

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F309642**

**FRANKIE HARMON**

**CLAIMANT**

**MOUNTAIN LAKES, INC.  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED APRIL 12, 2004**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared pro se.

Respondents represented by the HONORABLE GAIL O. MATTHEWS, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on March 26, 2004. A prehearing conference was held on February 17, 2004 and a prehearing order was filed on February 18, 2004. A copy of the prehearing order was admitted into evidence as Commission Exhibit No. 1 without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable incident on September 2, 2003.
2. The compensation rate is \$233.

The claimant contends that she sustained a compensable injury on September 2, 2003 and is entitled to additional medical benefits, mileage and prescription medicine, as well as temporary total disability benefits from September 17, 2003 to October 20, 2003, and full salary from October 20, 2003 through December 24, 2003,

and full salary from January 23, 2004 through March 26, 2004, plus an additional seven weeks for physical therapy.

The respondents contend that the claimant cannot prove by a preponderance of the evidence that she sustained a compensable injury with objective findings. The respondents contend the claimant was released by her doctor on December 24, 2003, with no limitations. The respondents contend there are no light-duty jobs; therefore, the claimant was not returned to work in a light-duty status. The respondents alternatively contend that if the claim is found to be compensable, respondents request an offset for unemployment benefits drawn by the claimant. The respondents controverted the claim on September 17, 2003.

The issues to be litigated are:

1. Compensability.
2. Additional medical benefits, to include prescription medication and mileage.
3. Additional temporary total disability benefits beginning on September 17, 2003, and continuing.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. Claim for a September 2, 2003, incident was initially accepted as compensable.
2. The compensation rate is \$233.
3. The respondents controverted the claim in its entirety on September 17, 2003.
4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury supported by objective findings.

**DISCUSSION**

The claimant worked for the respondent employer as an assistant manager and cook on September 3, 2002. The claimant lifted a heavy mop bucket full of water to empty it and felt a burning sensation in the lower part of her back. The claimant kept working that day but she reported the incident to Colleen, the accountant. The claimant was sent to the doctor that day and was prescribed some medication. The claimant later underwent a MRI and some physical therapy at her doctor's recommendation. The respondents accepted the initial medical treatment and paid benefits through September 17, 2003.

According to the claimant, she was referred to a neurosurgeon; however, that referral was denied. She next saw her own family doctor who prescribed medication and recommended additional physical therapy. The respondents have denied

additional medical treatment and have denied compensability of the claim after obtaining the medical reports and results of the diagnostic testing.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2003). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. The medical evidence provides that the claimant was diagnosed with an acute lumbar strain following her September 3, 2003, incident. She was prescribed medication and physical therapy and a MRI was performed. The MRI revealed:

**IMPRESSION:**

1. Disc desiccation and loss of disc space height at L2-3 and L3-4 but no significant disc herniation or central canal stenosis.
2. Vertebral body hemangioma of L1. (Resp. Exh. No. 1, p. 12)

There were no objective findings noted in the medical records that could connect the claimant's problems to a traumatic event. No muscle spasms, swelling or herniations were identified after the evaluations and diagnostic testing the claimant underwent. Ark. Code Ann. §11-9-102(D) provides that a compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) . . . Subdivision (16) defines "objective findings" as those findings which cannot come under the voluntary control of the patient. I find that the claimant has failed to satisfy the "objective findings" requirement of Ark. Code Ann. §11-9-102(D).

Since the claim has been found not to be a compensable claim, the temporary total disability request will not be addressed.

#### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury supported by objective findings. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**