

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309834

ROSA CORTEZ

CLAIMANT

BRIGHTON HOUSE CARE CENTER

RESPONDENT

ARKANSAS SELF INSURED
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 28, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Springdale, Washington County, Arkansas.

Claimant represented by MARK VELASQUEZ, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held in the above styled claim on March 15, 2004, in Springdale, Arkansas. A pre-hearing order was entered in this case on February 25, 2004 . This pre-hearing order purported to set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. I to the hearing.

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

1. On June 24, 2002 , the relationship of employee-self insured employer-third party carrier existed between the parties.
2. On June 24, 2002, the appropriate weekly compensation rates are \$187.00 for total disability and \$154.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injuries to her back, knees, and right elbow on June 24, 2002.
2. The claimant's entitlement to the payment of medical expenses, temporary

total disability benefits from August 6, 2003 through a date to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

“On June 24, 2002, the claimant slipped in water and fell onto her knees, struck her right elbow and onto her back. The fall caused injury to her spine.”

In regard to these issues, the respondents contend:

“Respondents contend the claimant did not sustain an injury arising out of and in the course of the employment as defined by the Arkansas Workers' Compensation Act. Among other things, respondents contend that the claimant does not have any measurable and objective findings to support the definition of a compensable injury. “

DISCUSSION

_____The central issue is the question of whether the claimant sustained “compensable injuries” to her back, knees, and right elbow, as the result of a specific incident (fall) on June 24, 2002. The burden rests upon the claimant to prove these alleged “compensable injuries”.

Ark. Code Ann. §11-9-102(4)(D) requires the claimant to prove, by medical evidence, the actual existence of the physical injuries or conditions alleged to be compensable. She must further prove that the existence of these injuries or conditions is supported by “objective findings”, as defined by Ark. Code Ann. §11-9-102(16)(A). The medical evidence presented in this case consists of the reports and records of Max Beasley, a nurse practitioner, at the Arkansas Occupational Health Clinic and the reports and records of various physicians at the Mercy Health System of Northwest Arkansas.

The sole medical report of Max Beasley (dated June 26, 2002), diagnoses the existence of “multiple trauma” in the form of a neck strain, right elbow contusion, and bilateral knee contusions. He attributes this multiple trauma to the claimant's alleged employment related fall on June 24, 2002. This report may well be sufficient to “establish

by medical evidence” the existence of the injuries diagnosed. However, there is no evidence of the observation of any “objective findings” to support the existence of these diagnosed injuries. It is apparent that the diagnosis of the presence if these injuries were based upon the claimant’s description of the accident and her subjective complaints (in the form of pain, tenderness, and decreased range of motion). Mr. Beasley expressly recorded that the claimant exhibited equal strength in her upper extremities, equal and normal reflexes in all of her extremities, normal pulses in both wrists, and full extension of her elbow. It was also expressly noted that there was no swelling, specific effusion, or no bruising observed (the claimant also testified that she experienced no bruising as the result of the fall). X-rays of the claimant’s cervical spine, right elbow, and both knees were interpreted as normal.

It must be noted that the subsequent medical reports and records of the Mercy Health System of Northwest Arkansas also fail to reveal the observation of any “objective findings” to support the existence of any physical injuries or conditions involving the clamant’s neck, right elbow, or knees. In fact, none of these subsequent reports or records even mention a history of injuries involving the claimant’s knees or right elbow. There is no record that the claimant made any complaints of symptoms indicative of any physical injury or condition involving her knees or right elbow. In his initial evaluation, Dr. R. Britt Mahan, expressly states:

“She (the claimant) denies any numbness, tingling, paresthesia or pain in the upper extremities, whatsoever. There is no joint discomfort in the upper extremities. There is no wrist pain, elbow pain, neck pain, shoulder pain, and no thoracic pain. There is lumbar pain and some hip pain. Her knees specifically do not hurt nor do her ankles hurt.” (emphasis mine)

The only symptoms, voiced by the claimant during her evaluation and treatment at the Mercy Health System of Northwest Arkansas, concerned her low back and legs. Following her evaluation at this facility a diagnosis was made of physical injuries or

conditions to her lumbar spine.

The existence of physical injuries or conditions involving the claimant's low back or lumbar spine and possible radicular symptoms involving her lower extremities is amply supported by "objective" findings noted in the medical record. Lumbar x-rays (taken on July 16, 2003) showed the presence of physical conditions, in the form of a Grade I anterior spondylolisthesis of L5 on S1, with a bilateral pars defect at that level. An MRI study of the lumbar spine (conducted on July 21, 2003) showed the presence of physical conditions, in the form of disc degeneration with diffuse disc bulging at L5-S1 with fairly prominent neuroforaminal encroachment bilaterally that was sufficient to efface the perineural fat surrounding both of the exiting L5 nerve roots. This study also indicated the possibility of either nerve root edema involving the S1 nerve root, or a congenital variant of a conjoined nerve root at that level.

After consideration of all the medical evidence presented, I find that the claimant has failed to prove by medical evidence, which is supported by "objective findings", the actual existence of any physical injury or condition involving her knees or right elbow. Thus, in regard to the alleged injuries to these portions of her body, she has failed to satisfy the requirements of Ark. Code Ann. §11-9-102(4)(D). Her failure to meet the requirements of this subdivision prevents a finding of the occurrence of any "compensable injuries" to these portions of her body. However, the claimant has proven by medical evidence, which is supported by objective findings, the actual existence of a physical injury or condition involving her lumbar spine, specifically, at the L5-S1 level.

Thus, it is only necessary to determine if the medically established and objectively documented physical injuries or conditions involving the claimant's lumbar spine satisfy the definitional requirements for a "compensable injury", which are contained in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) The physical injury or condition must arise out of and occur in the course of the employment.

- (2) The physical injury or condition must be caused by a “specific incident.
- (3) The physical injury or condition must be identifiable by time and place of occurrence.
- (4) The physical injury or condition must cause internal or external physical harm to the claimant’s body.
- (5) The physical injury or condition must require medical services or result in disability.

The burden rests upon the claimant to prove that the medically established and objectively documented physical injuries or conditions to her lumbar spine satisfy all of these definitional requirements. Failure to satisfy even one of these requirements would be fatal to her claim.

In order to satisfy the first three of these requirements, the claimant must prove by the greater weight of the credible evidence the existence of a causal relationship between the medically established and objectively documented physical injuries or conditions, involving her lumbar spine, and a specific employment related incident on June 24, 2002. It is not absolutely necessary that she prove the existence of this causal relationship by expert medical evidence. Nor, is she required to prove that the employment related specific incident is the sole or even major cause of her resulting injuries, need for medical treatment, or disability. This required causal relationship can be established, if it is proven that the employment related specific incident only aggravated a pre-existing condition.

The only direct evidence of actual occurrence of an employment related fall on June 24, 2002, and any causal role it may have played in claimant’s subsequent difficulties with her low back and legs, is the claimant’s testimony. It is well established that the testimony of a party is never considered uncontradicted. However, this does not mean that such testimony can be arbitrarily disregarded. If the testimony is found to be credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address.

Clearly, the claimant’s testimony would be legally competent to prove the occurrence

and mechanics of her alleged employment related fall on June 24, 2002. Her testimony would also be legally competent to establish the time of the initial onset of her back and leg symptoms and to describe the progression of these various symptoms. Her testimony would be legally competent to prove that she had not experienced any previous injuries or difficulties or symptoms to these portions of her body. Finally, her testimony would be legally competent to prove that she had no subsequent known injuries to these portions of her body.

At the hearing, the claimant testified that, on June 24, 2002, she was engaged in performing her usual and customary employment duties for the respondent. She stated that while going to change the water in her mop bucket, she slipped in some water on the floor and fell to the floor. She further testified that she landed on her left side, primarily on her left knee and left arm in the area of her elbow. She describes the immediate onset of substantial pain involving her entire left side, particularly her left arm and left leg, and a loss of her ability to “use” her left arm. In her testimony, she describes no difficulties involving her right elbow, her neck, or even her lower back. She stated that, although she continued working, the pain involving the left side of her body remained essentially unchanged. She further stated that, following this incident, her employment activities were somewhat altered, so that she was no longer required to change beds or lift and carry things by herself. She then testified that, some time after the fall, her entire left side started “going to sleep”, She testified that, approximately six months after the fall, she began to experience “cramps”, and that once these “cramps” started, she then began experiencing pain in her lower back. After the appearance of the low back pain she began experiencing these “cramps” in her right leg.

This testimony of the claimant, concerning the mechanics of her employment related fall and the onset and progression of her symptoms, is clearly contrary to the initial history recorded by Max Beasley. When the claimant was initially seen on June 26, 2002, a

history was recorded that the claimant slipped in some water, and fell “onto her knees” and “struck her right elbow”. At that time, her symptoms and complaints were noted to only involve her right elbow, the lower portion of her cervical spine, both of her shoulders and both her knee (with her left knee being more affected). There is no record of any mention of an injury or symptoms involving her left arm, nor is there any indication of weakness in that arm. In fact, on physical examination, she was noted to display equal and “strong” grip strength in both upper extremities.

There is no evidence of any further medical evaluations or treatment for any type of difficulties until July 16, 2003. When the claimant was seen at the Mercy Health Systems of Northwest Arkansas on July 16, 2003, an entirely different description of the fall and the onset and progression of the claimant’s symptoms is recorded. In his report of July 16, 2003, Dr. Britt Mahan recorded the following description of the claimant’s alleged work related fall:

“One year ago she (the claimant) fell at work and had an on the job injury. She apparently (went or was sent) to the Bates emergency room. She states that there was chest film done, but she actually fell on her back. They did not make any lumbar x-rays, pelvic x-rays, or anything further at that time. Four months later is when her problems started, not immediately after the fall.” (emphasis mine)

At the time of Dr. Mahan’s examination, he only recorded symptoms and complaints involving the claimant’s lower back and lower extremities. He specifically noted:

“She (the claimant) denies any numbness, tingling, paresthesia or pain in the upper extremities whatsoever. There is no joint discomfort in the upper extremities. There is no wrist pain, elbow pain, neck pain, shoulder pain, and no thoracic pain. There is lumbar pain and some hip pain. Her knees specifically do not hurt nor do her ankles hurt. The pain she is having is more of a through and through muscular and/or radicular pain. She cannot localize, however, to a particular dermatome on either leg. Her left leg may be worse than her right.”

Later in this report, he expressly further noted that the claimant denied any motor or strength difficulties involving any of her extremities or any overall weakness. On his

physical examination, Dr. Mahan observed that the claimant's reflexes were intact in both her lower and upper extremities, that she had only a minimal sensory deprivation or disturbance that was in her lower extremities and was purely subjective. Finally, he observed that the claimant had intact and equal motor strength in both of her upper and lower extremities and that she was "walking well".

I recognize that the claimant, may not speak english and may have difficulty communicating. However, the discrepancies between the claimant's testimony and the various histories recorded in the medical evidence cannot be easily explained by a failure to communicate. According to the claimant's testimony, when she fell she struck on her left side, primarily in her left knee and left arm. In the history recorded immediately following the incident the claimant struck on both knees and also struck her right elbow. In the history recorded by Dr. Mahan, the claimant struck on her back. In the claimant's testimony, her initial symptoms involved severe pain in her entire left side, particularly her left arm and leg, and numbness, loss of strength, and inability to use her left arm. At the time of her initial evaluation, at the Arkansas Occupational Health Clinic, the claimant's complaints involved only pain in her lower cervical spine, shoulders, right elbow, and knees, with no loss of sensation or abnormal sensations involving either of her upper or lower extremities. By the time the claimant was evaluated by Dr. Mahan, there was no mention of any symptoms involving either of her upper extremities, lower neck, shoulders, knees (or left side). Again, the physical examination of her upper extremities was entirely normal. In light of these significant discrepancies (almost to the point where each description of the claimant's complaints are almost entirely different), it is difficult to place any credibility on the claimant's testimony. Her failure to seek medical treatment for over a year following her fall and months after she allegedly began experiencing significant difficulties also adversely impacts her credibility.

The only area where the claimant's testimony and the medical evidence is somewhat consistent, concerns the initial onset of the claimant's difficulties with her lower back or lumbar spine and possible radicular symptoms involving her lower extremities. In regard to the onset of these symptoms, all of the evidence concurs that the claimant experienced absolutely no symptoms involving her back or lumbar spine (particularly radicular symptoms into her lower extremities), until at least several months following her alleged employment related fall on June 24, 2002 (somewhere between four and six months). Had the claimant's alleged employment related fall, on June 24, 2002, caused or even aggravated the medically established and objectively documented injuries or conditions involving her lumbar spine, a delay of some four to six months between the date of the fall and the initial onset of symptoms indicative of such an injury or aggravation would not be reasonably expected. The claimant has clearly failed to prove by the greater weight of the credible evidence the existence of a reasonably close temporal relationship between the alleged employment related fall and the occurrence of any physical injury to her lumbar spine.

The claimant's failure to prove the existence of this reasonably close temporal relationship must be further considered in light of the particular nature of the objectively demonstrated physical injuries or conditions involving her lumbar spine. The bilateral pars defect at L5-S1 would appear to be congenital in nature. The Grade I anterior spondylolisthesis of L5 on S1 could be traumatic in origin. However, the claimant should experience the contemporaneous onset of symptoms in her low back at the time of the actual slippage or displacement of the L5 vertebral on the S1 vertebra. The diffuse disc bulging of the L5-S1 intervertebral disc would be degenerative in nature (as opposed to focal bulging, disc protrusions, or disc herniations). Clearly, this condition can be aggravated by trauma. However, once again a relatively close temporal relationship between the aggravation and the initial onset of symptoms would be reasonably expected.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between her alleged employment related fall on June 24, 2002, and any medically established and objectively supported physical injury or condition to her back or lumbar spine. Thus, she has failed to prove the occurrence of a physical injury to this portion of her body that arose out of and occurred in the course of her employment with this respondent, that was caused by a specific incident, and that is identifiable by time and place of occurrence. The claimant's failure to prove these necessary requirements of Ark. Code Ann. §11-9-102(4)(A)(i) prevents a finding that she sustained a "compensable injury" to this portion of her body on June 24, 2002.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 24, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On June 24, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$187.00 for total disability and \$154.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained any "compensable injuries" to her back, knees, or right elbow on June 24, 2002. Specifically, she has failed to prove the actual existence of any physical injuries to her knees or her right elbow, which are "established" by medical evidence and are supported by "objective findings", as required by Ark. Code Ann. §11-9-102(4)(D). She has also failed to prove the occurrence of any physical injury to her back or lumbar spine on June 24, 2002, that arose out of and occurred in the course any

employment, that was caused by a specific incident and that is identifiable by time and place of occurrence, as required by Ark. Code Ann. §11-9-102(4)(A)(i).

5. The respondents have denied the occurrence of any compensable injuries to the claimant's back, knees, or elbow on June 24, 2002.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge