

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304730

CAROLYN JOHNSON, EMPLOYEE	CLAIMANT
CRITTENDEN MEMORIAL HOSPITAL, EMPLOYER	RESPONDENT
RECIPROCAL OF AMERICA, CARRIER	RESPONDENT

OPINION FILED JANUARY 8, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 29, 2003, at West Memphis, Crittenden County, Arkansas.

Claimant appeared Pro Se.

Respondent represented by the HONORABLE JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On August 26, 2003, a hearing conference was conducted in this claim, from which a prehearing order of August 27, 2003, was filed. The prehearing order reflects 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 Commission's Exhibit #1.

The testimony of Carolyn Johnson, the claimant, Henry Johnson, and Joe Ingle, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Carolyn Johnson, the claimant, with a date of birth of March 29, 1959, is a high school

graduate. Claimant commenced her employment with respondent as a certified nursing assistant on January 21, 2002. Claimant's employment with respondent ceased in October 2002, as a result of seven unexcused absences.

Claimant asserts that she last discharged employment duties for respondent on October 10, 2002. Claimant worked the 3:00 p.m. until 11:00 p.m. shift during her employment with respondent. Claimant acknowledged that prior to her employment with respondent in January 2002, she received medical treatment under the care of Lisa Shafer, a nurse practitioner, as a primary care provider for herself and her daughter. Claimant, however, denies that she experienced complaints relative to her low back prior to October 10, 2002.

With respect to the events of October 10, 2002, claimant asserts that she reported for work at her usual time and clocked in. Thereafter, claimant maintains that she was provided her assigned task for the shift. Claimant's testimony reflects:

Well, we was given our schedules at the desk there, assigning you know The ends of the hall. I was assigned to the right end. Ms. Lowe was assigned to the left end of the hall. And, we used to go, after we get assigned to whatever duties we got to do, we go in and take the vital signs first and then do other duties from there at a specific time, you know.

* * *

Well, it was like - - it was kind of something to four, something that. It had got just a little bit later and I went into this room and - -

* * *

I can't remember the room but it was a gentleman's room, Mr. Anthony. That's who I worked on that end of the hall. And he wanted to be turned that day. So

I called, tried to page somebody to help me and I couldn't get nobody to help me, come in there to help me. And, you know, I had - - he was steady saying he wanted to be turned. So, I, you now, accidentally pulled up on him, that's when I hurt my back. (T.47-48)

Claimant maintains that after completing her task in Mr. Anthony 's room, she proceeded to the nurse's station and requested personnel at that location to page her supervisor, Ms. Barbara Caldwell. Claimant maintains that while she was waiting for Ms. Caldwell to respond to the page, she, the claimant, was directed to proceed to the first floor and the office of nurses services. Claimant maintains that upon arriving in the office of nurses services she was informed that her employment had been terminated due to absenteeism. Further, claimant asserts that she was directed to get her check and to leave the facility. Claimant maintains that she did not have an opportunity to report her injury to either her supervisor or the personnel in the office of nurses services. Claimant testified that after she was directed to leave the facility of respondent-employer on October 10, 2002, she called a cab and went home. Claimant maintains that she was experiencing pain in her low back at the time she left the facility, and that upon arriving home did not leave the premises. Claimant's testimony reflects that while her check was cashed on October 10, 2002, the same occurred after her employment had been terminated and she arrived home.

Claimant acknowledged that she did not seek medical treatment immediately upon leaving the facility of respondent on October 10, 2002, following the occurrence of her injury and her subsequent discharge from the employment of respondent. Claimant's testimony reflects that while she was seen by Lisa Shafer, a nurse practitioner, subsequent to October 10, 2002, she did not report a history of the October 2002, injury in the employment of respondent during the visit. As previously

noted, claimant had received treatment under the care of nurse practitioner Shafer prior to October, 2002, however, the same did not entail complaints relative to her low back. Although claimant acknowledged that the complaints of pain in her low back subsequent to October 2002, were new symptoms when she was seen by nurse practitioner Shafer, subsequent to that date, she is unable to provide an explanation as to why she did not report the October 2002, injury in the employment to respondent as the basis for the complaint.

The testimony of the claimant reflects that because she did not receive relief from her symptoms of her back complaint under the care of the nurse practitioner she changed medical providers to Dr. James Alexander. Claimant was seen by Dr. James Alexander, a West Memphis practitioner, on January 15, 2003. Claimant maintains that she relayed to Dr. Alexander the history of her October 10, 2002, injury in the employment of respondent at the time she initiated treatment under the care of same. At another point, claimant testified that it was after Dr. Alexander obtained the MRI of her lumbar spine that she related her back complaints to her last employment with respondent. Claimant's testimony reflects, in that regard:

Right. Because I felt like Dr. Alexander was a professional doctor and he gave me the kind of treatment that I needed. And afterwards he sent me to an MRI testing on my back that's how I found out about how I had hurt my back. (T.77)

Claimant acknowledged that she applied for unemployment benefits after her employment with respondent was terminated. Further, claimant acknowledged that she had a conversation with her supervisor, Barbara Caldwell, in later September 2002, wherein a discussion was had regarding claimant's unexcused absences. Specifically, Ms. Caldwell informed the claimant that she had five unexcused absences. The testimony of the claimant further reflects that Ms. Caldwell suggested that

due to the claimant's child care problem, claimant status be changes from that of a full-time to part-time. Finally, claimant acknowledged that once her status was switched from full-time to part-time she did miss two days that she was scheduled to work due to confusion on her part. Nonetheless, claimant is insistent that her employment did not cease on October 7, 2002, but rather October 10, 2002.

Claimant also present the testimony of Henry Johnson, her husband, as supportive of her claim. Mr. Johnson's testimony reflects that he and the claimant both work for respondent for a period of time. Mr. Johnson worked in the kitchen of respondent-employer. The testimony of Mr. Johnson reflect the duration of his employment with respondent was April 2002 through July 2002.

Mr. Johnson testified that prior to claimant's employment by respondent she did not have complaints relative to her low back nor had she received medical treatment relative to same. Mr. Johnson maintains that approximately two weeks prior to claimant's last day of employment with respondent she complained of low back pain and attributed same to the discharge of her employment duties with respondent. The testimony of Mr. Johnson reflects that on October 10, 2002, a Thursday, he accompanied the claimant to respondent-employer where she pick-up her check at approximately 2:30 p.m. Thereafter, Mr. Johnson maintains that he and the claimant proceeded to the bank and the claimant cashed her check. After cashing the check, Mr. Johnson asserts that claimant returned to respondent-employer and clocked in to began her regular shift.

The testimony of Jo Ingle, director of human resources for respondent-employer, reflects that her job duties included supervisor over workers' compensation and personnel files. Ms. Ingle presented testimony regarding respondent's policy on unexcused absences, to include automatic termination of the employment for seven unexcused absences. Further, Ms. Ingle provided testimony

regarding the computerized time sheets for the employees of respondent and the back-up system utilized by department directors when an employee failed to clock in but nonetheless discharged employment duties during the employee's shift. Finally, the testimony of Ms. Ingle reflects her involvement as a representative for respondent-employer once the claimant filed her claim for unemployment benefits.

The credible testimony of Ms. Ingle reflects that claimant last discharged employment duties for respondent on October 1, 2002. Claimant's employment status was changed from that of full-time to part-time employee of respondent subsequent to October 1, 2002. Claimant was notified of the change in status as well as her accrued unexcused absences by her supervisor, Barbara Caldwell. Claimant was scheduled to work on October 5, and October 6, 2002, however, failed to report for work. The credible evidence in the record reflects that on October 7, 2002, claimant was notified by Ms. Caldwell, her supervisor, that he employment with respondent had been terminated due to seven unexcused absences.

The evidence in the record reflects that a final check was issues to the claimant for the week ending October 6, 2002. The check issues to the claimant also included claimant's accrued vacation hours. (Cx. 2).

The evidence in the record further reflects that on October 8, 2002, claimant submitted an application for unemployment benefits with the Arkansas Employment Security Division. (Rx. 2, p29). As a consequence of the basis of the termination of claimant's employment, claimant was ruled ineligible for benefits beginning October 6, 2002 through October 12, 2002. (Rx. 2, p27-28)

The medicals in the record reflects that claimant was initially seen by Dr. James Alexander on January 15, 2003. The January 15, 2003, report of Dr. Alexander reflects that claimant relayed

a history of low back pain for a period of one week at the time of the visit. (Rx. 1). On February 21, 2003, a MRI of the claimant's lumber spine was obtained pursuant to the direction of Dr. Alexander. (Cx. 1). On July 23, 2003, Dr. Alexander authored a report attributing the claimant's low back complaint to her employment duties. The July 23, 2003, letter to claimant's former attorney, reflects, in pertinent part:

This letter is to inform you that Ms. Carolyn Johnson suffers from degenerative disease of the right knee and a herniated disc in her lower back (L4-L5 disc). This comes directly from her previous job as a hospital aide - which required her to do a great deal of bending, lifting, turning, and moving patients. (Cx. 1)

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

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. In October 2002, the relationship of employee-employer-carrier existed among the parties.
3. In October 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$171.00.
4. The claimant has failed to prove by a preponderance of the evidence that she suffered an injury to her low back on October 10, 2002, or at any other time during her employment with respondent which was caused by a specific incident identifiable by time and place of occurrence, or as a result of a gradual onset.

CONCLUSION

Claimant asserts that while discharging employment as a CNA for respondent on October 10, 2002, she suffered an injury to her lower back while turning a patient. As a consequence of the afore, claimant asserts that she required medical treatment which was reasonable and necessary relative to her injury and that the injury has resulted in totally incapacitation from engaging in gainful employment until such time as she reach maximum medical improvement. Claimant seeks the afore corresponding workers' compensation benefits from respondent. Respondents have controverted this claim in its entirety.

The present claim is one governed by the provision of Act 796 of 1993, in that claimant asserts having sustained a injury subsequent to the effective date of the afore provision. In the instant claim, claimant maintains that her injury is the product of a specific incident identifiable by time and place of occurrence, rather than a gradual onset injury.

In order establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirement of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established by the claimant. Specifically, claimant must establish proof by a preponderance of the evidence of an injury arising out of and in the course of employment; proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective medical findings as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirement for establishing the compensability of the injury alleged, she

fails to establish the compensability of the claim and compensation must be denied. Mickel v. Speciality Plastic, 56 Ark. App. 126, 938 S.W. 2d 876 (1997).

In the instant claim, the evidence preponderates that claimant was not an employee of respondent on October 10, 2002, as asserted in her claim. The credible evidence reflects that claimant's employment with respondent was terminated on October 7, 2002, as a result of seven unexcused absences. Further, the evidence in the record reflects that on October 8, 2002, claimant submitted an application for unemployment benefits with the Arkansas Employment Security Division. Claimant acknowledged in her application that her employment had ceased as of October 7, 2002. Claimant last discharged employment duties for respondent on October 1, 2002.

The Arkansas Supreme Court has ruled that pursuant to Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), the claimant is not required to prove the exact date on which she received her injury. In Edens v. Superior Marble and Glass, 346 Ark. 487, 58 S.W. 3d 369 (2001), and the Arkansas Supreme Court held:

A strict construction of the statute does not require, as a prerequisite to compensability, that the claimant identify the precise time and numerical date upon which an accidental injury occurred. Instead, the statute only requires that the claimant prove that the occurrence of the injury is capable of being identified. The inability of the claimant to specify the date might be considered by the Commission in weighing the credibility the evidence, but the statute does not require that the exact date be identified.

In the instant claim, if the last date that the claimant discharged employment duties for respondent is identified as the date that the claimant suffered the injury asserted in the employment of same, that date would be October 1, 2002. Claimant has asserted that on the date she suffered her injury she

clocked in and discharged employment duties until approximately 4:00 p.m. The evidence in the record reflects that claimant performed duties her entire shift on the last day that she discharged employment duties for respondent, October 1, 2002.

The only medical in the record relating the claimant's low back complaint to her employment duties with respondent is a July 23, 2003, correspondence from her treating physician, Dr. James G. Alexander, Jr. However, the report of Dr. Alexander attributing the claimant's disc complaint to her employment duties with respondent is couched in terms of the duties that the claimant discharged as a hospital aide on a regular basis. In short, Dr. Alexander in describes a gradual onset as the nexus of the claimant's complaints to her employment duties. Claimant has asserted that her injury is the product of a specific incident identifiable by time and place of occurrence. Additionally, the evidence in the record reflects that at the time claimant initially saw Dr. Alexander on January 15, 2003, she relayed a history of low back complaints for one weeks prior to the visit. Claimant was not an employee of respondent one prior to the January 15, 2003, visit to Dr. Alexander and had not been so employed by respondent since October 7, 2002. Further, claimant last discharged employment duties for respondent on October 1, 2002.

It is therefore my opinion, after a thorough review of all of the evidence in this record that the claimant has failed to sustain her burden of proof by a preponderance of the credible evidence that she sustained an injury arising out of and in the course of her employment with respondent which is identifiable by time and place of occurrence or as a result of a gradual onset. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge