

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F209668**

<b>GLORIA WILSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MALLARD EXPRESS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>CANNON COCHRAN MANAGEMENT SERVICES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 16, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on April 18, 2003, at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees associated with a hip and back injury.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence fails to preponderate in favor of the claimant and benefits must be denied.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on October 30, 2001 at which time the claimant sustained a compensable scheduled injury to her left foot. Medical

expenses were paid. The claimant settled a September 8, 2000 left hip and back injury (same employer, different carrier), Claim No. F011826, by joint petition on February 21, 2003 for \$1,000.00.

The claimant contends that she injured her hip and back at the same time she sustained the compensable left foot injury. She seeks payment of medical expenses, temporary total disability benefits from October 31, 2001 to November 11, 2001 and attorney's fees.

The respondents contend the claimant's hip and back were not injured in the incident on October 30, 2001 and her symptoms are the result of her previous injury on September 8, 2000 with another carrier.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant was the only witness to testify at the hearing.

The claimant explained that she sustained two separate injuries while working at two different locations of the gas station and convenience store. She injured her back and hip in a fall on September 8, 2000. Her employer sent her to Healthcare Plus and the adjuster sent her to Dr. Safman. The claimant testified her symptoms resolved July 2, 2001 and she decided she didn't need to return for follow-up visits. She was able to return to work with no restrictions although she did experience some pain with heavy lifting.

The claimant was injured again on October 30, 2001 during the coverage with the respondent-carrier. The claimant was returning kitchen equipment that she had borrowed from the store. She tripped over a box in the aisle and fell on her left side, injuring her foot and arm. Her supervisor sent her to Healthcare Plus where she came under the care of Dr. Alexander. The

claimant was diagnosed with a contusion of the left hand and a sprained left foot. She testified she also complained of pain in her hip but that symptom is not listed in the medical records. She was given crutches and sent back to work but no light duty was available.

The claimant worked for a different employer, H & R Block from January 7, to April 15, 2002. They were able to accommodate her work restrictions but the work was seasonal and the job was short lived.

The claimant stated she was still symptomatic with pain in her arm, foot and hip. Prolonged standing and walking aggravate her foot. She has not seen a doctor for her injuries since November, 2001, but would like to consult an orthopedic surgeon, preferably in the Pine Bluff area as transportation is a factor.

Although testimony was elicited concerning some possible issues on the compensable foot claim (change of physician, temporary total disability benefits) it was my understanding as evidenced by the prehearing order, that the issues for the Commission's determination were limited to the compensability of the hip and back injuries.

### **MEDICAL EVIDENCE**

The claimant saw general practitioner, Dr. Morris on five occasions during the month of September, 2000, following her first back injury on September 8, 2000. She then saw orthopedic specialist, Dr. Safman on ten occasions between October 2000 to July 2001.

Dr. Morris recorded the claimant's injury on September 8, 2000 as a fall, injuring her left hip, shoulder and chest wall (ribs). There is no mention of a back problem until a few days later when the claimant experienced a pop in her back while stretching. Dr. Morris took x-rays of the shoulder, chest and hip which proved normal. He prescribed medication, a sling and light duty

(no standing, no lifting, and no use of the left arm). The claimant missed two days of work.

The claimant returned to Dr. Morris on September 18, 2000 complaining of back pain after stretching and experiencing a pop in her back. He took her off work until the 18<sup>th</sup>.

On September 18, 2000, Dr. Morris recorded “a minor setback” because of the claimant’s back pain at the iliac crest and sensation of heaviness in her leg. He felt her injuries to her chest, shoulder and hip were resolving. She was again excused from work.

On September 22, 2000, Dr. Morris decided the claimant needed an orthopedic consult due to her continued complaints. He mentions negative x-rays of the lumbar spine but there is no indication in his earlier records that the back was ever treated. Likewise, Dr. Safman makes no mention of lumbar x-rays when he reviewed the claimant’s medical history.

Dr. Safman began treating the claimant on October 16, 2000, noting she injured “her hip, chest wall and shoulder. She also had lumbar pain.” For the first time, the claimant also complained of pain in the cervical spine with headaches, thoracic spine pain and radiating left arm pain with numbness in both arms at night. She continued to complain of left hip and lower lumbar pain. Dr. Safman noted that x-rays of her hip, shoulder and ribs were normal. He diagnosed a contusion of the left hip with a cervical-thoracic-lumbar strain. He prescribed medication and two weeks of physical therapy. In later reports he described the therapy as ineffective because the therapist failed to follow his instructions.

The claimant returned to Dr. Safman on October 30, 2000 for trigger point injections. He imposed a 20 pound lifting restriction.

On November 6 and November 15, 2000, the claimant returned to Dr. Safman with complaints of subjective lumbar and thoracic pain and he changed her prescription medication.

Dr. Safman recorded hip and groin pain in a report dated November 29, 2000 but released her for full duty with 0% impairment.

Five months later, the claimant returned to Dr. Safman for pain in the lower lumbar and left trochanteric area. She was still working and using prescription medication.

The claimant returned to Dr. Safman on May 23, 2001, and June 4, 2001 complaining of back pain after working long hours and lifting heavy items. He suggested she use a cart at work to transport heavy items and changed her medication to include Prozac. The claimant noted improvement in her June 20, 2001 visit, but again reported achiness in her back after working long hours in her July 2, 2001 visit. Dr. Safman gave her medication and recommended follow-up in two weeks, however, the claimant did not return.

On several occasions, Drs. Morris and Safman mentioned in the notes that the claimant felt pressured to continue working out of financial necessity. She is the sole support of her two children.

After the second injury on October 30, 2001, the claimant returned to Dr. Safman but because the insurance carrier had changed, he was unable to treat her until issues regarding the workers' compensation coverage were resolved.

At the direction of her employer, the claimant returned to Healthcare Plus where she came under the care of Dr. Alexander on November 1, 2001 for contusions and swelling of the left hand and a sprain of the left foot. X-rays of the hand and foot were normal. She was prescribed medication, crutches and light duty.

The claimant returned to the clinic on November 6, 2001 (Dr. Alexander) and November 12, 2001 (Dr. Levy) because of foot pain. Dr. Levy recommended consultation with an

orthopaedic specialist. There is no mention of back or hip pain in Dr. Alexander's records. Dr. Levy does mention a September 2000 injury producing left hip and back pain in her medical history.

### **FINDINGS AND CONCLUSIONS**

\_\_\_\_\_As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717.

In order to prove a compensable injury, the claimant must meet the following elements of proof by a preponderance of the evidence of record:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (Ark. Code Ann. §11-9-102(5)(A)(i); Ark. Code Ann. §11-9-102(5)(E)(i); Ark. Code Ann. §11-9-401(a)(i));
- (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 (Ark. Code Ann. §11-9-102(5)(A)(i));
- (3) Medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury (Ark. Code Ann. §11-9-102(5)(D)).

'Objective findings' are those findings which cannot come under the voluntary control of the patient. When determining physical or anatomical impairment, neither a physician... (or) the Workers' Compensation Commission, nor the courts may consider complaints of pain; for the purpose of making physical or anatomical impairment ratings to the spine,...range-of-motion tests shall not be considered objective findings. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical

certainty;

- (4) proof by a preponderance of the evidence that the injury was caused (a) by a specific incident and is identifiable by time and place of occurrence (Ark. Code Ann. §11-9-102(5)(A)(i));

or

- (b) proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion (Ark. Code Ann. §11-9-102(5)(A)(ii)(a) and proof by a preponderance of the evidence that the injury was the major cause of the disability or need for treatment (Ark. Code Ann. §11-9-102(5)(E)(ii)).

“Major cause” means more than fifty percent (50%) of the cause... (Ark. Code Ann. §11-9-102(14));

If the claimant fails to prove any one of these elements, the claim is not compensable and benefits must be denied.

The evidence of record shows the claimant injured her hip and back in a fall at work on September 8, 2000. She was treated conservatively from September 2000 to July 2001, for continuing complaints but she was under financial pressure to keep working. This case was settled by joint petition on February 21, 2003. The only diagnostic test performed was limited to an simple x-ray and Dr. Safman assessed no permanent impairment.

The claimant fell again at work on October 30, 2001, while returning kitchen equipment that she borrowed from the store. The claimant’s medical records indicate she complained of foot and hand pain to two different doctors at the clinic. There is simply no mention of any symptoms regarding her back or hip, either as an aggravation or recurrence in the doctor’s medical records.

Where the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer remains liable. McDonald Equipment Company v. Turner, 26 Ark. App. 264, 766 S.W.2d 936 (1989). A recurrence is not a new injury but simply another period of incapacitation resulting from a previous injury. See Atkins, supra. This principle has been consistently applied in cases where a second complication is found to be a natural and probable result of the first injury. It is only where it is found that the second episode has resulted from an independent intervening cause that liability will be affected. Bearden Lumber Company v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983).

Under the circumstances of this case, I find the claimant has failed to prove by a preponderance of the evidence of record that she sustained a back or hip injury on October 30, 2001, arising out of and in the course of her employment, causing internal harm, supported by objective medical evidence and requiring medical treatment.

The claimant's present symptoms (Tr. p. 13), periodic pain after prolonged activity, sitting or standing are very similar to the complaints Dr. Safman recorded in his medical records after the first injury. The claimant also testified her present symptoms are located in the same area of her back and hip as the first injury (Tr. p. 16-19). Although she was able to work after the first injury, she was never completely asymptomatic and she was under financial pressure to continue working.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties

on October 30, 2001.

2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim for a back and hip injury is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge