

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307563

JUDNA CACERES	CLAIMANT
CRYSTAL LAKE FOODS	RESPONDENT
COMPCARE ADMINISTRATORS, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 26, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 2, 2003, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on September 9, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On December 10, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her right lower leg.

4. Medical expenses have been paid.

5. The claimant is entitled to a compensation rate based on an average weekly wage of \$326.00 per week.

By agreement of the parties the issues to litigate are limited to the following:

1. Temporary total disability from March 26, 2003, to a date to be determined.

2. Attorney's fees.

In regard to the foregoing issues the claimant contends that she injured her right leg when a door fell on her. She requests TTD and medical.

In regard to the foregoing issues the respondents contend that the claimant was released to return to work with restrictions up until December 28, 2002. At that time, work was provided to her within her restrictions. She was released to return to work without restriction on December 28, 2002. On January 20, 2003, Dr. Moffitt stated again that the claimant was released to work at full duty with no permanent impairment. Claimant saw Dr. Moffitt again on February 25, 2003, and he again stated that she could work without restrictions. The claimant was scheduled to see Dr. Moffitt on April 22, 2003, but failed to show up for that appointment. The claimant voluntarily terminated her employment with Crystal Lake Foods on March 25, 2003. Since work was made available to the claimant up until the time of her voluntary separation from the respondent employer, respondents contend that claimant is not entitled to any TTD benefits based on the present medical evidence. At the present time, the respondents are unaware of any assessment of a permanent anatomical impairment rating, and, therefore, based

on the present medical evidence, the claimant is not entitled to any permanent disability benefits. All known medical expenses have been paid to the claimant.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and a letter dated February 10, 2003, marked Claimant's Exhibit No. 2. The respondents submitted medical records marked Respondents' Exhibit No. 1. There were no objections raised to the admission of these documents.

#### DISCUSSION

The claimant testified and the respondents have stipulated that she sustained a compensable injury to her right lower leg on December 10, 2002. The claimant testified that she was struck in the leg by a metal and plastic door while working for the respondent. The claimant testified that at the time she was taken to the nurse's station by two co-employees. The claimant testified that the plant nurse put ice on her leg, told her that she had a small scratch and told her that she could go home if she wanted to. The claimant testified that she went home and then went to the hospital on her own. The claimant testified that a few days later the respondent sent her to Dr. Gary Moffitt. The claimant testified that the problems she was experiencing at the time of her fall and two days later when she was seen by Dr. Moffitt are still a problem for her as of the date of this hearing and these problems make it difficult for her to stand for a long length of time. The claimant

testified that she also experiences swelling in her right leg as a result of her problem.

The claimant testified that before her accident she was a packer explaining that she would stand during her shift and pick up forty pound boxes on the line. The claimant testified that she was able to do everything before her injury. The claimant testified that she was able to walk and do her job without any problems before her accident and that after her accident, she is not able to walk, lift or carry. The claimant testified that after her injury she worked sitting and standing pushing boxes and that her symptoms got worse with this alternative work. The claimant was asked, "Even though you weren't walking your symptoms got worse?" The claimant responded, "Yes." The claimant testified that she had "insupportable pain" and swelling. The claimant testified that the respondent did provide a "little step where I could put my foot up." The claimant testified that with her alternate job she was to push the boxes down the line to keep them from getting stuck. The claimant testified that she would sit to watch the boxes but when they would get stuck she would have to get up in a hurry and push the boxes on down the line. The claimant testified that this occurred about every three minutes during her shift.

The claimant testified that when she last saw Dr. Moffitt she continued complaining about a pulsating pain after standing for a while. The claimant testified that she reported this to Dr. Moffitt when she last saw him on February 25, 2003, and she had told him this every time she had seen him. The claimant indicated that Dr. Moffitt recommended treatment because she had blood clots. The

claimant was asked if she had had blood clots before December 10, 2002, and the claimant responded, "No."

The claimant testified that she saw Dr. William Kendrick in June 2003 and reported to him that she was having these pulsating pains in her leg. The claimant testified that it was her understanding that Dr. Kendrick had referred her to a specialist and recommended that she undergo an MRI. The claimant agreed that she was seen by a specialist, Dr. Arnold. The claimant testified that she last saw Dr. Chris Arnold in October and then in November she was called to make another appointment to see him.

The claimant agreed that she worked from February 25 to March 25 but continued to have her same problems. The claimant testified that, "The reason I quit working out there was because I never got good attention." The claimant explained that what she meant by good attention was that the respondent's doctor never offered to do any treatment for her or do anything for her. The claimant was asked if her reason to terminate her employment was voluntary or was it because of her physical inability to do the work and the claimant responded, "Because I had physical problems." The claimant testified that she continues to have these problems.

On cross examination, the claimant testified that after she quit her job with the respondent she went to work for George's for about one week. The claimant testified that her husband works at George's. The claimant testified that she quit her job at George's "because I could not do my job in walking." The claimant testified that she did not know what her job would be when she was hired by George's. The claimant testified that she had worked for the

respondent for seven months and she was last seen by Dr. Moffitt on February 25. The claimant testified that when she went to her April appointment with Dr. Moffitt they would not see her because she was no longer working for the respondent. The claimant testified that she went to the Northwest Medical Center emergency room on her own but agreed that when she was seen at the nurse's station on the day of her injury she did not ask to be seen by a doctor. The claimant was asked if when she took the job for George's did she think that she could do the work and the claimant responded, "No." It was pointed out in the claimant's deposition that she had responded differently in her deposition to this same question. The claimant agreed that the respondent provided her with a stool to sit on during the period of time that she worked after her accident.

On redirect examination, the claimant was asked if she was fired by the respondent and the claimant responded, "No." The claimant again testified that the reason she terminated her employment with the respondent was because she could not continue to stand. On recross examination, the claimant testified that she also has worked approximately one week at Cargill but because of the cold she could not do this work. The claimant testified that she also is currently selling pots and pans to help support her family. The claimant explained that to sell the pans she gets to sit down and show the books to people at parties.

On redirect examination, the claimant testified that she did not sell pots and pans before December 10, 2002, and took up this job after her injury because she could not do the standing for eight hours. The claimant testified that she has earned in commissions

\$5,000.00 since leaving her work at George's. The claimant testified that the job of selling pots and pans is not stable work.

Kassandra Buckner testified on behalf of the respondents. Ms. Buckner testified that she is the plant nurse and has been for the past seventeen years. Ms. Buckner testified that she saw the claimant on December 10, 2002, after her accident. Ms. Buckner remembers that she put ice on the claimant's leg and that the claimant had a small laceration which she medicated and cleaned. Ms. Buckner testified that she asked the claimant if she wanted to see a doctor and the claimant indicated that she did not want to see anyone but did want to go home. Ms. Buckner testified that work was made available to the claimant after her injury that was within her restrictions.

Lorraine White testified that she had been working for the respondent for almost four years in the personnel or human resources department. This witness testified that on March 25, 2003, the claimant called her on the telephone and told her that she was not coming in, that she was quitting. Ms. White testified that she asked the claimant why she was quitting and the claimant responded, "I have found another job, it will be closer to home." Ms. White remembered that the claimant told her that the name of this company was George's. On cross examination, Ms. White testified that the claimant did not make any mention to her that her reason for quitting her job was because of her physical problems.

The claimant was recalled to the stand on rebuttal. The claimant testified when asked the question what she had put on her separation forms when she left the respondent's work. The claimant

responded, "What I put was I was leaving the job because it was too far from Springdale to Rogers. I was----I was afraid to put down that I was leaving because I was hurt, and because if I went to look for work another----at another place, they would tell them." On cross examination by the respondent, the claimant testified that she had filled out the forms that she was quitting.

The respondents then called Lorraina White back to the stand. Ms. White was asked if an employee fills out the paper work themselves when they are resigning and Ms. White responded, "No." Ms. White testified that she was the one that filled out the separation forms and the employee does not sign it.

The medical records set forth that the claimant was seen at the Northwest Medical Center on December 10, 2002, with complaints to her right lower extremity. It is noted that she reports being struck by a metal door while working and it is noted that she has swelling, bruising and some abrasions on her right leg. X-rays of the claimant's right leg were normal. Medications were prescribed and the claimant was instructed to keep her leg elevated when not walking. Dr. Gary Moffitt writes on December 12, 2002, that the claimant was seen for her right lower leg injury which occurred on December 9. Dr. Moffitt notes that the claimant sustained a substantial bruise with a hematoma and an abrasion. The doctor notes that when the claimant was seen at the emergency room she was placed on a crutch and now reports that her leg is doing better but she is still having pain. Dr. Moffitt writes that upon examination the claimant had a large bruise with some hematoma formation along the upper portion of the posterior aspect of the claimant's lower

leg. Dr. Moffitt recommended that she limit the use of the crutch and she may continue to work but will need to limit weight bearing on her right extremity. On December 18, 2002, Dr. Moffitt writes that the claimant is seen for recheck of her contusion abrasion on her right leg noting that she is much better. Dr. Moffitt notes that the claimant still has a very large bruise and there is some tightness of the bruise but no evidence of compartment syndrome. Dr. Moffitt continues the claimant with her same restrictions. Dr. Moffitt saw the claimant on December 28 where it is noted that her conditions are improving although she still has some induration of the subcutaneous tissue where she had the crush injury. Dr. Moffitt notes that she is walking much better and her condition is improving. Dr. Moffitt recommended that she return to work without restrictions. Dr. Moffitt saw the claimant on January 20 where it is noted that the claimant still has some induration where there was crushing of the tissue but she has normal range of motion of her knee and ankle and she is walking normally. Dr. Moffitt released the claimant to work at full duty with no return appointments and no permanent impairment. On February 25, 2003, Dr. Moffitt writes that the claimant reports that she is having a pulsating type of pain after she has been on her leg for a while and a jumping kind of pain when she lays down at night. On examination, the doctor notes that there is really quite a shrinkage of the area of the crushed tissue and that there is no vascular compromise and her neurological examination was completely normal. The claimant was to continue to work with no restrictions but to be seen in two months. Dr. William Kendrick writes on June 26, 2003, that this is all probably old

damage that cannot be fixed. Dr. Kendrick recommended an MRI of the claimant's right leg to make sure there was nothing that could be fixed. Dr. Kendrick recommended that the claimant get training in order to do something to allow her to elevate her leg when necessary. Dr. Kendrick's diagnosis was post hematoma scar with swelling of the right lower extremity, varicose veins and probable old clotting in the superficial veins of the right lower extremity. Dr. Christopher Arnold writes on September 4, 2003, that he has seen the claimant for her right leg problems. Upon examination, the claimant has some skin changes from her old injury and is tender along the medial head of the gastroc. Dr. Arnold recommended the claimant undergo an MRI and to obtain an ultrasound. The claimant underwent an MRI of her right knee on September 22, 2003, which indicates that there was no significant abnormality seen on this study. There is a doctor's note dated September 23, 2003, which indicates that the ultrasound on the claimant's right lower extremity was negative with no sign of any DVT. It is also noted that the claimant is to have an MRI of her right calf since that is the source of her complaints. Dr. Arnold writes on October 16, 2003, that the claimant's MRI reveals some signal alterations, posterior subcutaneous fat in the bulbous portion of the calf most suggestive of a hematoma or granulation tissue with no malignancy or abscess. Dr. Arnold recommended that the claimant be given a heel lift and to do some formal therapy with some local modalities of stretching, strengthening and ultrasound.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that

she is entitled to temporary total disability from March 26, 2003, to a date to be determined. The claimant was released to return to work by Dr. Moffitt in January as well as in February 2003 to full duty with no restrictions. The claimant has testified as has the respondents that they accommodated the claimant by providing her with a stool to sit on and a step to elevate her leg while she was working on the line. The claimant has testified that she voluntarily quit her job and has even indicated that part of her reason for quitting her job with the respondent was to find employment closer to her home. There is no indication from any of the claimant's treating physicians that she is unable to work. Dr. Kendrick did suggest that the claimant find work where she could elevate her leg and as noted earlier the respondents had complied with this particular need.

#### FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 10, 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her right lower leg.
4. Medical expenses have been paid.
5. The claimant is entitled to a compensation rate based on an average weekly wage of \$326.00 per week.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from March 26, 2003, to a date to be determined. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from March 26, 2003, to a date to be determined. Therefore, this request for temporary total disability should be denied in its entirety.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE