

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306900

DEBRA ELMS	CLAIMANT
KMJ MANAGEMENT LLC	RESPONDENT
CROCKETT ADJUSTMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 9, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by RANDY SHOCK, Attorney, Fort Smith, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 23, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 28, 2004. 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 May 30, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her spine, neck and right shoulder.

4. The claimant is entitled to a weekly compensation rate of \$163.00 for temporary total disability.

5. Temporary total disability has been paid through July 29, 2003.

6. Medical expenses have been paid to July 29, 2003.

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

1. Compensability of the claimant's continuing spine, neck and right shoulder injuries of May 30, 2003.

2. Medical from June 29, 2003.

3. Temporary total disability from July 30, 2003, to a date to be determined.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that on May 30, 2003, she suffered an accidental injury arising out of and in the course of her employment as the result of the fall which injured her spine and right shoulder. Some medical was provided and temporary total disability benefits were paid from June 18, through July 29, 2003. The claimant is entitled to additional medical benefits, temporary total disability benefits from July 30, 2003, through a date yet to be determined less unemployment compensation received and the award of a maximum statutory attorney's fee on all benefits awarded.

In regard to the foregoing issues the respondents contend that they initially accepted this claim as compensable. The medical records reflect that the claimant was suffering from back problems

in January 2003 requiring the use of medications such as Flexeril and Hydrocodone. The claimant did have a temporary aggravation of her preexisting problems on May 30, 2003. At that point, the claimant was back to taking Hydrocodone, which was the medication she was taking prior to the injury. The claimant also had an MRI that indicated degenerative disc disease, but no disc herniation. The claimant did not return to the doctor until February 16, 2004, for chronic pain problems that the respondents contend are not related to this injury.

The documentary evidence consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondent submitted documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was 42 years old, married and had worked for the respondent a total of six years. The claimant testified that on May 30, 2003, she was working in the respondent's laundry sorting cloths and putting them in the washer. The claimant stated that she walked around to put some cloths in the dryer and slipped on what she thinks to have been some jello which had come out of the clothing barrel. The claimant testified that she fell on the concrete floor hitting her right buttock and hit her back on a mop bucket. The claimant testified that it felt like a shock wave and that she was dazed but was able to roll over to her left side and pull herself up. The claimant testified that she

stood there a few minutes trying to catch her breath to make sure that she could walk because she was hurting so bad and then she walked outside to smoke a cigarette. The claimant testified that an aid noticed that she was crying and asked what was wrong. After the aid looked at her back, the claimant testified that she went to report her injury to the night nurse. The claimant was asked why she was crying and she responded, "I was crying because it hurt--- the pain."

The claimant testified that she reported her injury to the night nurse who asked if she needed to go to the ER. The claimant testified that there was only thirty-five minutes left on her shift so she finished out her shift but at the end she was still hurting and asked to be sent to the doctor. The claimant stated that she went to the ER that night and was taken off work a couple of days later. The claimant testified that she was sent to the respondent's doctor and has since been treated by various doctors and physical therapists. The claimant testified that after a period of time her medical bills were refused by the respondent and she feels as though she is still in need of medical care. The claimant testified that she cannot walk or sit for long periods of time, she cannot sit flat but has to lean and has become very protective of her right side. The claimant stated that when she does stand flat footed and walks she gets a catching piercing pain down her right leg and that it sometimes goes numb to where she cannot walk at all. The claimant testified that sometimes there is a shock wave of pain which catches her breath. The claimant stated

that she has to lie down frequently which interferes with her house work and cooking. The claimant testified that she uses a cane to help her with balance and that since her injury she has gained 55 pounds, noting further that she is 5 feet and 5 inches tall. The claimant testified that she does not feel as though she would be able to return to her laundry job nor would she be able to work as a convenience store clerk, farm or work for an egg farming operation as she has previously done.

The claimant testified that her daily activities include getting up, having coffee, sitting in her recliner and that on a good day she will get up and start her dishes and do other household tasks little bits at a time. The claimant testified that, in her opinion, the physical therapy and the medical treatment which she had been receiving was helping improve her situation. The claimant further stated that it was her understanding that there was additional treatment options which were available to her which the respondents would not authorize.

On cross examination, the claimant agreed that she had had low back problems in the past and in fact had been seen at the Clarksville Family Group on July 23, 2003, for back pain. The claimant further agreed that for these problems she has taken Hydrocodone as well as Flexeril. The claimant agreed that it has been recommended to her by her doctors that she stop smoking a pack and a half of cigarettes a day as well as lose weight in order to alleviate her low back problems. The claimant agreed that Dr. Pennington had recommended that she stop working in the chicken

houses because it was causing her back to hurt and that during this period of time she was taking Flexeril as well as Soma. The claimant further agreed that she had testified in her deposition that over the years when she would do more than she should she would have muscle spasms in her low back. The claimant was asked about an emergency room visit on August 4, 2002, where she reported lifting and having tightness in her back. The claimant responded that she believes that was the time that she was lifting a twenty-pound sack of dog food at Wal-Mart. The claimant agreed that the medications she has taken in the past such as Hydrocodone, Flexeril, Amitriptyline and Vicodin are all medications which are similar to the medications which she has been given for her current problems. The claimant testified that her physical therapist had recommended that she do exercises at home. The claimant testified that due to the discomfort of doing the exercises she has not continued with this suggested plan. The claimant testified that her shoulder problems have resolved. The claimant agreed that her primary problem is her leg pain, noting that she limps real bad some days and some days not so bad. The claimant was asked about a note dated July 28 that indicated that she was having difficulty bending at work and the claimant responded that she was not working anywhere at that time. The claimant agreed that as of August 18 the doctor returned her to work and she went to see the nurse practitioner who gave her a note for light duty work on the 20th. The claimant testified that she took this note to the respondent and was told by Patty Stokes that there was no light duty in the

laundry and due to this she was terminated. The claimant testified that after she left the respondent's business she filed for unemployment and received those benefits from August 2003 to February 2004.

The claimant testified that after she was terminated she did not have money to return to the doctor. The claimant testified that in order for her to receive her unemployment benefits it was required that she make two employment contacts per week which she did. The claimant testified that she applied for kitchen work, at the Dollar Tree and fast food businesses. The claimant agreed that about the time her unemployment ran out she filed for social security benefits.

The claimant testified that one of her hobbies is being a member of the volunteer fire department, noting that her husband is the fire department chief. The claimant testified that up until she got hurt her duties for the fire department were fighting fires, directing traffic, running the pumps and being a first responder. The claimant testified that since her injury she still goes on some runs but she is limited to taking notes, medical history and taking vital signs. The claimant testified that she rode in the fire truck at the Christmas parade. The claimant testified that this past July she also took additional training on how to operate the pump for the fire department. The claimant testified that she returned to see the nurse practitioner, Susan Gateley, on February 16, 2004. The claimant stated that the nurse examined her and gave her tests as well as restrictions of no

lifting more than twenty pounds and not to stoop, bend or twist. The claimant testified that even though she was having back pain when she was seen in May 2004 for an ear problem no treatment or medications were recommended for her back. The claimant did agree that for the past year she has taken medication for her high blood pressure and asthma. The claimant testified that her condition is primarily the same as it was since the day she was injured, noting that some days are worse than others. The claimant testified that none of her medical providers have prescribed her a cane. The claimant testified that when she goes to places like Wal-Mart and Fred's she takes her cane and puts it in her basket.

On redirect examination, the claimant testified that prior to May 30, 2003, when working for other employers she would have back pain due to over worked muscles. The claimant testified that this pain did not cause problems such as numbness, tingling or pain into her right buttock or down into her right thigh. The claimant testified that she received, after taxes, \$134.00 dollars for unemployment. The claimant testified that there are days that she does not suffer from tingling and numbness but there is always a throbbing pain.

On recross examination, the claimant testified that when she saw the nurse practitioner in February 2004 she reported her numbness and tingling.

Patty Stokes testified on behalf of the respondents stating that she currently is the activity's director for that business. Ms. Stokes testified that before that she was in medical records

and was familiar with the claimant. Ms. Stokes testified that she recalls the claimant getting hurt and that as of August 2003 the claimant no longer worked for the respondent. Ms. Stokes testified that she has seen the claimant about five or six times since she left the employment of the respondent. This witness testified that she has seen the claimant at Wal-Mart pushing a cart. Ms. Stokes testified that when the claimant would see her the claimant would start limping. This witness testified that before the claimant saw her the claimant was walking normally. Ms. Stokes testified that this occurred every time she saw the claimant at Wal-Mart. This witness testified that she also saw the claimant driving the fire truck in the Christmas parade.

On cross examination, Ms. Stokes was asked if she attributed the claimant changing her gait in order to create the impression that he was hurt. This witness testified, "Yes, Sir." Ms. Stokes again testified that she was certain that she observed the claimant driving the fire truck in the Christmas parade rather than participate as a passenger.

Melissa Clayborn testified for the respondents stating that she works in payroll and personnel and was acquainted with the claimant. Ms. Clayborn testified that since the claimant left their facility she has seen her twice, once in the old Wal-Mart store and then in the new Super Center. Ms. Clayborn testified that about three or four months after she stopped working she observed the claimant walking in the parking lot pushing a shopping cart. This witness testified that she did not notice the claimant

having any limp or problem with her walking and she did not observe her having a cane. This witness testified that about two months prior to his hearing she observed the claimant at the Super Center walking down an aisle pushing a shopping cart. This witness testified that the claimant did not have her cane and she was walking fine and then started limping.

On cross examination, Ms. Clayborn testified that she did not see a cane in the claimant's shopping cart but a cane possibly could have been in her cart.

On rebuttal, the claimant testified that in the Christmas parade she was riding with her son in his truck. The claimant also testified that Patty Stokes was the person who fired her when she was terminated by the respondent.

The medical records set forth that the claimant has been treated for female problems as well as asthma and hypertension for several years. On December 28, 2002, the claimant was treated at the Johnson Regional Medical Center for complaints of right shoulder pain due to an injury at work. On August 4, 2002, the claimant was seen at the Johnson Medical Center, noting that after she got off work she had been tense and felt her back tighten. The medical notes set forth that the claimant was lifting something at Wal-Mart and suddenly felt tight pain on the right side. The claimant was assessed with lumbar strain and medications were prescribed as well as moist heat and she was to take off work for a couple of days. The records set forth that the claimant was treated for migraine headaches in the year 2002. The claimant was

treated at the Clarksville Medical Group on January 23, 2003, noting that she has a long history of headaches and some back pain. These medical records show that the claimant used to take Hydrocodone and Flexeril and she has been on Amitriptylene in the past and perhaps Zoloft. It is noted that it has been a long time since she has been on these medications. After examination, it was noted that the claimant has classic symptoms of depression and medications were prescribed.

The claimant was seen at the Johnson Regional Medical Center on May 30, 2003, where she reports that she slipped on Jello, landed on her buttocks and hit a bucket on the right side and medications were prescribed. A note from the Clarksville Medical Group dated June 3, 2003, sets forth that the claimant fell at the nursing home when working last week and landed on her buttocks but hit the area just beneath her shoulder blades on a mop bucket and had pain at the time. These notes set forth that the claimant was seen at the ER and was given Hydrocodone and Flexeril and that the claimant reports that she hurts any time that she moves her arms and it hurts between her shoulder blades in the mid thoracic area. These notes indicate that there is no pain running down her arm and no weakness, numbness or tingling. Upon examination it is noted that there is some bruising noted over the low back and muscle spasms are also noted. Medications were prescribed as well as moist heat and to be off work for the next forty-eight hours then light duty. On June 16, 2003, the claimant returned to the Clarksville Medical Clinic to be seen for the pain in her low back

which radiates down through the buttock and down to her right knee. Upon examination, it was noted that the claimant had a small ecchymosis at the base of her lumbar spine which was very tender and that she has muscle spasms. X-rays taken that day showed no obvious fractures, therefore, medications were prescribed, light duty was recommended and an MRI was scheduled. An MRI of the claimant's lumbar spine was made on June 23, 2003, which revealed that she had disc dessication at L-3, 4 and L-4, 5 otherwise it was an unremarkable MRI, noting that there was no nerve impingement. The claimant was seen at the Clarksville Medical Clinic on June 30, 2003, where it is noted that she has a slight improvement in her back pain but still experiencing sharp pain starting in her low back and radiating into her right buttock and down her leg when she walks. The claimant's medications were adjusted, physical therapy was scheduled three times a week for the next two weeks and she was to be off work during this period of time. The claimant participated in physical therapy five times over the next two weeks. On July 14, 2003, it is noted that the claimant is improving but still experiencing pain running into her right leg and physical therapy was continued for another two weeks. On July 16, 2003, the physical therapist notes that the claimant limps on the right when leaving the room but walks without any difficulty when leaving the department. When the claimant was seen by Susan Gateley, a nurse practitioner, on July 28, 2003, it was noted that the claimant's condition is improving and that physical therapy seems to be helping although she is still having pain in her right

buttock occasionally. Physical therapy was continued for another two weeks as well as her medications and moist heat. The claimant was to remain off work for two weeks from July 28, 2003, as set out in a note from Gateley and this time off was extended until the claimant's physical therapy was completed on August 18, 2003. On August 8, 2003, the physical therapist filled out a discharge on the claimant's physical therapy noting that she had fourteen treatment days and had partially achieved her goals, noting that the claimant had returned to work but was still ambulating with a right antalgic pattern but reported decreasing low back pain.

On August 18, 2003, the claimant reported to Nurse Gateley that she has been worse recently and was walking very slowly noting that lifting her grandchild may have aggravated her condition. The notes also set forth that her workers' compensation benefits were cut off two weeks ago and she will need a note to return to work but she is not sure that she will be able to work. The nurse writes that the claimant was requesting refills on her medications and upon examination the doctor writes that the claimant's gait is slow and she had trouble climbing up onto the examination table but getting down did not seem difficult for her. It was recommended that the claimant have SI injections to be performed by Dr. Dunham. The claimant's medications were refilled and she was given a note to start working on Wednesday on light duty but no lifting over twenty pounds and no bending or twisting.

The claimant was seen for follow up on February 16, 2004, for her back pain which radiates down into her right leg. The claimant

reports that she is not doing much better, however, physical therapy and medications did help for a while. It is noted that the claimant reports that she uses a cane to help her with walking due to the pain. It was recommended that the claimant get sacroiliac joint injections and medications were prescribed. It was recommended that the claimant see Dr. Valley, a neurologist, since no neurological deficits were found on examination this day.

Dr. Russell Allison writes on April 6, 2004, that he has seen the claimant for her complaints of right hip and leg pain. After taking a history from the claimant and conducting a physical examination of the claimant, Dr. Allison writes that the claimant appears to have obvious neurological type pain. Dr. Allison writes that he does not have her MRI but has seen a report which shows degenerative disease, however, the doctor notes that the claimant could have nerve root compression and recommends that she have a more thorough work up to consist of possible bone scans, new MRI, possible myelograms, nerve conduction studies and EMGs. Dr. Allison writes that without these the claimant will not have a diagnosis and will not improve. The claimant was seen at the Johnson Regional Medical Center on May 22, 2004, for a sore throat and allergies but there is no mention of her back at this visit. On July 18, 2004, the claimant was again seen at the Johnson Regional Medical Center for complaints of hip and back pain.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury of May

30, 2003, until August 18, 2003, when the claimant completed her physical therapy. It is noted on the August 18, 2003, medical records that the claimant reports a deterioration in her condition after lifting a grandchild. Up to this date, it would appear that the claimant's condition had slowly been improving but also according to the record, the claimant's approach to her problem seemed to be increasingly self serving hinting on exaggeration. It has been agreed by the parties that the claimant had a compensable injury on May 30, 2003, for which she received medical treatment up through June 29, 2003, as well as temporary total disability until July 30, 2003. I find that the problems resulting from the claimant's slip and fall incident of May 30, 2003, resolved as of August 18, 2003, except for her complaints of pain. Initially, it is noted that the claimant had marked tenderness, bruising as well as muscle spasms, all of which are not noted subsequent to August 18, 2003. I further find that the claimant is entitled to additional temporary total disability from her date of last payment on July 30, 2003, until August 18, 2003. I find, therefore, that any continuing problems which this claimant might allege subsequent to August 18, 2003, are not as a result of her slip and fall incident on May 30, 2003.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 30, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her spine, neck and right shoulder.

4. The claimant is entitled to a weekly compensation rate of \$163.00 for temporary total disability.

5. Temporary total disability has been paid through July 29, 2003.

6. Medical expenses have been paid to July 29, 2003.

7. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her May 30, 2003, incident up until August 18, 2003. See discussion above.

8. The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from July 30, 2003, to August 18, 2003. See discussion above.

9. I find that subsequent to August 18, 2003, any medical complaints which this claimant may be expressing are not as a result of a slip and fall incident the claimant experienced on May 30, 2003, while working for the respondent. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that any ongoing medical problems subsequent to August 18, 2003, are a result of her May 30, 2003, slip and fall incident.

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment from June 29, 2003, until August 18, 2003.

The claimant is entitled to additional temporary total disability from July 30, 2003, to August 18, 2003.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE