

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300590/F302846

MARY MORPHIS	CLAIMANT
DEPARTMENT OF HEALTH	NO. 1 RESPONDENT
PUBLIC EMPLOYEE CLAIMS INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED AUGUST 11, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents No. 1 represented by RICHARD SMITH, Attorney, Little Rock, Arkansas.

Respondent No. 2 represented by TERRY PENCE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 1, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on August 8, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$224.00 for temporary total disability and \$168.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to her neck and back.

2. Related medical.

3. Temporary total disability from January 18, 2003, to a date to be determined.

4. Attorney's fees.

5. Statute of limitations on 2000 claim.

In regard to the foregoing issues the claimant contends that she is entitled to continuing medical treatment of her neck and back conditions. The claimant is further entitled to TTD benefits from January 18, 2003, to a date yet to be determined, alternatively, total permanent disability as a result of the above described injuries. It is further the claimant's contention that the Second Injury Fund would be liable based upon the combination of the two incidents, combined with her condition of epicondylitis and pre-existing cervical spine problems. The claimant is not contending that she is entitled to benefits for the 2000 injury but states that she is entitled to benefits for the 2003 injuries whether it be an aggravation or a new injury.

In regard to the foregoing issues Respondents No. 1 contend that the medical evidence does not establish a work-related injury

on either date. Claimant has had a medical only claim in the past, however, as well as not-work-related DDD. In the event either of these claims is found to be compensable, there may be Second Injury Fund liability. Respondents No. 1 contends that the injury of 2000 is now barred by the statute of limitations and any problems that the claimant is currently having are a continuation or recurrence of those 2000 injuries.

In regard to the foregoing issues Respondent No. 2 will not offer contentions until compensability is determined.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was born on July 1, 1947, and that she finished the tenth grade. The claimant testified that for the past sixteen years up until January 6, 2003, she worked for the North Logan County Health Department. The claimant testified that she was a PHT explaining that this was an aid. The claimant testified that she worked with sick or hospice patients in their homes. The claimant explained that her duties would be to get the patients up, feed them, dress them, give them a bath, do their beds, put them on the potty chair, noting that these patients frequently are not able to get up and walk around on their own.

The claimant testified that she was working as a PHT for the respondent on January 6, 2003, and while making up a patient's bed,

slipped on a throw rug. The claimant testified that she did not hit the floor but she fell back into the dresser and it messed up her neck and right hip. The claimant testified that as a result of her injury she cannot move her neck and she is anticipating having surgery as soon as her Medicare comes into effect. The claimant testified that she did not go to the doctor the day of her fall but she did go the next day. The claimant stated that she reported her incident to Millie and that Millie sent her to the doctor. The claimant explained that Millie is the nurse at the health department. The claimant testified that she initially was seen by a general practitioner but then was referred to Dr. Johnson who is a back and neck specialist. The claimant testified that Dr. Johnson took her off work and that she has not been released to date to return to work. The claimant testified that she currently is on total disability through Social Security.

The claimant agreed that Dr. Johnson had her undergo an MRI and physical therapy was suggested but it was decided that it would do her no good. The claimant testified that her injury has caused her not to be able to turn her neck which eliminates her being able to drive.

The claimant agreed that in November 2000 she injured her back and was seen by Dr. Suguitan. The claimant testified that after the 2000 injury she went through physical therapy but she continued to work and got ok. The claimant stated that the injury in 2000 was to her low back, not to her neck. The claimant testified that she worked each day up until her January 2003 neck injury.

On cross examination, the claimant agreed that for her 2000 injury she did make a claim for workers' compensation benefits noting that it was a meds only claim. The claimant testified that she did not get an indemnity payments because she was not off long enough to receive them. The claimant indicated in her testimony that she was only seen by a physician a couple of times following her 2000 injury and she was prescribed medications and did have these medications refilled one time. The claimant agreed that the last time she had any medical treatment or prescriptions filled for her 2000 injury was in January of 2001. The claimant agreed that following her 2003 injury, her initial visits to the doctor were paid for by the respondent. The claimant testified that she has not had surgery on her neck as a result of her 2003 injury because she does not have the money to pay for the surgery. The claimant agreed that Dr. Johnson is her principle treating physician. The claimant agreed that she was seen by Dr. Cheyne on November 29, 2001, at which time she had x-rays of her lumbar spine. The claimant stated that she has hurt her back several times but it would always resolve and she could go on with her work. The claimant agreed that she had had an MRI of her cervical spine in the year 2002 at the direction of Dr. Suguitan (Dr. JoJo). The claimant explained that when she fell and hit the dresser at the time of her 2003 accident she did not actually hit her neck and head on the dresser but she "popped it." The claimant was asked if she hit her neck and head on anything and the claimant respondent, "No, huh uh." The claimant testified that she now cannot turn her

neck which prevents her from driving a car and her job depended upon her being able to drive from one patient to the next.

The medical records set forth that the claimant was seen by Dr. Patty Borkland on February 12, 1996, with complaints of multiple aches and pain in her cervical spine, both legs and her low back which has been going on for a week. The doctor notes that the claimant's neck and back have been long standing problems for her. On April 8, 1999, Dr. Demetrio Suguitan writes that he has seen the claimant for her complaints of low back pain which started a week and a half ago. The doctor notes that the claimant described the pain mostly on the right and occasionally involves both sides radiating to the right thigh. The doctor writes that the claimant is tender at L5 and he diagnosed her with sciatica.

Dr. Richie writes on November 29, 2000, that he has seen the claimant for her complaints of low back pain noting that she was lifting a resident on Monday when it began to hurt. Medications were prescribed and she was released to regular duty work. The claimant was seen by Dr. Richie for follow up on December 6, 2000, for her continuing complaints of low back pain. Again, Dr. Richie prescribed medications as well as to use a heating pad. (It is questioned if these reports are for the claimant since Dr. Richie has noted that the white female he has examined for low back pain is seventy or seventy-one years old.) On November 29, 2001, the claimant was seen by Dr. Thomas Cheyne for chronic low back pain for years which has been much worse over the last three months. X-rays of the claimant's lumbar spine area show moderate degenerative

change at L5-S1 as well as T-12 and L1. These x-rays also show mild degenerative changes with very minimal spondylolisthesis of L4 and L5. An MRI was recommended and she was prescribed Vioxx and to do home exercises. Dr. Cheyne writes on December 7, 2001, that he has reviewed the claimant's MRI which shows degenerative disc disease with mild bulging annuli in the lower lumbar spine. Dr. Cheyne writes that he sees nothing of a surgical nature and believes she is having chronic myofasciitis. The claimant saw Dr. Michael Miranda on February 11, 2002, reporting that she developed some pain and stiffness in her neck and was experiencing headaches. The doctor notes that the claimant reports that she basically just woke up with this discomfort. The doctor writes that the claimant keeps her head still not wanting to turn it anyway because it aggravates the pain. Dr. Miranda notes that the claimant's x-rays appear to show arthritic changes in her cervical spine. Medications were prescribed as well as the use of a heating pad. The claimant underwent an MRI of her cervical spine on November 16, 2002. This MRI revealed that the claimant has spondylitic spurring and probable small central disc protrusion at C5-6 with borderline to mild channel stenosis at C5-6 with spondylitic spurring and left para central bulge at C6-7. There is also noted a midline bulge at C7-T1. Another finding in this MRI was a cervical syrinx from C6 through C7. A follow up MRI of the claimant's cervical spine was made on December 10, 2002, where the findings set forth that there was no enhancement of the cervical cord identified but that the repeat imaging does confirm a small

syrinx at C6 extending down to at least T1 and possibly extending further into the thoracic channel. There is also spondylitic spurring with disc protrusions at C5-6, at least some disc bulge at C6-7, C4-5 and mild disc bulge at C3-4.

On January 7, 2003, the claimant was seen by Dr. Richie where she reports that yesterday she slipped on a rug and twisted trying to fall and has had right hip and neck pain since then. The doctor notes that the claimant has a history of arthritis and bulging disc in her neck and was already scheduled to be seen by a doctor for her back the next week. The doctor notes that the claimant reports that she did have a low back injury in 2000 from which she is greatly improved but that she never got back to normal. The claimant was taking Vioxx as well as Prozac at the time of this visit. Upon examination, Dr. Richie notes that the claimant does have a mild left sided cervical muscle spasm and she has left sided para spinal muscle spasm in the lumbar area. Dr. Richie diagnosed the claimant with having lumbar and cervical strain and prescribed medications and encouraged her to keep her doctor's appointment for her back. The claimant was seen by Dr. Johnson on January 13 by referral from Dr. Sugiutan for neck, low back and right leg pain. It is reported by the claimant that she has had pain in her neck for approximately six months and this goes bilaterally into her hands and she also has pain in her low back with radiation to the right hip and buttock which goes into the right ankle. Dr. Johnson reviewed the claimant's MRI of her cervical spine and notes that it shows cervical osteophyte at C5-6 with neuroforaminal narrowing and

that the plain films show the same. Dr. Johnson referred the claimant to physical therapy for cervical traction as well as for lumbar and cervical physical therapy. An MRI of the claimant's lumbar spine was ordered and she was placed on Lorcet Plus for pain. Dr. Johnson took the claimant off work for approximately two months. An MRI of the claimant's lumbar spine done on January 15, 2003, sets forth that she has degenerative changes of the thoracolumbar spine as described in the findings with no focal disc herniations. Dr. Johnson saw the claimant again on March 18, 2003, noting that she has had physical therapy and has been on medication. The doctor notes that the claimant continues to have significant pain in her neck and lower back, noting that her pain is worse in her low back. Dr. Johnson writes that the claimant's pain in her neck goes into both of her arms. The doctor notes that the claimant's MRI of her lumbar spine showed only degenerative disc changes at L4-5 and L5-S1 with central disc bulging but no significant channel stenosis, disc herniations or neuroforaminal stenosis. Dr. Johnson continued the claimant on physical therapy, prescribed medications and recommended that she stay off work as well as quit smoking. Dr. Johnson again continued the claimant in an off work status in a note dated May 29, 2003, indicating that she should not return to work until September 18, 2003.

After a review of this entire record, I find that the claimant has proven by a preponderance of the evidence that she had a temporary aggravation of a pre-existing cervical problem. The claimant, in the past, has had several studies and tests run on her

neck as well as thoracic area and her lumbar area all setting forth degenerative changes as well as spurring in her cervical area. Following the claimant's slip and fall event on January 6, 2003, Dr. Richie notes that she has mild left sided cervical muscle spasm as well as some lumbar muscle spasm. The x-ray report of the claimant's cervical spine made on January 13, 2003, does reveal that she has slight reversal of the normal lordotic curvature and then sets forth findings which have previously been found on much earlier MRI reports such as C5-6 level posterior osteophytes and spondylolisthesis. When the claimant was seen by Dr. Johnson on January 13, 2003, she reports that she has been having pain in her neck for approximately six months and that this pain goes down bilaterally into her hands. Dr. Johnson, on March 18, again writes that the claimant reports pain in her neck radiating down into both arms but that her lumbar pain is more significant. Dr. Johnson notes that upon physical examination there are not vocal findings on neurological examination. I find, therefore, that this claimant's temporary aggravation resolved itself by March 18, 2003. The claimant, therefore, will be entitled to treatment for her temporary aggravation from the date of her injury up through March 18, 2003, as well as temporary and total disability from January 13, 2003, when Dr. Johnson takes her off work until March 18.

The respondents have contended that the claim number F302846 is barred by the statute of limitations. The claimant filed an AR-C with the Commission on April 1, 2003, indicating that she sustained a back injury at work in January 2000. Arkansas law sets

forth that a claimant cannot bring forth a workers' compensation claim for an injury sustained more than two years prior to filing a claim for benefits. It is noted that the claimant specifically stated prior to the beginning of testimony that she was not seeking benefits for a 2000 back injury.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$224.00 for temporary total disability and \$168.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that she experienced a temporary aggravation on January 6, 2003, to her preexisting degenerative neck problems. It is further noted that these temporary aggravating conditions resolve themselves by March 18, 2003, when the claimant was seen by Dr. Johnson.

5. The respondents should pay for the medical treatment for this claimant's temporary aggravation from January 6, 2003, through March 18, 2003. See discussion above.

6. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability for her compensable injury from January 13, 2003, until March 18, 2003. This was the period of time which Dr. Johnson had released the claimant from work. All see discussion above.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the temporary total disability awarded herein.

9. The statute of limitations bars the claim filed by the claimant indicating that she hurt her low back in January 2000 and that she filed her AR-C in March 2003. Arkansas law prohibits the filing of a workers' compensation claim when there has been more than a two year lapse from the date of injury to the time of filing. See Commission file AR-C in claim number F302846.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable temporary aggravation to her preexisting neck problems on January 6, 2003, while working for the respondent.

The respondents shall pay for medical treatment for this claimant's compensable injury from January 6, 2003, through March 18, 2003.

The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability for her compensable injury from January 13, 2003, through March 18, 2003.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said

attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE