

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402629

SHEILA G. COLLINS, EMPLOYEE	CLAIMANT
OUACHITA NURSING & REHAB CENTER, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 28, 2004

Hearing before Administrative Law Judge J. Mark White on August 17, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Lewis E. Ritchey, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 17, 2004, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on June 21, 2004, and a Prehearing Order was entered that same day. A copy of the June 21, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including December 23, 2003; that the claimant earned wages sufficient to entitle her to a compensation rate of \$160 for total disability benefits and \$154 for permanent partial disability benefits; and that the respondents have controverted this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury on December 23, 2003; whether the claimant is entitled to associated medical and indemnity benefits; and controversion and attorney's fees.

The claimant contends that while she was on the job for the respondent-employer on December 23, 2003, she was pushing a heavy patient in a wheelchair when she felt her back hurt with sharp pain and felt her right leg go numb; that she reported her injury to her immediate supervisor but was denied medical treatment; that her employment was terminated because she pursued her workers' compensation claim; and that prior to December 23, 2003, the claimant had an on-the-job injury at the respondents and injured her back in June, 2002.

Respondents contend that the claimant has an earlier back injury that was accepted; that the claimant was treated and released to return to work with no permanent partial disability; that there is no evidence of a new injury and there are no medical reports concerning the new injury; and that the claimant did not sustain

a compensable injury on December 23, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that her alleged aggravation is established by medical evidence supported by objective findings.
4. The claimant has failed to prove by a preponderance of the evidence that she sustained a new compensable injury or an aggravation of her prior compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant worked for the respondent nursing home as a CNA. On June 13, 2002, she sustained a compensable injury to her back when she caught a falling patient. Her injury, a herniated disc at L4-5, was accepted by the respondents as compensable. She was treated initially by Dr. Dan Martin, and then by Drs. Edward Saer and Sunder Krishnan. She was off work for some seven months as a result of her injury, and she resumed work at light duty on January 1, 2003.

She continued to treat with Drs. Saer and Krishnan through the summer. She last saw Dr. Krishnan on May 20, 2003, and Dr. Saer on June 17, 2003. Dr. Saer released her from his care by letter dated October 22, 2003. Nonetheless, the claimant testified that she continued to have trouble with her back throughout 2003, to the point of missing work because of back pain. She continued having back pain and right leg numbness through the end of the year, and she continued to take medication. The record reflect that Dr. Martin refilled prescriptions for Soma and Darvocet as late as November, 2003.

On December 23, 2003, the claimant testified that she reinjured her back while trying to keep a patient from sliding out of his wheelchair. She testified that her back and right leg "went totally numb." A co-worker who was present at the time

testified that the claimant exclaimed, "Oh, my god, my back," and left to report the injury to her supervisor. The claimant returned to Dr. Martin on January 8, 2004.

The claimant acknowledged in her testimony that her back continued hurting, and she continued to take medication from her release by Dr. Saer up until the incident of December 23, 2003. She acknowledged that she was having right leg numbness prior to December 23, though she said it became much worse after the December 23 incident. She acknowledged that she was still on light-duty work as of December 23 and had never been released to full duty. The claimant has not returned to work since the December 23 incident.

II. Adjudication

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of 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 existence and extent of the injury; and (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. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.* An aggravation is a new injury resulting from an independent incident; being a new injury with an independent cause, an aggravation must meet the requirements for a compensable injury. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Therefore, regardless of whether the injury herein is alleged to be an aggravation of the June, 2002, compensable injury or an entirely new compensable injury, the claimant must still meet the same burden of proof as outlined above.

The claimant contends that the incident she sustained on December 23, 2003, resulted in an aggravation of her June, 2002, compensable back injury. However, I am unable to identify any objective findings of injury establishing the existence or extent of this alleged aggravation. The only objective findings in the record are the reports of the three MRI exams the claimant has undergone. The findings of an MRI taken January 20, 2004, after her alleged aggravation, appear to be substantially the same as the findings of the two MRI exams performed before the alleged aggravation. The 2004 MRI documents degenerative disc disease at L4-5 with

foraminal narrowing and sequestered disc material in the “anterior epidural space” at L4-5. An MRI performed May 15, 2002, contains similar findings, except that the disc material is described as being in the “ventral epidural space.” It is clear from *Dorland’s Illustrated Medical Dictionary*, 26th Edition, that “ventral” and “anterior” are synonyms, meaning there is no substantive difference between the two MRI reports.

Given this evidence, and the lack of any other objective findings in the record, I must find that the claimant has failed to prove by a preponderance of the evidence that her alleged aggravation is established by medical evidence supported by objective findings. Therefore, I must find that the claimant has failed to prove by a preponderance of the evidence that she sustained a new compensable injury or an aggravation of her prior compensable injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury or aggravation. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge