

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305562

SUSIE BAKER, EMPLOYEE

CLAIMANT

**ST. BERNARDS MEDICAL CENTER,
SELF-INSURED EMPLOYER**

RESPONDENT

RISK MANAGEMENT RESOURCES, TPA

RESPONDENT

OPINION FILED AUGUST 26, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 4, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On April 13, 2004, a pre-hearing conference was conducted in this claim from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit No. 1.

The testimony of Ms. Susie Baker, the claimant, coupled with the post-hearing deposition testimony of Michael Cox, herein designated claimant's supplemental exhibit, along with medical reports and other documents comprise the record in this claim.

DISCUSSION

Susie Marie Baker, the claimant, with a date of birth of December 14, 1942, last discharged employment duties for respondent on May 31, 2003. While in August 2002, the claimant worked in the radiation oncology department of respondent, and had done so since November 15, 1999, at the time she commenced her employment with respondent on May 17, 1999, she worked in the cafeteria. (T. 40)

The testimony of Michael Cox, the dosimetrist and department manager in the radiation oncology department of respondent, testified he supervised the claimant during the time of her employment in the department from November 15, 1999 until September 2002. In describing the claimant's job duties as a clerk/transporter in the oncology department Mr. Cox testified:

She was hired to be a transporter of patients, clerical position. That position holds some clerical responsibility as far as answering the phones, taking messages, making appointments, filing, transporting in-patients from their room down to our department for treatment, and then back to their room. And just running errands, you know, taking lab and things like that over, blood over to the lab, and errands like that. (Claimant's Supplemental Ex. No. 1, p. 5)

The claimant's hours while in the oncology department were from 7:30 a.m. until 4:00 p.m. The claimant acknowledged that her job duties while in the oncology department entailed both secretarial tasks and transporting patients. On August 1, 2002, while transporting a patient the claimant asserts that she suffered the injury which serves as the basis of the present claim. In describing the mechanics of her August 1, 2002, injury the claimant presents a detailed account:

I had gone to get Mrs. Mills. She was on a stretcher and she was one of our patients that was very bad and she had had – she had an IV and a Morphine Pump and so the night before it had been pulled out of

her arm accidentally and so in pulling her to the elevator with the Morphine Pump on an IV pole which I had been told weighs around 40 pounds and then pulling her on a stretcher I pushed the elevator door, it opened up and I just stepped back to pull her on as we're instructed to do, to pull them on rather than push them on. And the elevator was about three or four inches below the floor and when I –

* * *

No. It's usually level with the floor. And as I stepped back with the IV pole and pulling her all at the same time then just suddenly the floor being lower of course I fell, the IV pole started falling and going in this direction, I was still pulling her and I realized if she fell down on the stretcher, because she wearing something, a neck brace, that it would really do damage to her so I was trying to stop her from coming down, you know, the stretcher from coming down on the floor of the elevator and also yet trying to hold the IV pole and that it would not be yanked out of her arm again and the whole time wondering too if the door, the electronic eye would be shutting because there was nothing there, you know, physical enough to show that there was something there and so it was kind of rough. The fact from what I had remembered the best is – this all happened so quickly and all of a sudden I noticed that Sister Anne Marie was walking across the hallway there and I, to the best of my knowledge, I was already on one knee trying to hold this IV pole in this direction and pulling this way so I was kind of in a twisted turning position and I hollered at Sister Anne to come help me. And she had difficulty king of getting on to the elevator because of the way or the position of the pole and everything. (T. 10-11)

The claimant's testimony reflects that Sister Anne Marie helped her in that she pushed the buttons to make sure that the elevator would not close and assisted her with the IV pole. The claimant noted that the incident/accident occurred quickly, and, in addition to it resulting in her being on her knee, also caused her body to be in a contorted position.

Regarding the physical discomfort she experienced during and following the incident the claimant's testimony reflects:

It would be a very awkward position in which my body ordinarily

would not go and being very concerned for the patient I was trying to prevent anything I could from her being hurt anymore than what she was. And at that particular time when I fell on my knee I knew that I – it sounded, I don't know who to explain it. It – I can't say that at that time that I felt any sharp pains but I do know there was something definitely wrong that was going on in my leg. (T. 14-15)

Claimant maintains that Sister Anne Marie inquired if she was alright following the incident, to which she responded that she did not know at that point.

Claimant testified that the respondent's policy regarding the reporting of work related injuries mandates that the same be reported to your supervisor. In the instant claim, the claimant testified that her supervisor, Mike Cox, was not available so she went to her team leader, Dawn Pate, and told her about the accident. The claimant asserts that because her supervisor was not available no paperwork was completed at the time of the reporting to her team leader. The claimant further added that her team leader assured her that the reporting and completion of the paperwork would be done a little later.

Claimant's testimony reflects that she later had a conversation with Mr. Cox regarding her August 1, 2002 injury:

Yes, I did. When I actually – he had already filled out the papers and I checked them and I signed it and that was, would have been the following Monday. (T. 16)

Although claimant asserts that the paperwork was completed on Monday following the accident, she was not seen by a doctor on said date:

No, I told Mike about it. He sent me over to the wellness center and they made arrangements for me to see the doctor. They were going to send me to Dr. Lack and that was not, I don't remember if it was that same day or not. (T. 16)

The evidence in the record reflects that August 1, 2002, was on a Thursday. The claimant

testified that the incident occurred “later afternoon” on August 1, 2002. The record reflects that a Form N was completed and signed by the claimant on Thursday, August 8, 2002. While the Form N noted that the accident occurred on August 1, 2002, it also reflects the time of the occurrence as 10:00 a.m. Further, the Form reflects that the date the employer was notified of the accident was August 6, 2001 [2002]. (RX1, p. 99)

The testimony of the claimant reflects that she first received medical treatment relative to complaints attributable to the August 1, 2002, accident under the care of Dr. Michael Lack, respondents’ designated medical provider. The claimant’s treatment under the care of Dr. Lack included medication and restrictions on her employment activity. Dr. Lack also obtained x-rays relative to the claimant’s lumbar spine which disclosed retrolisthesis of L4-L5 with degenerative changes. The claimant’s complaint was assessed by Dr. Lack as sprain/strain of the lumbar region. (RX1, p. 100-101)

The claimant was initially seen by Dr. Lack on August 8, 2002, pursuant to the direction of respondent. X-rays obtained relative to the claimant’s August 8, 2002 visit to Dr. Lack disclosed degenerative disc disease, degenerative joint disease, and anteriorly spondylolisthesis L4 with respect to L5. (RX1, p. 105) The claimant was also prescribed physical therapy by Dr. Lack following a August 14, 2002, follow-up visit. (RX1, p. 109-122)

The medical in the record reflects that the claimant underwent a MRI of her lumbar spine on August 18, 2002, which disclosed a small chronic hard disc on the right L5-S1, and significant spondylolisthesis, grade 1 at L4-5. The MRI report further disclosed that the spinal stenosis was moderate-severe with both nerve roots involved. (RX1, p. 123) During an August 21, 2002, follow-up visit to Dr. Lack, the claimant was referred by same to Dr. Terence P. Braden III, a physiatrist.

(RX1, p. 127).

On August 30, 2002, the claimant was evaluated by Dr. Braden, pursuant to the above-mentioned referral of Dr. Lack. The history as reflected in the August 30, 2002, report of Dr. Braden as relayed by the claimant recites the August 1, 2002, incident in the elevator with the patient. The report further reflects:

She says she tripped and slightly twisted. She fell down on one of her knees. She had no pain in her back. She had no discomfort in her back, leg, or lower extremity on Friday or Saturday.

She said that on Sunday, though, she was up pretty much twenty-hours with her daughter-in-law (married to her son) while she was in labor waiting to have a baby. She reports that she had a few hours of sleep and then went back to the hospital on Monday morning. She was allowed to hold the baby which weighed approximately 6 and a half pounds and she sat down on a couch in the delivery room itself. She said that after awhile, she stood up and while holding the baby in her arms by her chest, she stood up and bent forward to get up and she had immediate onset of pain in her low back area. She reports that she could barely stand up from this. She went to work but had difficulty at times straightening up and then reported the injury that occurred on August 1, 2002. (RX1, p. 128)

The claimant's treatment under the care of Dr. Braden included a prescription for ibuprofen, Zanaflex, and a continuation of her alternate duties. (RX1, p. 131) During the follow-up visit the claimant was also referred by Dr. Braden to physical therapy. (RX1, p. 132-155)

In addition to her continuation of complaints to her low back during the October 15, 2002 visit to Dr. Braden the claimant relayed new complaints:

She has a new complaint that began a week ago. She says if she bends her head to the left toward her left shoulder, then she starts getting tingling in the left side of the neck and the left shoulder. When she bends the head back to the right side, the tingling goes away. She wants to know if that is connected to her back. (RX1, p. 156)

As conducted in the examination of the claimant during the October 15, 2002 visit, Dr. Braden released the claimant from his care with the recommendation that when she returned to work she lift no greater than 30 pounds and avoid any twisting or repetitive bending. (RX1, p. 156-157)

The claimant's testimony reflects that when she provided the weight lifting restrictions imposed by Dr. Braden to her supervisor, Mr. Michael Cox, she was informed that the same would not present a problem. Later, the claimant maintains that she was informed by Mr. Cox that her employment with respondent was being terminated because she was unable to perform the job duties for which she was hired, transporting patients. The claimant further maintains that the termination of her employment was pursuant to the insistence of a physician on staff of respondent, Dr. Peacock, who wanted her barred from further employment with respondent.

Claimant asserts that through the assistance of Mr. Cox she secured employment in the cafeteria. The claimant maintains that her employment in the cafeteria in October 2002 was not actually a transfer but rather a rehire. Further, the claimant asserts that she was unemployed for approximately two days between the time her employment ceased in the radiation and oncology department and when she commenced her employment as a cafeteria worker for respondent.

The claimant maintains that when she was released from the care of Dr. Braden on October 15, 2002, she sought and obtained treatment under the care of her family physician, Dr. Joseph McGrath. Further, the claimant's testimony reflects that she attributes not only the low back complaint but the complaints relative to her cervical spine and headaches and left shoulder to the August 1, 2002 elevator incident.

The medical in the record reflects that on November 12, 2002, the claimant underwent an MRI relative to her cervical spine at St. Bernard's Medical Center pursuant to the direction of Dr.

McGrath. (RX1, p. 159 - 160) The claimant was later referred by Dr. McGrath to Dr. Gregory F. Ricca, a Jonesboro neurosurgeon. A February 17, 2003, report of Dr. Ricca reflects that the claimant was referred to him for complaints of low back pain, left hip pain and thigh pain, and left shoulder numbness. Dr. Ricca's report reflects that he had access to the claimant's prior pertinent medical records associated with the history of the August 1, 2002, elevator complaint. Dr. Ricca opined that the claimant's back pain was related to the spondylolisthesis at L4-5 and also possibly related to the degenerative disc disease at L5-S1. (RX1, p. 163)

On May 31, 2003, the claimant ceased her employment with respondent. The claimant maintains that she was unable to physically perform her job duties with respondent, and attributes same to residuals of her August 1, 2002 incident. Subsequent to the June 4, 2004, hearing before the Commission in this claim, the parties were provided the opportunity to obtain the deposition of claimant's supervisor at the time of the August 1, 2002 accident, Michael Cox.

Mr. Cox denies that claimant's employment with respondent was terminated at any point following the August 1, 2002, incident. Further, the testimony of Mr. Cox reflects that at the time claimant reported the incident to him she also relayed the incident involving lifting her newborn grandchild and the onset of severe pain in her low back as the impetus for requiring medical treatment. Since the claimant attributed the back pain as being primarily associated with the August 1, 2002, elevator incident she was referred to appropriate medical personnel by Mr. Cox.

The claimant acknowledged that she had undergone chiropractic adjustments under the care of Dr. Susan J. Myshka for a variety of complaints. The evidence in the record reflects that the claimant was initially seen at Myshka Chiropractic Clinic in September 1985, and received chiropractic adjustments relative to her back periodically subsequent to the initial visit. Dr.

Myshka's notes relative to the claimant reflects that the claimant was seen on November 21, 2001, with complaints of pins and needles in the thoracic area and a click in her neck. On December 8, 2001, the claimant related complaints of migraine headaches for which she received chiropractic treatment under the care of Dr. Myshka. Dr. Myshka's records reflect the entry of "LCP since 6-10-02," relative to the claimant. (RX1, p. 59)

The medical records reflects that the claimant relayed to both Dr. Lack and to Dr. Braden, subsequent to August 6, 2002, that she had received chiropractic adjustments under the care of Dr. Myshka subsequent to the August 1, 2002 elevator incident. The records of Dr. Myshka reflect that the claimant was seen by her on August 5, 2002, with complaints of low back pain, sharp. (RX1, p. 59)

After a thorough consideration of all the evidence in this record, to include the testimony of the witnesses, a review of the medical reports, and application of appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 1, 2002 the relationship of employee-employer-carrier existed between the parties.
3. On August 1, 2002 the claimant did not sustain an injury arising out of and in the course of her employment.

CONCLUSIONS

On August 1, 2002, while discharging employment duties for respondent, transporting a

patient, the claimant suffered an incident while pulling the patient onto the elevator when there was a misalignment of the elevator floor with the floor of the building. The claimant asserts that as a result of the accident, she suffered an injury to her low back which required medical treatment and resulted in her inability to discharge gainful employment subsequent to May 31, 2003. The claimant asserts entitlement to temporary total and medical benefits growing out of the August 1, 2002 accident. Respondents take the position that the claimant did not sustain a compensable injury in her employment with same. The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The evidence preponderates that on August 1, 2002, an incident occurred involving the claimant as she was transporting a patient within the course and scope of her employment, and the elevator. While respondent provided some workers' compensation benefits, in the form of medical treatment, to the claimant associated with the August 1, 2002 claim, the evidence preponderates that the claimant has failed to sustain her burden of proof that she sustained a compensable injury as a result of the August 1, 2002, incident.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence; (1) an injury arising out of and in the course of her employment; (2) that the injury caused internal or external 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; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A)(i)(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. Mickel v. Engineering Speciality Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

It is undisputed that the claimant suffered from preexisting degenerative joint disease, degenerative disc disease and anterior spondylolisthesis L4 with respect to L5 prior to August 1, 2002. A claimant is required to establish a causal connection between any “objective findings” and the alleged compensable injury, even if the compensable injury is an aggravation of a preexisting condition. Ford v. Chemipulp Processing, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The evidence in the record reflects that the first treatment received by the claimant subsequent to the August 1, 2002, incident involving the elevator was had under the care of Dr. Susan Myshka, a chiropractic physician, on August 5, 2002. (RX1, p. 59) The claimant’s incident involving the elevator occurred on Thursday, August 1, 2002, at approximately 10:00 a.m. (RX1, p. 99) There is no documentary evidence in the record to reflect that the claimant sought or obtained medical or chiropractic treatment following the August 1, 2002, incident until August 5, 2002.

The credible evidence in the record reflects that on August 4, 2002, the claimant was at the hospital during the birth of her grandchild. More importantly, the claimant did not experience pain in her low back following the August 1, 2002, incident such as she required or sought medical treatment until August 4, 2002, when she rose from a couch holding her newly born grandchild. The afore was relayed to her supervisor, Michael Cox, at the time claimant reported the injury to him.

At the time the claimant was initially seen by Dr. Michael Lack, respondents’ designated medical provider, on August 8, 2002, she relayed the following, with respect to her injury:

Ms. Baker works as a secretary in the cancer center. On August 1,

she had an accident in an elevator. She was pulling a stretcher with a patient on it into the elevator. The elevator was not even with the floor. There was a variance of about three inches. She stepped back and jarred herself. She does not actually remember hitting anything, but she was trying to catch the I.V. pole and stopped the gurney. She really does not know what happened. Initially, she did not think anything was very seriously wrong. There was no bruising. Since that time, however, the patient has had headaches. She does have a history of migraine headaches and says that she knew that this was a migraine coming on. The patient did not hit her head. The patient has seen a chiropractor and has been adjusted twice, with very little relief. The patient has had pain in the back, the mid-lumbar region. She has problems sitting for prolonged periods. She also has some stiffness. She has no problem with bowel and bladder. She has taken over-the-counter medications with no relief. She is able to walk without problems, and is fairly animated, but has occasional sharp pain. . . . (RX1, p. 100)

Dr. Lack ultimately referred the claimant to Dr. Terence P. Braden, III, D. O., who is also a physiatrist.

The claimant was seen by Dr. Braden on August 30, 2002, pursuant to the above-cited referral of Dr. Lack. In his August 30, 2002 report, relative to the initial evaluation of the claimant, Dr. Braden recited the history of the claimant's August 1, 2002, elevator incident:

As you know, this a 59 year old right-handed female who reports that on 8/1/02, which was a Thursday, she was pulling a patient on a stretcher while at work at the radiation/oncology center. She says she tripped and slightly twisted. She fell down on one of her knees. She had no pain in her back. She had no discomfort of her back, leg, or lower extremity on Friday or Saturday.

She said that on Sunday, though, she was up pretty much 20-hours with her daughter-in-law (married to her son) while she was in labor waiting to have her baby. . . She was allowed to hold the baby which weighed approximately 6 and a half pounds and she sat on a couch in the delivery room. She said that after a while, she stood up and while holding the baby in her arms by her chest, she stood up and bent forward to get up and she had immediate onset of pain in her low back area. She reports that could barely stand up from this. She went

to work but had difficulty at times straightening up and then reported the injury that occurred on 8/1/02.

* * *

Assessment:

(1) low back pain with chronic degenerative changes in the lumbosacral spine.

(2) based upon the historical perspective with the time frame of onset of her initial inciting injury and how the mechanism of her injury took place, this does not appear to be a work related phenomenon.

(3) it is this examiner's opinion that by holding the child in the chest and by standing forward with the weight held in front of her with the significant chronic degenerative changes she has in her back, this is what actually triggered the pain and caused her discomfort. If it had been the twisting injury of August 1, then, within a reasonable degree of medical certainty, this pain would have been instituted and caused as well as manifested itself well before Monday morning, the 5th. (RX1, p. 128-130)

Although Dr. Gregory F. Ricca, a Jonesboro neurosurgeon, to whom the claimant was referred by her family physician was of the opinion, based on the history provided by the claimant, that the work related injury of August 1, 2002, involving the elevator was responsible for the symptoms experienced by the claimant in her back at the time she was seen by him on February 17, 2003, a review of the evidence in the record reflects that a complete history had not been furnished. Specifically, claimant omitted or failed to relay to Dr. Ricca that she did not experience back pain until August 5, 2002, when she attempted to rise from the sofa while holding her newly born grandchild.

The evidence in the record preponderates that the onset of the claimant's low back complaint which required medical treatment and resulted in the imposition of restrictions on her employment activities with respect to lifting on August 8, 2002, was the product of the August 4-5, 2002, efforts

of the claimant in raising up from the sofa while holding her grandchild, rather than the August 1, 2002 incident involving the elevator. Accordingly, the claimant has failed to sustain her burden of proof by a preponderance of the evidence that she suffered an injury arising out of and in the course of her employment with respondent on August 1, 2002. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ANDREW L. BLOOD
Administrative Law Judge