

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306428

REBECCA FURR	CLAIMANT
WASHINGTON REGIONAL MED. CTR.	RESPONDENT
CANNON COCHRAN MANAGEMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 15, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 21, 2003, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on August 20, 2003. 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 August 31, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for the year 2001.

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

1. Compensability of the claimant's low back injury.
2. Related medical.
3. Temporary total disability from September 20, 2001, to a date to be determined.
4. Statute of limitations.
5. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was injured on May 31, 2002, when she bent over to assist a patient and herniated a disc. She is not a candidate for surgery but she is not able to return to her past employment or any other employment for which she is suited. Therefore, she requests total disability. Claimant has been seen by Dr. David Cannon, Dr. Danks and Dr. Peek.

In regard to the foregoing issues the respondents contend that the claimant has had back problems since 1996. She was diagnosed with an HNP at that time. She has filed claims for work related back injuries on August 30, 2001, May 25, 2000, February 28, 1996, October 15, 1997, May 1, 1996, July 8, 1994, and November 14, 1990. She took an FMLA leave beginning September 20, 2001, for an incident that happened at home on September 6, 2001. She did not return to work at all in the year 2002. Her FMLA expired on September 9, 2002 and she resigned. The claimant was not injured at work in 2002. The statute of limitations bars all previous

claims. The claimant's last injury was due to an accident that happened at home.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and additional information marked Claimant's Exhibit No. 2. All these documents were admitted without objection.

DISCUSSION

The claimant testified that she was fifty years old, had a GED and also was a certified RN. The claimant testified that she had been working for the respondent since May 22, 1989.

The claimant testified that she initially hurt her back while working for the respondent in March or April 1996 when she bent over to pick up a pencil off the floor and started having instant back pain. The claimant testified that this pain was in her low back and it did go down into her leg. The claimant testified that she did not report this incident to the respondent but she did seek medical treatment at the respondents' ER. The claimant testified that she was off work several days following this event and while at home she bent over and the pain got worse. The claimant testified that following this 1996 event, the ER doctor, Dr. Carol Fossey, had her undergo a CT scan. The claimant testified that she also saw Dr. Blankenship for the problems that she was experiencing. The claimant testified that she also developed pain and numbness that went down her right leg. The claimant testified that Dr. Blankenship prescribed medications and she was off work

for three months. The claimant testified again that she did not turn this 1996 event in as a workers' compensation claim. The claimant testified that when she did return to work it was on light duty and she worked as a secretary and monitor tech. The claimant stated that her light duty primarily dealt with not doing any lifting but after a two-month period of time on light duty, she went back to regular duty. The claimant testified that while working on regular duty she would have flare ups of pain and she would fill out incident reports whenever she had these injuries. The claimant testified that she does not recall the exact dates of these incident reports but knows that she filled out a bunch of them. The claimant testified that for some to these incidents she did miss time from work and that she would seek medical treatment through the emergency room as well as through her family physician, Dr. Bonner. The claimant stated that she paid for these benefits through her group insurance policy. The claimant was asked if she ever filed a workers' compensation claim notifying the respondents that she had injured herself at work any time before August 2001. The claimant responded, "I don't recall ever filing an actual claim. I know when I did some of the incident reports and I was sent to the ER---I wasn't charged for those visits."

The claimant testified that it was the lifting and turning of the patients that made her condition worsen. The claimant explained that it was a daily requirement of her job that she move and lift patients. The claimant stated that as time went on, like the last year that she worked, she started having more and more

problems. The claimant explained that she worked in the coronary care unit which required that the patients be turned or moved every two hours. The claimant testified that usually it would require two nurses to make this maneuver but there were times when she would have to do it herself. The claimant stated that there were at least four patients in the unit and during her work shift, this would require twenty-four lifts. The claimant testified that the very last job she worked for the respondent was on light duty because of the problems she was having with her back. The claimant testified that she was working in a sleep lab and it did not require the lifting because everyone was responsive and they were up and around. The claimant stated that she would stand during her shift and she would bend over to hook the patients up to equipment. The claimant testified that during this period of time she was seeing her family physician, Dr. Bonner, who was prescribing medications for her and she also has seen Dr. Kelly Danks.

The claimant testified that her last day of work for the respondent was August 31, 2001. The claimant stated that the very first doctor she saw after she quit work was Dr. Bonner and then she was seen by Dr. Danks. The claimant remembered that on August 13, 2001, before she quit work she reported to Dr. Cannon that the events that caused her pain was her continuing to work and lift and bend.

The claimant testified that in August 2000 she was working in the cardiac unit and reinjured her back. The claimant testified that she thinks that she filled out workers' compensation papers

and she was sent to see Dr. Abernathy at the Lowell Medical Clinic. The claimant remembers that she reported to Dr. Abernathy a history of her back problems and told him that she had strained her back at work while lifting. The claimant was asked how long her back had been hurting and she responded that it had bothered her all along but that it had just gotten worse and worse and eventually it just never did get any better.

The claimant testified that when she saw Dr. Richard Peek she reported to him that she was injured at work and that her work caused her to keep reinjuring her. The claimant testified that Dr. Peek did not recommend surgery but did recommend facet joint injections. The claimant testified that Dr. Peek recommended that she go to Dr. Cannon for these injections since he was closer to where she lived. The claimant testified that she is not able to work, remembering that on her last day of work, August 31, 2001, she had strained her back when she was bending over a patient. The claimant was asked why she did not file a workers' compensation claim on August 31, 2001, and the claimant responded that she did ask the employee health nurse about workers' compensation but was told that she did not qualify. The claimant was asked why she did not qualify and the claimant responded that she was told that she had chronic back pain and that did not qualify. The claimant was asked if she does have chronic back pain and the claimant responded, "yes, I do."

On cross examination, the claimant was asked if she had any back problems prior to her 1996 back injury when she bent over to

pick up a pencil. The claimant responded, "just muscle strain." The claimant was then asked if she had ever had any back problems that she turned in to her employer as a workers' compensation claim prior to 1996 and the claimant responded, "maybe. I don't know." The claimant testified that she did not turn in her 1996 event as a workers' compensation claim. The claimant agreed that the treatment that she received from the various doctors after her 1996 event was paid for by her group insurance. The claimant stated that between 1996 and when she ended her employment in August 2001, she did fill out incident reports and there were times when her back problems were bad enough that she was sent to the emergency room and it was filed as worker's comp. The claimant testified that she did not know who paid for these bills and the only insurance company that she has worked with while working for the respondent was Blue Cross Blue Shield. The claimant stated that she never received any disability payment of any kind from any insurance company for workers' compensation benefits. The claimant testified that in August 2001 when she hurt her back working, she filled out an incident report and then she was sent to see the employee health nurse at which time she asked about workers' compensation and was told that she did not qualify because her problem was chronic. The claimant testified that at that time she filed for medical leave under the FMLA. The claimant testified that after the employee health nurse told her that she did not qualify because her back problem was chronic she believed her. The claimant was asked when her chronic back problem began and the

claimant responded, "probably, back in 1996." The claimant was then asked, "so ever since 1996 you had problems with your back?" The claimant responded, "yes, I have." The claimant's workers' comp Form C was reviewed and it was agreed that it was signed on June 20, 2003, and sets forth that, "describe the part of your body you injured and the cause of the injury." The claimant responded, "I injured my back at the end of my work shift while bending over to pick up a pencil. I was off work for a couple of days and reinjured my back while bending over to water a plant." The claimant was then asked if this is what happened back in 1996 and the claimant responded, "yes." The claimant was then asked, "but there is nothing in here about an August of 2001 incident. Why did you not put it on there?" The claimant responded, "I don't know. I guess I just didn't understand the question." The claimant testified that she does not know of any workers' compensation claims being filed on her behalf between 1996 and 2003. The claimant agreed that ever since 1996 she continued to have problems with her back while she was working for the respondent. The claimant testified that she has never been back to work after Dr. Danks took her off work on September 25, 2001, for a two-week period of time. The claimant testified that she has had upper back problems as well but her biggest problem is with her low back. The claimant testified that several of her doctors have indicated to her that surgery is not something that would help her. The claimant testified that she has not worked for over two years but she did go back to the respondent to see about getting another job

and it just did not work out. The claimant agreed that the reason her employment did not work out was because she failed her drug test.

In the medical records there is a pain questionnaire which sets forth various doctors which this claimant has seen and also indicates that the claimant ruptured a disc in March 1996 and her continued working has caused her pain due to lifting and bending. Dr. Kelly Danks writes on September 25, 2001, that the claimant reports that she has reinjured her back and is in a considerable amount of pain as well as some hip pain and thoracic pain. Dr. Danks ordered a repeat MRI to see if there was anything new going on in the claimant's back. Dr. Danks took the claimant off work from September 25, 2001, for two weeks. On October 2, 2001, Dr. Danks writes that he has reviewed the claimant's MRI which does show degenerative changes but no significant changes. Dr. Danks suggested that the claimant not return to any kind of heavy work and she should seek a job that is sedentary in nature. The claimant underwent an MRI on July 22, 2002, which sets forth a small broad based left sided disc protrusion at L4-5. This report notes that this does result in mild mass affect on the left aspect of the thecal sac and on the left L5 nerve root in the lateral recess. It is also noted that the claimant has mild multilevel degenerative facet disease. There are reports from Dr. David Cannon dated August 13, 2002, where it is indicated that the claimant has multiple medical problems including degenerative disc disease as well as low back pain and a disc protrusion at L4-5.

Dr. Cannon treated the claimant with facet injections on August 19, 2002, and again on March 2, 2003. There is a workers' compensation first injury report which indicates that the claimant was injured on May 25, 2000, and the type of injury was a strain to her lower back while prepping a patient for a heart cath, strained back when bending over.

After a review of this entire record, I find that this claimant's claim should be barred by the statute of limitations. The claimant has consistently testified that she initially injured herself while working for the respondent in 1996, received medical treatment at that time and sustained disability at that time because she was off work for several days following this incident. The claimant has also testified that she has experienced several recurrences of her low back over the years subsequent to 1996. The claimant testified that while recovering from her 1996 injury she was at home and bent over to water a plant and experienced severe pain at that time. The claimant testified that there were numerous times between 1996 and when she last worked for the respondent in August 1991 that she would have a recurrence of her low back pain, seek treatment and occasionally take off some days in order to recuperate. The medical records do set forth that the claimant filled out a first report of injury on June 19, 2000, indicating that she strained her lower back on May 26, 2000, when she was prepping a patient in the heart cath lab and strained her back when bending over. The claimant testified and the medical index indicates that a pain questionnaire was filled out as a result of

a referral from Dr. Peek and in this form the claimant sets forth that her pain started in March 1996 and that she has continued to have problems due to her work with lifting and bending. This form also sets forth that the claimant had MRIs done at the Washington Regional Medical Center at Northwest Arkansas Radiology and at Baptist Medical Center in Little Rock. The claimant did not file a claim for workers' compensation until June 20, 2003, where she sets forth that she was injured on August 31, 2002, although this date has been amended to 2001. In this claim for compensation, the claimant sets forth that she injured her lower back at the end of her work shift when bending over to pick up a pencil, was off work for a couple of days and reinjured her back while bending over to water a plant. This report of injury, in my opinion, reflects the testimony of the claimant dealing with her injury in 1996 not any of her testimony as to bending over a patient in the cath lab or doing any other work for the respondent. The claimant, herself, has indicated several times in her testimony that her initial injury and what started her problems occurred in 1996, she missed work and suffered disability at that time. Therefore, I find that this claimant's claim for workers' compensation benefits was filed outside of the statute of limitations of filing a claim within two years from the date of the injury and or disability which in this case was in 1996. Therefore, this claim for benefits is barred due by the statute of limitations.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On August 31, 2001, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for the year 2001.

4. This claim is barred by the statute of limitations. See discussion above.

ORDER

Based on the testimony and documentary evidence submitted in this matter, I find that this claim is barred by the statute of limitations. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE