

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010842

FAYE ANDERSON, EMPLOYEE	CLAIMANT
RAY WHITE LUMBER COMPANY, INC., EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 2, 2004

Hearing conducted before The Honorable C. MICHAEL WHITE, Administrative Law Judge in El Dorado, Union County, Arkansas.

The claimant was represented by F. MATTISON THOMAS, III, Attorney at Law, El Dorado, Union, Arkansas.

The respondents were represented by MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on May 4, 2004. A prehearing conference was conducted on February 25, 2004, and a prehearing order was filed on March 26, 2004. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. The employee/employer/carrier relationship existed on August 28, 2000.

2. The claimant was earning sufficient wages to entitle her to a compensation rate of \$90.00.
3. Respondents paid temporary total disability compensation and medical expenses until October 20, 2000.
4. The respondents controvert any medical not previously paid.

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

1. Whether the claimant sustained a compensable injury to her back on August 28, 2000.
2. Whether the claimant's hearing loss is related to her August 28, 2000 injury.
3. Whether the claimant is entitled to additional temporary total disability compensation.
4. Whether the claimant is entitled to compensation for a permanent physical impairment.
5. Whether the claimant is entitled to additional medical treatment.

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 medical records that were submitted into the record do not contain any objective findings to support a conclusion that the claimant's hearing loss is compensable under the Arkansas Workers' Compensation Law.
4. Likewise, the medical records do not contain any objective findings to support a conclusion that the claimant sustained an injury to her back as a result of the August 28, 2000 incident.
5. I find that the claimant failed to establish by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law
6. Other than with regard to benefits previously paid, the respondents have controverted this claim in its entirety.

DISCUSSION

The claimant was seventy-four (74) years old at the time of the hearing, and she was previously employed by the respondent/employer and performed general labor type activities such as stacking lumber, and operating machinery. On August 28, 2000, claimant was feeding lumber into a saw when she was struck in the head by a piece of a board. According to the claimant's testimony, observers thought that she was dead. In any event, she was taken to a medical clinic in Sparkman for medical treatment. Although no medical records of that treatment have been submitted into the record, the claimant testified that she was advised that she had a brain concussion. She

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also testified that she had bruises on her leg and on her back, as well as on her head.

The claimant has not worked since the time of that accident and she testified that she has experienced considerable problems since that time. These problems include difficulty hearing, headaches, falling, mental confusion, and cramping and pain in her leg. She testified that she is unable to enjoy most of the activities that she enjoyed prior to this incident.

No medical records were submitted into the record for treatment provided prior to January 10, 2003. The record is from Dr. James Tucker, a neurologist. Dr. Tucker's report indicates that the claimant was injured when the right side of her face was struck by a plane belt. His report indicates that the claimant was complaining of worsening hearing. The report also indicates that she was complaining that the right side of her face was numb, and that she had pain in the right side of her head that radiated into her neck on the right side. The report also indicates that she was complaining that her right ear felt puffy, that her right lip seemed to swell up, and that she experienced numbness in her legs and loss of memory. She also indicates that she related all of these conditions to her injury with the respondent/employer. Dr. Tucker initially suspected an acoustic neuroma; however, a MRI of the brain was performed which did not reveal an acoustic neuroma, or any other abnormality

to explain the claimant's complaints. Dr. Tucker's report also indicates the claimant demonstrated signs of psychosis and that she attempted suicide in 2002. Dr. Tucker's report indicates that his clinical examinations have revealed no objective finding to support the claimant's complaints, although he does note that pain can occur in the absence of the usual objective findings.

Since the claimant contends that she 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.

In the present claim I find that the claimant failed to establish a compensable injury with medical evidence supported by objective findings as required by the Arkansas Workers' Compensation Law. In this regard, as discussed earlier, no medical record pertaining to any treatment prior to January of 2003, were submitted into the record. Accordingly, the Commission's ability to evaluate the claimant's condition and the causal relationship between her condition and the incident that occurred on August 28, 2000 is impeded by the absence of the medical records created

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immediately after that incident. Furthermore, the medical records that were submitted into the record do not contain any objective findings to support a conclusion that the claimant's hearing loss is compensable under the Arkansas Workers' Compensation Law. Likewise, the medical records do not contain any objective findings to support a conclusion that the claimant sustained an injury to her back as a result of the August 28, 2000 incident. Accordingly, I find that the claimant failed to establish by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law. Other than with regard to benefits previously paid, the respondents have controverted this claim in its entirety.

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.

C. MICHAEL WHITE
Administrative Law Judge