 2**

ORDER AND OPINION FILED SEPTEMBER 9, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE M. KEITH WREN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE RICHARD LUSBY, Attorney at Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Jonesboro, Arkansas on July 24, 2003. A prehearing conference was held on March 12, 2003 and a prehearing order was filed the same date. 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 February 18, 2002.
2. The compensation rates are \$356/267.

The claimant contends she sustained a compensable injury to her lower back on February 18, 2002. The claimant contends she is entitled to medical benefits and

temporary total disability benefits from the date of the injury to a date to be determined. All other issues are reserved.

The respondents contend that the claimant did not sustain a specific injury on February 18, 2002 and acknowledge the claim has been controverted in its entirety. The respondents further contend that the claimant's problems pre-existed the February 2002, alleged incident. Alternatively, the respondents contend if the claim is found to be compensable, the claimant's healing period ended on May 6, 2003.

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 February 18, 2002.
2. The compensation rates are \$356/267.
3. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury on February 18, 2002, which exacerbated her pre-existing condition.
4. The respondents are liable for all reasonable and necessary medical treatment the claimant has pursued.

5. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from February 19, 2002 through at least May 6, 2003.

DISCUSSION

The claimant, 42 years old, worked for the respondent employer for 18 years. The claimant worked as an order picker where she would go to a station, pick up an order and after logging in she would go pick the various shock absorbers for the order. According to the claimant, some of the boxes could weigh from a pound to 40 pounds.

The claimant testified that her low back pain from 1994 to 2002 was like a numbness with her foot going to sleep and a little pain. She took prescription and over-the-counter medication. According to the claimant, on February 18, 2002, around 12:30 p.m., she picked up a Halidex order (the heaviest shocks) and began filling the order. As the claimant was picking up boxes of shocks, the box was lodged and as she jerked, she hit her arm and shoulder and went down. According to the claimant, she finished emptying the pallet but she felt a sudden pain in her low back that sent her to her knees. She attempted to complete filling her order but could not. She reported the incident to the supervisor, Richard Burns, and went to the emergency room. The claimant compared the pain with the February 18, 2002, incident with the pain before and she stated the prior pain was like a numbness but the February 18, 2002, pain was a sharp shooting pain.

While in the emergency room, the claimant received shots and medicine and was sent home to follow up with her family doctor who referred her to Dr. Dewayne

Eubanks. Dr. Eubanks ordered some diagnostic tests and the claimant underwent surgery on August 16, 2002. The claimant is currently seeing Dr. Mihaela Savu for pain management. According to the claimant, she did return to work for about two hours and filled out "face sheets." The claimant stated that the personnel manager, Harold Diggs, told her he was unable to put her back to work with a five-pound lifting limitation.

The claimant verified that she was involved in a serious car accident in 1994 and continued to have back pain afterwards as well as hip and leg pain. The claimant verified that she saw a number of specialists between 1994 and 2001 for back complaints, including having a number of diagnostic tests. The claimant verified that she had a MRI of her low back in November 2001 and that in December 1994, she described an incident to her doctors where she bent down to pick up her daughter and had pain so severe that she fell to her knees.

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 admittedly has pre-existing back problems for which she has sought treatment for a number of years before the February 18, 2002, work incident. A pre-existing disease or infirmity does not disqualify a claim, if the employment aggravated, accelerated or combined with the disease or infirmity to produce the disability for which compensation is sought. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 504 (1990); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

After considering all the medical evidence and the claimant's testimony, I find that she has proven by a preponderance of the evidence that she sustained a specific incident injury on February 8, 2002, that exacerbated her pre-existing condition and caused her to need medical treatment and surgery. The respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued for the compensable February 18, 2002, injury.

In the present case, the claimant presented details of how she was performing her job and jerked on a box and fell back and immediately felt pain. The claimant reported the incident and sought medical treatment. A March 12, 2002, lumbar CT of the spine revealed a possible right HNP at L3-4. Dr. Wilbur Giles opined on April 3, 2002, in part:

Her recent MRI scan is entirely within normal limits, other than mild degenerative disease and shows no evidence of herniation. There is questionable protrusion on the right at

L3-4 on her CT scan, but her MRI scan was entirely normal.
(Cl. Exh. No. 1, p. 126.)

The claimant underwent CT scans as well as a discogram and MRI scan and on August 8, 2002, Dr. K. Dewayne Eubanks, orthopedic surgeon, opined that the claimant's condition was "acute L3-4 far lateral disc herniation on the left with L3 radiculopathy and weakness and sensory loss. This is likely the event that occurred when she hurt herself on February 18, 2002." (Cl. Exh. No. 1, p. 141.) Dr. Eubanks recommended surgery and performed such on August 16, 2002, with a preoperative and postoperative diagnosis of left L3-4 far lateral herniated disc with L3 radiculopathy and degenerative disc disease, severe at L3-4 with discogenic low back pain chronic.

Dr. Eubanks opined in a letter dated August 29, 2002, in part:

Ms. Stallings has called asking for me to confirm whether or not her injury was work-related. Indeed, her disc herniation far laterally was clearly the result of a workplace injury, given her history, etc. Of course she has degenerative disc disease at that same level, but the acute problem was due to the disc herniation. Unfortunately, in order to fix this, she had to undergo removal of the entire disc with interbody fusion to treat it completely. (Cl. Exh. No. 1, p. 145.)

In a July 11, 2003, deposition, Dr. Eubanks opined that the claimant did have degenerative disk disease but the mechanism of her injury with the twisting motion in the fall or partial fall is the most likely thing to cause a tear in the anulus and a subsequent disk rupture. Dr. Eubanks opined that he believed the day the claimant twisted either caused the disk herniation or exacerbated it. Dr. Eubanks was asked to review the November 7, 2001, MRI where there was no L3-4 disk herniation and then to review the March 12, 2002, CT scan showing a herniation at L3-4. Dr. Eubanks opined if the MRI report and the CT reports were accurate, one could assume the claimant's

herniation occurred between November 3, 2001 and March 12, 2002, which is consistent with a February 18, 2002, event at work. Dr. Eubanks also acknowledged that a review of the claimant's previous diagnostic studies as of April 2000, revealed that there was objective neurodiagnostic evidence of nerve root impingement or irritation of some sort. Dr. Eubanks performed the disk surgery on the claimant and verified that there was an actual herniation at L3-4. Dr. Eubanks also opined that it was possible the herniation was there two years ago, but whether or not it was there before, it was clearly exacerbated by the injury that the claimant related on the day when she twisted and fell at work. Dr. Eubanks opined the claimant's symptoms were exacerbated, causing her to need treatment and she ultimately had surgery. A medical report on May 6, 2003, authored by Dr. Eubanks, indicated the claimant was nine months out from her surgery and the excruciating pain was gone, although she still had a low-key but chronic pain she could not shake. Dr. Eubanks recommended she seek some pain management treatment with Dr. Savu.

The claimant next contends that she is entitled to temporary total disability benefits from the date of the injury until a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally incapacitated from earning wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant underwent back surgery on August 16, 2002. On August 29, 2002, Dr. Eubanks opined in a letter that he expected the claimant to make a complete recovery and would expect she could resume her work activities, although it might be six months to a year before she could return to full or normal

duties. The latest report in evidence is a May 6, 2003, report from Dr. Eubanks indicating that the claimant still had the low key chronic pain but not the excruciating pain as before and he recommended she treat with Dr. Savu. He did not expressly state whether the claimant was released to return to work nor did this question arise at the July 11, 2003, deposition. The claimant contends that she is unable to return to work and only returned for about two hours following her injury, when she was sent home because of her five-pound lifting limitation. With the most recent 2003 medical report making no mention that the claimant had reached maximum medical improvement and additional pain management being recommended, I find the claimant was still in her healing period and unable to work at that time. I find the claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to work from February 19, 2002 through at least May 6, 2003 (date of the latest medical report).

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury on February 18, 2002, which exacerbated her pre-existing condition. The respondents are liable for all reasonable and necessary medical treatment the claimant has pursued. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from February 19, 2002 through at least May 6, 2003.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be

paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**