

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106816

LUCIANA A. FRAZIER, EMPLOYEE	CLAIMANT
DEPARTMENT OF CORRECTION, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER	RESPONDENT

OPINION FILED JUNE 8, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on May 21, 2004 at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by MS. MARCIA FRAZIER.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses.

At issue is whether or not the claimant developed a compensable physical and/or mental illness as defined by Ark. Code Ann. §11-9-102 and §11-9-113.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and benefits must be denied.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on September 24, 2000. The claimant is presently drawing Social Security Disability benefits.

The claimant contends she sustained a closed head injury on September 24, 2000 when an inmate threw an unknown object at her. She suffered a nervous breakdown with headaches,

difficulty sleeping and trouble concentrating. On September 26, 2000, she was seen at Southwest Behavioral Clinic on an emergency basis and diagnosed with depression and psychosis. She was hospitalized until October 3, 2000. She was hospitalized again in Jonesboro from October 16, 2000 to October 25, 2000. She returned to Pine Bluff and was hospitalized again at Southwest Behavioral Clinic. The claimant remains under the care of Dr. Ella Williams for Schizoaffective Disorder, bipolar type. She has been prescribed medication (Lexapro and Seroquel) and attends counseling, but has not been able to return to work.

The respondents contend the claimant cannot meet her burden of proving a work-related injury verified by objective medical findings. The claimant's psychiatrist, Dr. Wooten, was not aware of any head trauma (see his report of March 16, 2004) and her physician, Dr. Lon Burba cannot causally connect her abnormal test results (MRI scan, EEG report) to any trauma at work, (see reports dated June 27, 2002 and June 12, 2002).

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript.

The following witnesses testified at the hearing: the claimant and her mother Marcia Frazier, Lt. Summers, and Lt Jenkins. The claimant was well dressed, polite, and able to testify on her behalf.

The claimant reaffirmed the history of her injury as discussed at the prehearing conference and contained in the prehearing order filed April 14, 2004. The claimant, age 29 (D.O.B. January 16, 1975) received six weeks of training and had worked two years as a guard for the respondent-employer. On September 24, 2000 she was hit in the head by an unknown object thrown at her by an inmate behind bars. The floor was littered with pencils, books and paper but she had no physical

contact with any inmate. She reported the incident by calling the control center and Lt. Summers and two other correction officers came to the barracks to investigate. The claimant's shift was from 6:00 p.m. to 6:00 a.m. and this incident happened some time between 11:00 p.m. and 1:00 a.m. The claimant felt dazed and confused and called a family member for a ride home.

The next day the claimant went to Dr. Williams at Southeast Arkansas. There is no mention of a physical injury precipitating her mental symptoms. In fact, Dr. Williams was under the impression that the claimant had a history of depression and her symptoms had worsened over the last week to include insomnia, paranoia, and hearing voices.

The claimant's mother, Marcia Frazier, testified she called Lt. Jenkins to let him know the claimant was receiving medical treatment. She also disputes the history of illness appearing in Dr. Williams' reports.

Lt. Summers testified he did not remember working with the claimant and had no knowledge of her reporting an injury or any inmate disruption. The parties made reference to documents including prison logs and Lt. Summers' attendance records but these were not introduced into evidence.

Lt. Jenkins admitted the claimant's mother called him on September 27 or 28 to report that her daughter had been hospitalized but she never reported it as work-related, and he saw no reason to document the call.

MEDICAL EVIDENCE

Dr. Ella Williams, Medical Director of the Southeast Arkansas Behavioral Healthcare System, Inc. authored a report dated September 26, 2000, diagnosing the claimant as depressed with psychotic features. The claimant and her mother declined hospitalization and Dr. Williams

prescribed medication.

Dr. Williams authored two letters dated January 18, 2001 and January 30, 2001 addressed to Richard Rogers at the Department of Corrections explaining the claimant was unable to handle her affairs and her mother was unaware of the procedure for filing a “grievance”. These letters seem to contradict the September 26, 2000 report and indicate the claimant was hospitalized at Jefferson Regional Medical Center (JRMC) from September 26, 2000 to October 3, 2000. She was also hospitalized in Jonesboro from October 16, 2000 to October 25, 2000.

In June, 2002, the claimant saw Dr. Lon Burba on referral from Dr. John Harris, whose records were not provided. Apparently Dr. Burba was under the mistaken impression that the claimant was “hit in the head and thrown across a room in September, 2000.” The claimant complained of headaches, confusion, blurred vision and photophobia. Dr. Burba thanked Dr. Harris for

referring this nice lady who was injured when she was struck in the head by an unknown object. She did not completely lose consciousness, but apparently saw stars. She since has had a ‘nervous breakdown’, has had difficulty with sleep patterns and trouble concentrating. Her exam is thankfully non-focal today. We are concerned about the possibility of mesiotemporal sclerosis with partial seizures. We will get an EEG and an MRI..

Dr. Burba performed an electroencephalogram which he interpreted as “an abnormal EEG characterized by diffuse intermittent sharply contoured theta which may reflect an encephalopathic state, but is non-specific as to etiology.”

An MRI scan of the brain was interpreted by Dr. Bradley Pierce as showing:

single non specific focus of increased signal intensity in left frontal subcortical white matter... MRI scan of the brain is otherwise unremarkable.

This (white matter) is a non-specific finding. This could be secondary to white matter shear injury in this setting of a history of head trauma if this was significant trauma... Migraine headaches could produce a similar white matter focus. Finally, this may be idiopathic of no clinical significance. (Emphasis added)

The claimant did not inform the doctors that the objects thrown at her were pencils, papers, and books. It is doubtful these objects could cause the necessary “significant trauma” sufficient to cause a head injury.

Dr. Greg Wooten, a psychiatrist with Southeast Arkansas Behavioral Healthcare System authored a report dated March 16, 2004, diagnosing the claimant with Schizoaffective Disorder, bipolar type. In response to the claimant’s questions regarding causation, Dr. Wooten opined:

I have been treating you since approximately April, 2003. In that time, I have not been aware of any significant head injury. Symptoms similar to ones you have can be experienced by those people who have experienced certain types of head traumas. It is impossible to know exactly what symptoms could be related to that or what symptoms are related to a primary psychiatric disorder.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, and §11-9-113, by a preponderance of the evidence of record, which means “evidence of greater convincing force, Smith v. Magnet Cove Barium Corporation, 212 Ark. 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical

services or resulted in disability

- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

* * *

A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual (DSM) of Mental Disorders.

Notwithstanding any other provision of this chapter, where a claim is by reason of mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits.

The evidence of record shows the claimant cannot meet her burden of proving any incident happened at work. There are no witnesses who can confirm an inmate disruption; she did not seek medical attention for a head injury; and she did not mention a head injury to her psychiatrist as the origin of her problems. Accordingly, I find the claimant cannot meet her burden of proving an injury arising out of and in the course of her employment which caused physical harm and required medical treatment. Assuming arguendo, the claimant is regarded as a victim of a crime, assault and battery,

no physical injury would be required, but the claimant would still have to meet the requirement of a causal connection between her employment and her present condition. None of her physicians offered an opinion on causation within a reasonable degree of medical certainty. Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002), Frances v. Gaylord Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000). Furthermore, Dr. Wooten does not refer to the DSM criteria in making his diagnosis and therefore, the claimant cannot meet this additional element of proof. Branscum v. RNR Construction Co., 60 Ark. App. 116, 959 S.W.2d 429 (1998).

After reviewing the lack of corroborating evidence of any incident at work and any physical head injury combined with evidence that her psychiatric problems began before the date of the alleged incident at work, I find the claimant has failed to meet her burden of proof by a preponderance of the evidence of record.

LIEN

Claimant's former attorney, Mr. Philip Wilson, filed a lien in this case of \$150.00 by letter dated September 10, 2002. Notice of this hearing was sent to Mr. Wilson but he did not appear to defend the lien. No accounting was attached to the lien to explain what fees and/or expenses were being sought. Without some form of explanation, I cannot approve fees and costs. Ark. Code Ann. §11-9-715, and Commission Rule 19.

Accordingly, I find the lien has been waived and the claimant does not owe Mr. Wilson.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on September 24, 2000.
2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a

compensable head injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

3. The claimant has failed to prove that she was the victim of a crime of violence pursuant to Ark. Code Ann. §11-9-113.
4. The claimant has failed to prove that her diagnosis of schizophrenia meets the criteria of the DSM as required by Ark. Code Ann. §11-9-113.
5. The claimant has failed to prove that her diagnosis of schizophrenia is causally related to a head injury.
6. Attorney Philip Wilson did not respond to the certified hearing notice, nor provide an accounting of services rendered or expenses sought. Without such information, an assessment of fees and costs cannot be determined as required by Ark. Code Ann. §11-9-715 and Commission Rule 19. Accordingly, I find Mr. Wilson waived his lien.

This claim for medical expenses is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge