

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405679

AMY FOWLER, CLAIMANT

CLAIMANT

PARK VILLAGE HOMES, UNINSURED EMPLOYER

RESPONDENT

OPINION FILED DECEMBER 9, 2004

Hearing before Administrative Law Judge Andrew L. Blood, on December 9, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondent represented by the Honorable Michael W. Langley, Attorney at Law, Paragould, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-referenced claim to determine claimant's entitlement to workers' compensation benefits growing out of a March 10, 2004 accident.

_____ On October 26, 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 the issue to be addressed during the course of the hearing and the respective contentions of the parties relative to same. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Amy Fowler, the claimant, Shirley McGlouglin, and Jerry Skelton, comprise the record in this claim.

DISCUSSION

Amy Fowler, the claimant, with a date of birth of March 2, 1973, is a highschool graduate

with approximately two (2) years of collage education. Claimant was employed by respondent from August 2003, until March 17, 2004, as a property manager. Respondent-employer is a mobile home operation consisting of three (3) separate mobile home park in Jacksonville, Arkansas.

Claimant's testimony reflects that as the property manager for respondent-employer her duties included leasing trailers, collecting rent, and the general upkeep of the facilities. Claimant testified that with authorization of the owners or agents of same she was permitted to hire and fire employees of respondent-employer.

Claimant asserts that on March 10, 2004, she suffered an injury to her right shoulder and the right side of her neck growing out of her employment with respondent. Specifically, claimant maintains that she was cleaning a vacant trailer in Phoenix Village #1 at the time she suffered her injury. The testimony of the claimant reflects that she used a carpet cleaning machine from approximately 3:30 P.M. until 6:00 P.M. Claimant acknowledged that there was not a specific incident which served as the basis of the claim. Claimant testified that she did not experience any symptoms, which she attributed to her employment activity, until the following day, March 11, 2004.

Claimant asserts that on March 11, 2004, she proceeded to the emergency room of Rebsamen Regional Medical Center in Jacksonville, Ar., in effort to obtain medical treatment for her injury. Claimant maintains that emergency room busy, and after waiting for several hours she left Rebsamen and proceeded to the emergency room of Baptist Health Medical Center in North Little Rock, Ar., where she was treated for her complaint. Claimant acknowledge that she was not give an off-work slip by the attending emergency room physician following her

examination and treatment, however maintains that she was directed to “take it easy”.

Claimant’s testimony reflects that she was provided pain medicine and muscle relaxants by the ER physician.

Claimant’s testimony reflects that she was off work March 12, 2004, due to residuals of her injury. Claimant normally worked five (5) days per week, Monday through Friday, from 8:00 A.M. to 5:00 P.M. Claimant testified that she called Jerry Skelton, a supervisor in Jonesboro, Ar., and informed same that she had hurt her back and needed to be off work. The testimony of the claimant reflects that when she next reported for work she was informed that her employment had been terminated.

The testimony of the claimant reflects that at the time of her firing by respondent she continued to experience residuals of her injury to include pain in the right side of her neck and down her right arm. Claimant received a bill in the amount of \$165.00 relative to the emergency room visit. Claimant testified that she also had two (2) prescriptions filled relative to her injury, which totaled \$47.00. Claimant’s testimony reflects that she did not seek further medical treatment relative to the accident because she did not have money for same. The testimony of the claimant reflects that respondent employed more than three (3) employees at the time of her injury.

The testimony of Jerry Skelton reflects that he is an employee for one of the owners of respondent-employer, however he is not employed by respondent-employer. Mr. Skelton testified that his responsibilities are to check on the properties of the owners of respondent-employer to assure the upkeep of same. Mr. Skelton further testified that when labor tasks are required with respect to the properties he hire available laborer and pay cash. The owners of

respondent-employer were identified as Porter Hurt and Roger Moore, who also own other concerns.

Mr. Skelton's testimony reflects that he was in Jacksonville, Ar., from Wednesday, March 10, 2004, through Wednesday, March 17, 2004, for the purpose of effectuating changes in the management of the property. Mr. Skelton noted that he had recommended that the claimant's employment be terminated due to her failure to properly maintain the property. In furtherance of the afore Mr. Skelton had contacted Ms. Shirley McGlouglin, the manager of respondent-employer out of the Jonesboro office and requested her presence in Jacksonville for the Monday, March 15, 2004, pending termination.

Mr. Skelton testified that on Monday, March 15, 2004, he received a telephone call from Ms. McGlouglin informing him that the claimant would not be available due to illness. Mr. Skelton's testimony reflects that on Tuesday, March 16, 2004, he received a telephone call from the claimant and was informed that one of her children was ill. Mr. Skelton denies that claimant ever reported having sustained a work-related injury. On Wednesday, March 17, 2004, claimant arrived for work and was told that her employment was terminated due to her job performance. Mr. Skelton testified that at the time of the termination claimant became upset/angry and begin removing property from the office that she claimed belonged to her, to include a printer and copier.

Mr. Skelton's testimony reflects that claimant had been granted use of a vehicle belonging to respondent-employer, a pick-up truck. Claimant packed the items in the truck after being given permission to use same. Mr. Skelton testified that claimant did not report that she had sustained a injury, nor did he appreciate any kind of injury based on his observations of the

claimant on March 17, 2004.

The testimony of Ms. Shirley McGlouglin reflects that she works for the owners of respondent-employer, with duties which include keeping the book, records, and paying bills. Ms. McGlouglin testified that the claimant was hired as an employee of respondent-employer as the property manager at a weekly rate of pay of \$400.00. Additionally, Ms. McGlouglin's testimony reflects that respondent-employer employed Ms. Melissa Gonzales as a receptionist, as well as another individual, Jeff Canada. The testimony further reflects that each of the afore individuals are paid by cash with no withholdings or deductions from their earnings.

The testimony of Ms. McGlouglin reflects that claimant's job duties did not entail clean, a task was assigned to Ms. Gonzales. Further, Ms. McGlouglin testified that while she did receive a telephone call relative to claimant's inability to attend the scheduled Monday, March 15, 2004, meeting, she was not informed that the same was the product of a work-related injury. Ms. McGlouglin testified that at the time claimant's employment was terminated she was paid for three (3) days of work and given a week's severance pay of \$400.00.

After a through consideration of all the evidence in this record, to include the testimony of the witnesses and application of appropriate statutes and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 10, 2004, the respondent employed the required number of employees to bring its operation within the jurisdiction of the Arkansas Workers' Compensation laws pursuant to Ark. Code Ann. § § 11-9-102 (11) (A) and 11-9-103, and was required to have in place either a policy of workers' compensation insurance or to be certified as an authorized self-

insured employer by the Arkansas Workers' Compensation Commission. Respondent is responsible for the cost of these proceedings before the Arkansas Workers' Compensation Commission.

3. On March 10, 2004, the relationship of employee-employer existed between the claimant and the respondent.

4. On March 10, 2004, the claimant did not sustain an injury arising out of and in the course of her employment.

CONCLUSIONS

Claimant asserts that she sustained an injury to her right shoulder and the right side of her neck while discharging employment duties for respondent on March 10, 2004, for which she seeks medical benefits. Respondent denies that claimant suffered an injury in her employment. Respondent did not have a policy of workers' compensation in place on March 10, 2004, nor was it an authorized self-insured employer.

The present claim is one governed by the provisions of Act 796 of 1993, in that 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. Claimant asserts that her injury sustained over the course of the period between 3:30 P.M and 6:00 P.M. while using a carpet cleaning machine on March 10, 2004.

Ark. Code Ann. § 11-9-102 (4) defines a compensable injury to mean:

- (i) An accidental injury causing internal or external physical harm to the body , arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence;

- (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
 - (a) Caused by rapid repetitive motion.

In the instant claim, since claimant did not suffer a “accidental” injury, her claim must of necessity fall within the category (ii) type compensable injury. Claimant has failed to put forth any evidence of rapid repetitive motion with respect to her job task on March 10, 2004. Further, claimant has failed to put forth medical evidence supported by objective findings, as defined in Ark. Code Ann.§ 11-9-102 (16), establishing the injury asserted. According the claimant has failed to establish by a preponderance of the evidence that she sustained a compensable injury in the employment of respondent.

The evidence does preponderates that the respondent employed the required number of employees to bring its operation within the purview and jurisdiction of the Arkansas Workers’ Compensation Commission and that it does not have in place a policy of workers compensation insurance nor is it an authorized self-insured employer. Respondent is liable for the cost of these proceedings and will pay the court reporter cost associated with same.

The claimant’s claim for workers’ compensation benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge