

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201415

NANCY GRISHAM, EMPLOYEE	CLAIMANT
S & B POWER TOOLS, EMPLOYER	RESPONDENT NO. 1
TRAVELERS INDEMNITY COMPANY OF CONNECTICUT, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED MAY 6, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 6, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE M. KEITH WREN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE DAVID LANDIS, Attorney at Law, Jonesboro, Arkansas.

Respondent No. 2 represented by the HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On December 9, 2003, a prehearing conference was conducted in this claim from which a Prehearing Order of the same date was filed. The prehearing order reflects the stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as the Commission's Exhibit No. 1.

The testimony of Nancy Grisham, the claimant, Glenda Staten, coupled with medical records

and other documents comprise the record in this claim.

DISCUSSION

Nancy Grisham, the claimant, with a date of birth of January 20, 1954, completed the eleventh grade and later obtained her GED in 1992. The claimant commenced her employment with respondent on October 28, 1996, as an assembler, and remained in the employment of same through April 29, 2002, when she took voluntary layoff.

On September 5, 2000, claimant suffered an injury to her back while discharging employment duties for respondent. Regarding the September 2000 injury, the claimant's testimony reflects:

I was lifting a pallet and in the process, I felt a sharp pain in my back. As soon as I could, I went to find my supervisor to let them know what had happened.
(T. 12)

The September 2000 injury was accepted as compensable by respondent and medical treatment rendered to the claimant relative to same and was paid for by respondent.

The claimant was seen by respondents' designated medical provider, Dr. Robert Quevillon, for complaints relative to the September 2000 injury. A review of the medical generated relative to the claimant's September 2000 compensable injury reflects that diagnostic studies were performed to include a CT of her lumbar spine on September 8, 2000. The September 8, 2000 radiology report of Dr. Wayne Chilcote, relative to the claimant, reflects the impression:

HNPL4-5 with right lateral recess stenosis and central canal impingement. 2. left facet arthritis L5-S1.

3. Minor sacroiliac joint arthritis bilaterally. (CX1, p. 3)

The claimant was ultimately referred to Dr. Edward Cooper, an orthopedic physician at NEA

Bone and Joint, for treatment relative to the September 5, 2000, compensable injury.

Claimant underwent conservative treatment relative to the September 5, 2000, compensable injury, to include physical therapy, and medication. The claimant was referred for pain management under the care of Dr. Stephen Gipson, a radiologist and pain management specialist.

The claimant's credible testimony reflects that she was able to return to the employment of respondent following her September 5, 2000, compensable injury, where she performed restricted duties for a period of time. Further, the claimant noted that she received epidural steroid injections under the care of Dr. Gipson, and that her pain and symptoms subsided after a period of time. The claimant noted that when she returned to full duty on January 15, 2001, she did not have major complaints relative to her back. Claimant was seen by Dr. Gipson on May 3, 2001, however, noted that the same was a product of a six month scheduled return notice. A May 3, 2001 report of Dr. Gipson, relative to the claimant's visit on said date reflects, in pertinent part:

Ms. Grisham comes having done really well for six months. She recently had some pain return in her lower back across the iliolumbar fascia. I identified and injected five trigger points there using 12 cc of trigger joint solution. She tolerated this well. I will see her back on an as needed basis. I encouraged her to exercise and continue to work at full pace. (CX1, p. 15)

Claimant maintains that she suffered another injury to her back on January 30, 2002, while discharging employment duties for respondent. Regarding the January 30, 2002, injury, the claimant's testimony reflects:

I volunteered to go to another plant of S-B Power Tool to help re-pack table top saws. And another lady and I were to do this. And it consisted of unpacking and re-packing these big table top saws, and it took

two of us to put on a pallet and there was four to a pallet. (T. 16)

Claimant estimated that the weight of the table saw was over 75 pounds, and that performing the job entailed strenuous work. The claimant further testified:

About 1:00 in the afternoon, I had told the girl that I was working with that I had hurt my back again. And the supervisor had come by and asked us how we were doing, and I told her my back was hurting and that I would be seeing Glenda the next day. (T. 16-17)

The testimony of the claimant reflects that the following day she had a conversation with Glenda Staten, human resource manager for respondent-employer. Regarding the conversation, the claimant's testimony reflects:

I told Glenda that I had hurt my back in helping re-pack saws at the NRC building, and that I needed her to see if I could get back in to see Dr. Gipson. (T. 17)

It is undisputed that the claimant had the above-cited conversation with Ms. Glenda Staten, human resource representative, safety medical coordinator, for respondent-employer. During the course of the conversation, the testimony reflects that Ms. Staten informed the claimant that there was a different workers' compensation carrier involved in 2002 than in 2000, and that there may be a problem with payment of medical bills.

The testimony of the claimant reflects that after being seen by respondents' designated medical provider relative to the January 30, 2002 injury, she next received treatment under the care of Dr. Gipson on February 11, 2002. Thereafter, the claimant continued active treatment under the care of Dr. Gipson and to receive epidural steroid injections for her symptoms attributable to the January 30, 2002 injury.

The medical in the record reflects that during the February 11, 2002, visit to Dr. Gipson, claimant related the following history:

SUBJECTIVE: Ms. Grisham comes today with persistent pain in her lower back. She reports to me that since I had seen her last, which was nearly one year ago, her pain has done well off and on until recently when she was switched to a different duty at work and lifted some boxes and aggravated her pain yet again. She has pain now across the small of her back on both sides equally which is aggravated by bending and straightening, and twisting and turning. This is consistent with facet syndrome.

OBJECTIVE: I proceeded to do bilateral median branch blocks from S1 up through L3 on each side, under fluoroscopic guide. (CX1, p. 16)

Dr. Gipson diagnosed the claimant's complaint as low back pain/Lumbar spondylosis without myelopathy. During subsequent visits of February 18, 2002, and March 18, 2002, Dr. Gipson's reports reflect the presence of objective findings. Specifically, on February 18, 2002, under the heading of rationale Dr. Gipson reported transforaminal selective epidural injections instill medication along the affected nerve root and into the anterior epidural space at the site of inflammation. In the March 18, 2002 under the heading of rationale Dr. Gipson reported:

Lumbar spinal stenosis and herniated nucleus pulposus can induce nerve root inflammation and functional nerve root changes. Nerve root inflammation causes radicular symptoms and corticosteroids reduce the morphologic and functional nerve root changed. Therefore, lumbar epidural injections may relieve radicular symptoms. This serves as a means of possible avoiding surgery because the natural history of lumbar radiculopathy is likely one of gradual resolution over a period of time. (CX1, p. 26)

There is evidence in the record to reflect that the claimant was seen by Dr. Darrell Hutchinson relative to the January 30, 2002, injury. Dr. Hutchinson was presumed respondents medical provider during the pertinent time period. On February 1, 2002, the claim's department for respondent-carrier solicited information from Dr. Hutchinson:

Dr. Hutchinson, there are some questions that must be clarified before we can determine our responsibility in this matter as the workers' compensation carrier. The question is primarily whether or not the claimant's current problems are the result of a new injury, or whether are not this is a continuation of her original injury of September 2000, which she was treated by Dr. Gipson. (RX 4)

In a February 5, 2000, hand written notation on the February 1, 2002, inquiry, Dr. Hutchinson, relayed, "the patient current problem is a continuation of her original of her September/2000". (RX 4)

There is not a dispute that claimant performed the job duties asserted on January 30, 2002, repackaging table saws with a co-worker. Further, the evidence clearly reflects that subsequent to discharging the afore job duties claimant experienced severe pain and complaints relative to her low back which she attribute to the work that she had been performing, and for which she required further medical treatment. While there is some discussion in the record regarding the start up of a barbeque business by the claimant and her husband, there is no evidence to reflect that claimant's need for medical treatment on and after January 30, 2002, was the product of the barbeque business.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, a review of the medical reports, and application of the appropriate statutory provisions, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims.
2. On January 20, 2002, the relationship of employee-employer-carrier existed among the parties.
3. On January 30, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$243.00/\$182.00 for temporary total /permanent partial disability benefits.
4. On January 30, 2002, the claimant sustained an injury arising out of and in the course of her employment.
5. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of January 30, 2002.
6. The respondents have controverted this claim in its entirety.

CONCLUSIONS

Claimant asserts that as a result of performing job duties in the employment of respondent on January 30, 2002, she suffered an injury to her back which required medical treatment, and for which respondents are liable. Respondents deny the compensability of the claim asserted by the claimant. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits subsequent to the effective date of the afore provisions.

In the instant claim, claimant maintains that she suffered an injury while discharging employment duties for respondent on January 30, 2002, while repackaging table saws weighing

in excess 75 pounds, which had to be lifted. Claimant asserts entitlement to medical benefits as a result of the injury sustained on said date.

In order to prove that she is entitled to compensation for her back injury, the claimant is required to prove either that she sustained an injury arising from a specific incident identifiable by time and place of occurrence or that she sustained an injury arising out of and in the course of her employment that is the major cause of the disability or need for treatment. In the instant claim, claimant's credible testimony reflects that on January 30, 2002, she volunteered to repackage table saws with another employee. The table saws weighed 75 pounds and required both employees to lift them onto a pallet once they were unpackaged. As a consequence of performing the afore job duties claimant experience pain in her low back which she attributed to the employment activity.

The evidence clearly reflects that claimant suffered a pre-existing condition relative to her low back. Indeed, claimant had previously sustained an injury in the employment of respondent on September 5, 2000, which was accepted as compensable for which she received medical treatment. The medical evidence reflects that claimant had not required medical treatment relative to her back subsequent to May 3, 2001, until her employment activities of January 30, 2002, resulted in the onset of severe pain.

A pre-existing disease or infirmity does not disqualify claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W. 2d 550 (1996). Claimant may very well have suffered degenerative disc disease and other complaints even prior to her employment with respondent on October 28, 1996. In workers'

compensation law the employee takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox*, 302 Ark 69, 787 S.W.2d 64 (1990).

In the instant claim, the evidence preponderates that claimant successfully discharged employment duties subsequent to May 30, 2001, in her employment respondent. Claimant had returned to full duty with respondent as a result of the September 5, 2000, compensable injury, as of January 15, 2001.

On January 30, 2002, while discharging employment duties lifting table saws weighing in excess of 75 pounds along with a co-worker, claimant suffered an aggravation of the pre-existing facet syndrom complaint. As a consequence of the afore, claimant reported the injury to appropriate supervisory personnel of respondent and sought and obtained medical treatment relative to same. Pursuant to Ark. Code Ann. §11-9-508 respondents are mandated to provide reasonable, necessary medical treatment relative to the compensable injury suffered by the claimant. Upon reporting her January 30, 2002, injury to appropriate personnel of respondent, respondent allowed the claimant to be seen by their designated medical provider. Thereafter, respondents controverted the compensability of the injury.

It is not disputed that at the time of claimant's September 5, 2000, compensable injury workers' compensation insurance coverage was provided to respondent by Fireman Fund Insurance Company. When claimant suffered the January 30, 2002, compensable injury the workers' compensation carrier for respondent-employer had changed. If the January 30, 2002, compensable injury had been a recurrence of claimant's prior September 5, 2000, injury, the carrier at the time of the prior injury would be liable for workers' compensation benefits to the

claimant. Such was not the case. In the instant claim, claimant had returned to her regular employment duties and the January 30, 2002, injury was not a natural progression of the September 2000, injury but rather an aggravation of the pre-existing condition. Claimant has sustained her burden of proof by a preponderance of the credible evidence that she sustained a new injury or a recurrence of the prior injury on January 30, 2002, within the course and scope of her employment with respondent, which required medical treatment. Respondents have controverted this claim in its entirety.

AWARD

Respondents are hereby ordered and directed to pay to the claimant all reasonable related medical, hospital, nursing, and other apparatus expenses growing out of the claimant's compensable injury of January 30, 2002.

Maximum attorney fees are herein ordered to claimant's attorney, pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

Andrew L. Blood
Administrative Law Judge