

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306433

DIANE MUNN, EMPLOYEE	CLAIMANT
BEVERLY HEALTHCARE MAGNOLIA, EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, INC., TPA	RESPONDENT

OPINION FILED JUNE 24, 2004

Hearing before Administrative Law Judge J. Mark White on May 19, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. F. Mattison Thomas, III, Attorney at Law, El Dorado, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 19, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on March 1, 2004, and a Prehearing Order was entered that same day. A copy of the March 1, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times, including April 21, 2003; and that the respondents have controverted this claim in its entirety. At the end of the hearing, the parties further stipulated that the claimant earned an average weekly wage of \$480, entitling her to a compensation rate of \$320 for total disability benefits.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury to her back on April 21, 2003; and controversion and attorney's fees.

The claimant contends that she sustained an injury on April 21, 2003, while working for the respondent-employer; that she did suffer a previous back injury working for Magnolia Hospital but had been released by her doctors to return to work; and that on the date of her injury, the claimant re-injured or aggravated her pre-existing condition and as a result has become temporarily and totally disabled and is entitled to disability benefits and medical treatment.

Respondents contend that the claimant did not sustain an injury on April 21, 2003; that the claimant was injured in 2000 while working for Magnolia Hospital and never fully recovered; that the claimant's April 21, 2003, injury, if any, was a recurrence of the 2000 injury; that the claimant was on medical leave for her back from October, 2002, until April 21, 2003; and that the claimant worked one day and did not return.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports; documents; the record of the September 25, 2003, hearing in claim no. F003562; and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of her injury is established by medical evidence supported by objective findings.
4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury, or aggravation of her prior injury, on April 21, 2003.

DISCUSSION

I. History

The claimant sustained a compensable injury to her back on February 17, 2000. Her claim was accepted and benefits paid by her employer at that time. Over the next three years she was on and off of work because of her injury and treatment. On April 18, 2003, she was released by her doctor to return to work, and on April 21 she reported for work to the respondent-employer. She had previously worked part-time for the respondent-employer, but as of April 21 she was to work full-time. She testified that she was still having pain from her 2000 injury when she returned to work.

During the course of her shift that night, the claimant testified, she was pushed and knocked to the floor by a patient. She testified that she gradually developed pain and stiffness in her back, and she sought treatment at the emergency room. The record contains no notes or documents from that visit. She saw her personal physician, Dr. Patrick Antoon, the following day. Dr. Antoon's treatment note from that visit makes no mention of the alleged April 21 incident, but it does note "LS Pain" and "Rt leg radiculitis." The claimant returned to Dr. Antoon on April 30 after another fall that day, which she attributed to her 2000 injury.

The claimant had previously sought benefits for her prior injury, and a

hearing was held before this Administrative Law Judge on September 25, 2003. An opinion filed October 24, 2003, found that her prior claim, AWCC No. F003562, was barred by the statute of limitations. That opinion was not appealed.

II. Adjudication

The claimant contends that her incident of April 21, 2003, was an aggravation of her prior compensable injury. An aggravation is a new injury resulting from an independent incident; being a new injury with an independent cause, an aggravation must meet the requirements for a compensable injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). Therefore, the claimant must establish the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) to prove the compensability of her claim: (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 physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) 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. *Ford v. Chemipulp Process, Inc.*, 63 Ark.

App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

After reviewing the record, including the medical records submitted at the May 19 hearing, as well as the medical records submitted at the September 25, 2003, hearing in claim number F003562 (the prior compensable injury), I am unable to identify any objective findings supporting the existence and extent of any injury sustained on April 21, 2003. A doctor's note dated April 30, 2003, does mention a bruise to the claimant's face, but it appears to be the result of an unrelated fall sustained by the claimant on April 30, not the incident of April 21.

To be compensable, an injury must be established by medical evidence supported by objective findings. ARK. CODE ANN. § 11-9-102(4)(D). The record before me contains no such evidence. I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of her injury is established by medical evidence supported by objective findings. Therefore, I conclude that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury, or aggravation of her prior injury, on April 21, 2003.

AWARD

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on April 21, 2003. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge