

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F212335

SUSAN WING, Employee	CLAIMANT
P.A.M. TRANSPORTATION, Employer	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED DECEMBER 10, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by DAVID C. JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 12, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 15, 2003, and a pre-hearing order was filed on September 16, 2003. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties in October 2002.
3. The claimant was earning an average weekly wage of \$300.00 which would entitle her to compensation at the weekly rates of \$200.00 for total disability benefits and \$154.00 for permanent partial disability benefits.
4. Respondent has controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to left lower extremity on October 10, 2002.
2. Temporary total or temporary partial disability benefits from October 15, 2002 through a date yet to be determined.
3. Medical.
4. Attorney fee.

At the time of the hearing the parties confirmed that claimant's claim is for a specific injury, not a gradual onset injury. In addition, claimant modified her request for temporary disability benefits to include temporary total disability benefits from October 15, 2002 through July 15, 2003, and temporary partial disability benefits from July 16, 2003 through a date yet to be determined.

The claimant contends she sustained a compensable injury to her left lower extremity on October 10, 2002 as the result of the specific identifiable event of depressing a clutch. The claimant contends that she is entitled to temporary total disability benefits from October 15, 2002 through July 15, 2003, and temporary partial disability benefits from July 16, 2003 through a date yet to be determined, as well as reasonable and necessary medical treatment. The claimant contends her attorney is entitled to an appropriate attorney's fee.

The respondents contend that the claimant did not sustain a specific incident injury identifiable by time and place of occurrence in the course and scope of her employment for the respondent employer. Further, there is no causal connection between her alleged injury and her work related activities for the insured. In that regard, claimant had only worked for the insured for approximately three days prior to the beginning of her complaints concerning the knee injury alleged in this matter. Therefore, respondents contend that the claimant cannot prove a causal connection between her employment activities and the injury alleged in this matter due to the short duration of her employment and her limited driving activities. In the alternative, respondents would also contend that claimant's

medical condition is degenerative in nature as reflected in the medical reports. Therefore, any alleged injury should simply be considered a temporary aggravation of her pre-existing degenerative condition. The respondents contend that if the claimant is somehow able to prevail, that she would not be entitled to any temporary total disability benefits subsequent to her return to work for a different employer on or about July 17, 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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 15, 2003, and contained in a pre-hearing order filed September 16, 2003, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left lower extremity while employed by the respondent.

FACTUAL BACKGROUND

_____The claimant began working for the respondent on October 7, 2002, as an over-the-road truck driver. Initially, claimant was undergoing training on one of respondent's trucks by driving with Catherine Ferguson, a driver trainer for the respondent. The claimant and Ferguson swapped driving responsibilities over the course of several days and traveled to various states hauling product.

Claimant testified that on October 10, 2002, at approximately 6:00 to 6:30 a.m. she was driving the truck when she applied the clutch and "pain shot across the kneecap".

Claimant testified that after this incident she continually had pain in her left knee which increased the more she used the knee. Claimant testified that after this incident she experienced swelling in her knee and that she alternated hot and cold packs on her knee. Claimant continued to alternate driving the truck with Ferguson until October 15, 2002, when her pain became too great to continue according to her testimony.

When claimant returned home to Oklahoma she sought medical treatment from the emergency room on October 19, 2002. Claimant was also evaluated by Dr. Rosson and a Dr. Tyler.

Claimant has filed this claim contending that she suffered a compensable injury to her left lower extremity as a result of a specific injury which occurred on October 10, 2002. She seeks payment of temporary total or temporary partial disability benefits, medical benefits, and a controverted attorney fee.

ADJUDICATION

The claimant alleges that she suffered a compensable injury as a result of a specific injury which occurred when she applied the clutch on the morning of October 10, 2002. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

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

(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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left lower extremity which arose out of and in the course of her employment with respondent and which was caused by a specific incident identifiable by time and place of occurrence.

Claimant testified that she suffered a specific injury to her left knee on the morning of October 10, 2002 at approximately 6:00 to 6:30 a.m. when she felt pain in her kneecap after depressing the clutch while driving. While the medical reports do indicate that claimant gave a history of her pain beginning on October 10, the medical reports do not mention a specific incident. Instead, the medical reports seem to reflect that although claimant's pain began on October 10, that it was the result of a cumulative trauma, not a specific incident. For instance, the emergency room report of October 19, 2002 states:

PT STATES SHE DRIVES A TRUCK AND HAS BEEN DOING
A LOT OF DRIVING USING A CLUTCH, STATES SHE HAS
HAD LT KNEE PAIN AND SWELLING SINCE 10-10-02

Subsequent to that emergency room visit, claimant sought medical treatment from Dr. Lance Rosson, a physician chosen by an attorney in Oklahoma who was representing claimant at that time. Although Dr. Rosson's medical reports indicate that claimant's left knee pain began on October 10, 2002, Dr. Rosson attributes claimant's injury to a cumulative and repetitive trauma, not a specific injury.

The patient relates that while employed by P.A.M. Transport as a truck driver, the patient was involved in cumulative and repetitive trauma, with the last date of exposure on October 15, 2002.

The patient was involved in cumulative and repetitive trauma, while employed by P.A.M. Transport with the last date of exposure on October 15, 2002. It is my opinion that as a result of this cumulative and repetitive trauma, the patient has sustained injury to her left knee with persistent complaints of pain and swelling and joint effusion.

Thus, while claimant did indicate to Dr. Rosson that her pain began on October 10, Dr. Rosson attributed claimant's pain to cumulative trauma, not a specific incident.

In addition to the medical reports, I also believe it is important to note that claimant originally filed a claim for workers' compensation benefits in Oklahoma. In conjunction with that filing, claimant completed a form indicating that the injury was the result of a cumulative injury, not a single incident. Claimant contends that this form was completed by her attorney's assistant and that the "cumulative injury" box was checked by mistake.

Finally, I believe that the testimony of Catherine Ferguson, the claimant's driver trainer who was present throughout claimant's employment with respondent, is significant. Ferguson testified that she picked up the claimant to begin her training on October 7, 2003. In contrast to claimant's testimony that she suffered a specific injury to her knee while applying the clutch on October 10, 2002, Ferguson testified that she does not recall any specific claim of injury. Ferguson testified that claimant would complain of knee problems any time she was having to back up the trailer. Ferguson testified that claimant's first complaints of knee pain occurred the first time she was asked to back up the trailer. Ferguson testified that claimant's complaints of knee pain began on October 7, 2002, and occurred every day thereafter. Ferguson's testimony is in direct conflict with claimant's testimony that she had no knee pain prior to October 10, 2002. I find that the testimony of Ferguson is credible.

In summary, in order to prove compensability of an alleged specific injury, claimant has the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment with respondent and that her injury was caused by

a specific incident identifiable by time and place of occurrence. Here, claimant contends that the specific injury occurred when she depressed the clutch in the early morning hours of October 10, 2002. While the medical reports do reflect that claimant's knee pain began on that date, the medical reports do not reflect a history of a specific injury. To the contrary, Dr. Rosson attributed claimant's knee pain to a cumulative injury, not a specific injury. Furthermore, Catherine Ferguson, the claimant's driver trainer, testified that claimant made complaints of knee pain the first day she drove the truck on October 7, 2002, and every day thereafter. Ferguson's testimony contradicts claimant's testimony that she did not have any knee pain prior to this incident on October 10, 2002. I find that the testimony of Ferguson is credible and entitled to great weight.

Accordingly, for the foregoing reasons, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury which arose out of and in the course of her employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left lower extremity while employed by the respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE