

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202133

CLAUDIA L. WHIPPLE, EMPLOYEE	CLAIMANT
ST. ANTHONY'S HOSPITAL ASSOCIATION, EMPLOYER	RESPONDENT
ALTERNATIVE INSURANCE MANAGEMENT, 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 EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

The respondents were represented by WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER FILED NOVEMBER 26, 2003

A hearing was held in this matter on August 29, 2003. A prehearing conference was conducted on June 17, 2003, and a prehearing order was filed on June 19, 2003.

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

1. Employee/employer/carrier relationship existed on February 18, 2002.
2. A specific incident occurred on February 18, 2002 for which the respondents paid benefits.

During the hearing the parties were able to stipulate that the claimant was entitled to a temporary disability rate of \$259.00, and a partial disability

compensation rate of \$149.00. Therefore, issue No. 3 was withdrawn. At the hearing the parties also indicated that the primary issue to be decided is whether the claimant sustained an injury that is compensable under the Arkansas Workers' Compensation law.

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

1. Whether claimant was entitled to temporary total disability compensation for the period extending from April 15, 2002, to a date yet to be determined.
2. Whether additional medical treatment is reasonably necessary for the treatment of the claimant's injuries.
3. Whether claimant is being paid the correct compensation rate.

From a review of the record as a whole, to include the testimony of the claimant, 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 establish an injury with medical evidence supported by objective findings as required by the Arkansas Workers' Compensation law. T

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 was employed by the respondent/employer as a licensed practical nurse. She contends that she injured her back on February 18, 2002 when she was assisting in the moving of a patient. According to her testimony she experienced a sudden onset of severe pain in her low back and between her shoulders. In this regard she testified that "it felt like a real bad burning sensation between [her] shoulders and [she] had pain, immediate pain in [her] lower back that shot down through [her] right leg all the way down [her] right leg." She immediately reported the incident and was seen for treatment in the emergency room on that same date. The medical records indicate that the claimant has a long history of frequent back problems and the emergency room report indicates that the claimant had re-injured her back and sustained a muscular back strain. The respondents initially accepted the compensability of the claim and paid benefits. However, in April of 2002, the claimant's benefits were stopped and the claim was controverted in its entirety. 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 requirement 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). Since the claimant in the present claim alleges that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997) are controlling, and the following requirements must be satisfied:

(1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (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 which

required medical services or resulted in disability or death (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (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 a specific incident and is identifiable by time and place of occurrence (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997)).

If the claimant 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.

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 requirement 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). Since the claimant in the present claim alleges that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997) are controlling, and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (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 which required medical services or resulted in disability or death (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (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 a specific incident and is identifiable by time and place of occurrence (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails

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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 establish a compensable injury with medical evidence supported by objective findings as defined by the Arkansas Workers' Compensation law. In this regard the medical records indicate that the clinical examination performed on the claimant were essentially within normal limits. In addition, a MRI was performed on May 2, 2002, which showed some mild bulging of the anulus at the L4 level, however, the medical records also indicate that these findings were essentially within normal limits. Moreover, the medical records indicate that at least two MRIs had been performed prior to the date of the alleged compensable injury and those MRIs revealed findings consistent with the MRI performed subsequent to the alleged injury, and were also interpreted as being normal.

Accordingly, I find that the claimant failed to establish an injury with medical evidence supported by objective findings as required by the Arkansas Workers' Compensation law. Consequently, I find that the claimant failed to prove by a preponderance of the evidence th elements necessary to establish a compensable.

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.

HON. C. MICHAEL WHITE
Administrative Law Judge