

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312444

TERESA S. HUGGINS, EMPLOYEE

CLAIMANT

**GEORGIA PACIFIC CORPORATION,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED SEPTEMBER 16, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on June 18, 2004 at Pine Bluff, Jefferson County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE CHRISTINE A. CRYER, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

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.

STATEMENT OF THE CASE

The parties did not agree on any stipulations.

The claimant, age 27 (D.O.B. November 11, 1976) began work for Georgia Pacific in June, 1997. She contends she injured her back on September 8, 2002, while driving a clamp truck that hit a crack in the pavement, jarring her spine. The incident took place at Mill No. 1 and she reported an injury to her supervisor, Tommy McDougal. Mr. McDougal sent her to the safety department for

over-the-counter medication and let her sit out the rest of her shift (2:30 p.m. to 10:30 p.m.). At first, she didn't think she was seriously injured but when her symptoms worsened, she went to general practitioner, Dr. Henry Mills. After a negative MRI scan, he referred the claimant to Dr. Gary Talbert for breast reduction in January 2003, but her back pain was not relieved and she developed complications from the surgery. The claimant's surgery interrupted her back treatment (physical therapy) at the rehabilitation clinic.

The claimant has also been treated by Dr. McKiever who diagnosed her with lupus in September 2003. He authored a report dated February 3, 2004 indicating the claimant was capable of only sedentary work. Dr. Silas has also treated the claimant for degenerative disc disease. She also saw a physician in El Dorado who advised her to lose weight to alleviate back pain. In the past, the claimant has had some back pain related to kidney problems.

The claimant has not worked since September 8, 2002. Since then, she has received 26 weeks of short-term disability from MetLife, and her medical expenses have been paid by Medicaid. She enrolled in a computer training course but was unable to complete her schooling due to back pain.

The claimant filed an AR-C on December 1, 2003 with the Commission.

The respondents failed to participate in the scheduled prehearing conference and were barred from presenting exhibits and witnesses. Inexplicably, the respondents indexed and abstracted the claimant's exhibits.

The claimant and her supervisor, Tommy McDougal, whom she subpoenaed, were the only witnesses to testify at the hearing.

Mr. McDougal testified he had reviewed his records and found no report of injury from the claimant on September 8, 2002 and in fact they did not work the same shift that day. He was not aware the claimant was contending she was injured on the job until October, 2003.

MEDICAL EVIDENCE

The medical records show the claimant was complaining of back pain on the right side on August 8, 2002, one month prior to the incident at work. She was treated conservatively with exercise, heat and work restrictions.

She returned to her general practitioner, Dr. Henry on September 10, 2002 complaining that her lumbosacral pain had gradually worsened but there is no mention of a specific work-related injury. X-rays were taken showing degenerative changes of the lumbar facet joints.

An MRI scan conducted September 12, 2002 showed “minimal mid and lower lumbar posterior facet inflammatory changes.”

The claimant returned to Dr. Henry on September 23, 2002 and discussed breast reduction to help her back pain. The report indicates they had discussed this topic previously. The claimant was diagnosed with back syndrome, degenerative joint disease and spine “uns” and referred to Dr. Massanelli.

Dr. Massanelli’s report of October 2, 2002 indicates the “Pt states she did not do anything that she remembers. Pt reports she drives a truck and bounces a lot.” He recorded a loss of range of motion and muscle tenderness. He prescribed physical therapy for the claimant. The claimant was discharged when she failed to appear for her last appointment.

The claimant returned to her general practitioner complaining of back pain and he referred her to Dr. Ellis, a pain care specialist.

Dr. Ellis' Report of 10-10-02:

She has a long history of backaches but had an exacerbation of her pain in early September of this year without recall of any accident or injury.

MRI was done on 9-12-02 and showed minimal, mid and lower lumbar posterior facet inflammatory changes otherwise unremarkable. There is no evidence of fracture, subluxation, disk herniation or nerve impingement.

She describes her pain as extending across both sides of her lower back with radiation into both buttocks. Her pain is a constant aching and throbbing as well as a "swollen feeling." She also complains of some intermittent burning upper back pain that she relates to the need for having breast reduction surgery, this is tentatively scheduled for January.

Dr. Ellis diagnosed muscle tenderness with lumbar facet joint syndrome and evidence of degenerative spondylytic changes of the facet joints, with morbid obesity and deconditioning. He prescribed medication and injections.

After the injections, the claimant complained of muscle spasm although Dr. Ellis did not make that assessment in his physical exam. Dr. Ellis recommended weight loss and radiofrequency denervation of the facets. The claimant reported no improvement after the procedure and felt her condition was worse. Dr. Ellis then recorded positive Waddell's sign during the December 30, 2002 and January 27, 2003 examinations indicative of symptom magnification. Dr. Ellis recommended medication, a TENS unit and a work hardening program. The claimant did not respond to the medication or TENS unit, so Dr. Ellis released her January 27, 2003 with instructions to lose weight

and exercise.

Dr. Ellis commented, “she states that she is expected to be able to lift more than fifty pounds frequently. She has not been formally tested so I cannot speak to this at this point. I do feel that she is capable of doing some type of work.”

In February, 2003, the claimant began a four week work hardening program. Her medical history is summarized in therapist, Nat Grubbs’ report of February 11, 2003. He found nothing to support the claimant’s complaints of radiculopathy noting that the physical therapy was designed to address her poor musculoskeletal health and function. The claimant’s rehab was interrupted on February 28, 2003 due to complications from her January breast surgery reduction. The claimant returned to Dr. Ellis on April 3, 2003 and told him she did not ever want to return to her old job. Her physical exam was again positive for Waddell’s signs and Dr. Ellis diagnosed predominantly musculo-ligamentous pain resulting from obesity and deconditioning with mild spondylotic changes of the facet joints. Dr. Ellis prescribed medication and weight loss. A repeat MRI scan dated May 2, 2003 showed “mild multilevel posterior facet synovitis.”

In September, 2003 the claimant participated in a Functional Capacity Evaluation which indicated she could perform sedentary light work but her former job as a fork-lift driver was classified as heavy work.

On February 3, 2004 general practitioner, Dr. William McKiever authored a letter:

To Whom it May Concern:

She has had a recent functional capacity evaluation in January, 2004. Her condition has deteriorated. She is rated at below sedentary. She is not physically able to work a full day at any job.

Due to her lumbar pain she is unable to lift anything at all which would qualify her for holding gainful employment. She has been

found to have lupus, which is further causing her condition to deteriorate.

She is totally disabled and it is permanent.

A repeat MRI scan conducted March 16, 2004 revealed a minimal central disc bulging at L5-S1 with no evidence of nerve root impingement.

The first mention of an on-the-job injury appears in a report dated April 15, 2004 by Dr. Silas. There are no specifics about the injury. Dr. Silas reviewed her records and agreed with the diagnosis of degenerative disc disease with sciatica.

DISABILITY

The claimant drew short-term disability from MetLife. The form, completed on May 15, 2003 shows a diagnosis of lumbar facet joint degeneration caused by a non-work related illness, as opposed to an injury.

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, 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.

Failure to prove any one of these elements defeats the claim.

“Arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of employment” refers to the time, place and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 692 S.W.2d 879 (1985).

The test for arising out of the employment requires that a causal connection exist between the injury and the employment. The injury must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980).

The test for the course of employment requires that the injury occur within the time and space boundaries of the employment, while the employee is carrying out the employer’s purpose or advancing the employer’s interests. Pilgrims Pride Corp. v. Caldarera, 54 Ark. App. 92, 923 S.W.2d 290 (1996).

The claimant’s contention that she injured her back in a specific incident at work on September 8, 2002 cannot be corroborated by her supervisor or her physicians. In fact, the medical records show she was complaining of back symptoms before September, 2002. The medical records

make no mention of a specific injury at work until April 15, 2004, almost a year and a half later.

After comparing the claimant's testimony with her supervisor's, and considering her claim for short term disability combined with the medical records, I find the claimant has failed to prove a compensable injury arising out of and in the course of her employment which caused internal harm, requiring medical services.

The claimant's claims of an injury also cannot be proven by objective medical evidence. Diagnostic testing has shown some minor degenerative changes but no recent acute injuries. Dr. Ellis felt her symptoms were out of proportion to her condition. The claimant's health history is also clouded by her back pain from obesity, deconditioning, kidney infections, the need for breast reduction surgery and the over-all effects of lupus.

Accordingly, I find the claimant has failed to prove she sustained an injury from a specific incident identifiable by time and place of occurrence, supported by objective medical evidence.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on September 8, 2002.
2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable 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.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge