

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206108

EARLENE MARTIN, EMPLOYEE	CLAIMANT
CAMACO, EMPLOYER	RESPONDENT
SPECIALTY RISK SERVICES, CARRIER	RESPONDENT

OPINION FILED JULY 28, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on April 29, 2004 at Helena, Phillips County, Arkansas.

Claimant represented by the HONORABLE CHARLES PHILLIP ALLEN, JR., Attorney at Law, West Helena, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ISSUES

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

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 and benefits must be denied.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on May 1, 2002 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$303.00/\$227.00, in the event this claim is found to be compensable. Some medical expenses were

paid before this claim was controverted on May 20, 2002. Some benefits have been paid by Blue Cross Blue Shield and MetLife Disability.

The claimant contends she injured her neck, back and right hip in a specific incident at work on May 1, 2002. The claimant tripped on mats and fell, striking her head and back against a parts basket and striking her hip against the concrete floor. She seeks payment of medical expenses, temporary total disability benefits from May 11, 2002 to a date yet to be determined and attorney's fees.

The respondents contend the claimant's condition is either the result of a preexisting condition (chronic back pain pre-dating any accident at work) or is the result of an independent intervening cause, a motor vehicle accident (MVA) on July 12, 2002.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant was the only witness to testify at the hearing.

The claimant, age 51 (D.O.B. April 24, 1953) has a high school education. She has worked for the respondent-employer for the last twenty years performing seven different jobs. The company manufactures car seats. The claimant's health history includes prior workers' compensation claims for injuries to her thumb, cuts to her face, and back pain after overhead containers fell on her. She makes frequent (once a month) trips to the emergency room (ER) for a wide variety of complaints. The claimant was also involved in a motor vehicle accident (MVA) on July 12, 2002.

On May 1, 2002 the claimant tripped on floor mats and hit the parts basket with her right hip before falling to the concrete floor. She reported the incident and was directed to the company physician, Dr. Lee. She became ill while waiting for the doctor and was transported by ambulance

to the ER.

The claimant has been treated conservatively by general practitioners, Dr. Balkey and Lee, pain specialist, Dr. Safman and chiropractor, Dr. Audirsch.

Since the incident on May 1, 2002, she has not returned to work, looked for work elsewhere, nor has she applied for unemployment benefits. She is supporting herself on disability benefits (\$1,182.00 monthly) from MetLife based upon her preexisting condition of uncontrolled high blood pressure, headaches, dizziness and weakness. She stated these problems prevent her from returning to work. The claimant also feels that her back pain increases her blood pressure and prescription medications make her sleepy and dizzy. Any activity (gardening, sweeping, mopping) aggravates her low back and right leg pain.

On cross-examination, the claimant admitted that she suffered from headaches, high blood pressure and back pain prior to any incident at work on May 1, 2002. In fact, an MRI scan of the lumbar spine was conducted April 4, 2002, just one month prior to the accident.

The claimant stated that she was sore all over her body after the July 12, 2002 MVA but the only injury she suffered was whiplash to her neck. In interrogatories answered on January 6, 2004 in connection with a pending lawsuit, the claimant stated that the MVA caused back, neck and arm injuries. Medical records also show that she received chiropractic treatment for her back after the MVA.

The claimant conceded that Dr. Lee returned her to work on May 15, 2002, but she told him she was unable to perform her job, so he referred her to Dr. Safman. According to the claimant, Dr. Balkey has excused her from work although there is no supporting documentation in the exhibits.

MEDICAL EVIDENCE

The claimant has submitted numerous medical records from her general practitioners, (GP), Drs. Webber and Balkey. The reports are handwritten and difficult to read. It appears, however, that the claimant has been treated for high blood pressure, vertigo, otitis, migraine headaches, neck, shoulder, arm, back, chest, leg and hip pain. She described pain on the right side of her body from her head to her feet.

It should be noted however, that the claimant was treated for elevated blood pressure, neck, shoulder, low back, right leg pain and migraines prior to any injury at work on May 1, 2002.

In January, 2002 the claimant was treated for neck and shoulder pain and headaches. Due to her complaints of low back and right leg pain, an MRI scan was conducted April 4, 2002, one month before the incident at work on May 1, 2002. The scan revealed multilevel facet osteoarthritic changes of the thoracic and lumbar spine at T11-12, L3-4, L4-5 and L5-S1 with a shallow disc herniation at T12-L1.

There are no medical records in May and June with her family physicians. There is no mention of a work-related injury until July 16, 2002, some two months after the injury.

The claimant complained of right arm and wrist pain and an MRI of the cervical spine was conducted on May 16, 2002. The scan showed multilevel osteophytes and a mild diffuse disc bulge at C6-7. Repeat MRI scans of the lumbar spine were conducted on June 13, 2002 and July 1, 2002. The scans revealed hypertrophic changes of the facet joints and ligamentum flavum at L5-S1, causing narrowing of both neuroforamina.

On July 2, 2002 the claimant returned to her general practitioner with complaints of headaches, back, neck and shoulder pain with spasm.

On July 12, 2002 the claimant was involved in a motor vehicle accident although Dr. Audirsch's records refer to a June 12, 2002 MVA.

The first mention of a work-related injury appears in a report dated July 16, 2002, when the claimant visited her GP with complaints of headaches, neck, back and leg pain.

Hurt @ work – pulling parts from basket & fell backward hit head on basket/back & hip on concrete

Dr. Audirsch treated the claimant after the MVA for complaints of cervical spine, right shoulder, and low back pain. He also recorded a history of headaches with nausea since 1992. Dr. Audirsch diagnosed cervical radiculitis, right compression, lumbar disc displacement and degeneration and lumbar compression on the right. He successfully treated the claimant with spinal adjustments on four occasions (November 25, 2002, January 28, 2003, March 11, 2003, April 17, 2003). In a report dated April 17, 2003, Dr. Audirsch opined that the claimant was at risk for reinjury and degenerative joint disease with pain and discomfort.

The claimant returned to her GP on numerous occasions from July to December, 2002, and in January and April 2003, with the following complaints:

7-2-02 -	headaches, back neck, shoulder spasms	10-21-02- 10-29-02-	neck, back neck, back, head, right side of body
7-12-02-	MVA		
7-16-02-	neck and back strain	11-5-02-	neck, chest, right arm
7-29-02-	neck, back	12-16-02-	right side of face, head, neck,

8-5-02-	neck, back, headaches		arm, rt leg, neck and shoulder
8-22-02-	head, neck, back		pain with spasm
8-29-02-	back, leg, neck	1-2-03-	rt neck rt arm
	shoulders with spasm		rt leg, neck, headaches
9-9-02-	whole right side	1-14-03-	neck shoulders chest arm
	headaches, ear		leg
9-19-02-	left leg (BP good)	4-23-03-	neck back hip

Dr. Savu treated the claimant in September and November 2002, administering nerve blocks for complaints of myofascial pain of the right shoulder girdle, neck pain from the facet joints at C3-4, C4-5 and C5-6, low back right buttock and thigh pain.

Dr. Savu's Report of 9-23-02:

Ms. Martin is a pleasant 49-year-old woman with long standing history of the (sic) low back pain which started about four or five year ago and it may or may not be related to a series of low-grade accidents she suffered while on the job; they mostly pertained to lifting heavy objects and repetitive twisting motion. In mid 2001, she stumbled on basket of parts and fell backward and hit herself at the neck, low back, buttock and thigh levels. Within a few weeks, she developed significant neck pain which then extended into the right arm and as well as in the occipital scalp later on.

DIAGNOSIS:

1. Cervical axial pain with referred pain into the right shoulder. The pain appears to be related to cervical facet disease with a superimposed myofascial component.
2. Lumbar axial pain with radiation into the buttock. The differential diagnosis for the latter condition includes facet disease versus foraminal stenosis with mild and discrete nerve root irritation, right more than left.

It appears that the facet disease may have been triggered by a whiplash-type injury at the time of her fall.

Dr. Savu does not appear to be aware of the MVA; Dr. Savu does not explain why the claimant's neck symptoms took "a few weeks" to develop after the accident; and Dr. Savu's opinions are not stated within a "reasonable degree of medical certainty." Frances v. Gaylord Container Corp., 69 Ark. App. 26, 9 S.W.3d 550 (2000).

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.

The claimant is seeking benefits for neck, back and right hip injuries sustained in a fall at work on May 1, 2002. The medical records show a history of chronic neck, back and right leg pain prior to any incident at work.

A lumbar MRI scan conducted one month prior to the incident at work showed multilevel degenerative changes with a shallow herniation at T12-L1.

A cervical MRI scan conducted on May 16, 2002 showed multilevel degenerative changes with a mild disc bulge at C6-7.

On July 12, 2002 the claimant was involved in a MVA injuring her neck, back and arm. Thereafter, she made frequent trips to her general practitioners for treatment.

The only physician to comment on the causal connection, Dr. Savu does not appear to be aware of the claimant's MVA or complaints of neck and right leg pain prior to any incident at work.

The burden is on the claimant to prove a causal relationship between the injury and the employment. Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002).

Because of the claimant's history of treatment for chronic pain, diagnostic testing revealing progressive degenerative changes, and the intervening MVA, there is a lack of a clear causal connection between any incident at work and her present condition.

Therefore, I find the claimant has failed to meet her burden of proving that her injuries were caused by a specific incident, arising out of and in the course of her employment, by a preponderance of the evidence of record.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties

on May 1, 2002 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$303.00/.\$227.00.

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