

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F406109

GUADALUPE OCHOA, Employee	CLAIMANT
WASHINGTON REGIONAL MEDICAL CENTER, Employer	RESPONDENT
CANNON COCHRAN MANAGEMENT, Carrier	RESPONDENT

OPINION FILED NOVEMBER 23, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On October 27, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 18, 2004, and a pre-hearing order was filed on August 20, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties on June 3, 2003.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$340.00.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's neck on June 3, 2003.
2. Related medical.
3. Temporary total disability benefits.

4. Attorney fee.

The claimant's contentions as set forth in her pre-hearing questionnaire are as follows: "Claimant injured her neck in a specific incident in which she was mopping the floor on June 3, 2003. She simply twisted wrong and has suffered an injury. She was earning \$8.60 an hour and worked Monday to Friday from 3:00 p.m. to 11:30 p.m. She requests temporary total disability and medical."

The respondent's contentions are set forth in its pre-hearing questionnaire which is attached as Exhibit A.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 18, 2004, and contained in a pre-hearing order filed August 20, 2004, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$340.00 is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her neck while employed by the respondent.

#### FACTUAL BACKGROUND

The claimant is an Hispanic lady who went to work for the respondent in its housekeeping department in January 2003. Claimant testified that her job duties included cleaning, mopping, and vacuuming of offices and a medical clinic. Claimant testified that

she injured her back one day while mopping. The claimant testified that she reported this incident to an individual named Randy who took her to a doctor on the fourth floor who gave her a massage and moved her neck around. Claimant testified that she informed the doctor that she did not know why her neck hurt but that she thought it was from mopping. Claimant continued to work for the respondent until approximately August 22, 2003. Claimant sought medical treatment for her condition in August 2003 and was eventually referred for an MRI scan of her cervical spine. According to Dr. Gallaher's report of September 10, 2003, the MRI scan revealed a small herniated disc at the C5-6 level. Dr. Gallaher did not believe surgery was necessary but instead recommended medication, steroid injections, and physical therapy.

The claimant has filed this claim contending that she suffered a compensable injury to her neck on or about June 3, 2003. She seeks payment of related medical treatment, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

Claimant contends that she suffered a compensable injury to her neck while mopping on or about June 3, 2003. Claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 injury;

(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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her neck while working for the respondent. First, I believe it is important to note that according to claimant's testimony she was involved in a motor vehicle accident in Mexico some 15 to 16 years ago. Claimant denies having any other motor vehicle accident. However, a medical report from Dr. Wilson dated January 14, 2002 indicates that claimant gave a history of a motor vehicle accident two months earlier at which time she struck her head against the dashboard. That medical report also indicates that claimant began developing severe headaches on the top of her head and in the occiput after the accident. Dr. Wilson diagnosed claimant as suffering from post-traumatic headaches and ordered a CT scan along with medication.

The CT scan of the claimant's head showed no significant abnormalities but she continued to complain of headaches. Claimant sought medical treatment from the Northwest Medical Center on June 25, 2002 complaining of headaches, positional vertigo, and nausea. Medication was again prescribed and a CT scan of the claimant's head ordered. The CT scan of June 26, 2002 showed nothing of clinical significance to explain claimant's headaches or dizziness.

Claimant again sought medical treatment for headaches, nausea, and dizziness at the Northwest Medical Center on January 31, 2003. She also sought treatment for headaches from Dr. Adkins on March 27, 2003.

Subsequent medical reports after claimant's alleged injury in June 2003 reveal a continuing complaint of headaches.

As previously noted, claimant testified that her neck was hurting while mopping in June 2003. Claimant testified that she reported this incident to Randy who took her to a physician on the fourth floor who massaged her head and neck area.

Testifying on behalf of respondent was Randy Harris. Harris is not a supervisor, but instead is a co-employee of the claimant. Harris testified that he worked for the respondent throughout the period of time claimant worked for respondent in January 2003 through August 2003. Harris testified that he took breaks with the claimant and at times noticed claimant having pain. According to Harris, claimant indicated that she had been in a wreck in Mexico and that her head and neck hurt. Harris acknowledged taking the claimant upstairs one time to see the doctors in order to determine whether they could help her with her headaches and neck pain; however, Harris testified that the claimant never mentioned having injured herself at work to him.

Claimant testified that on the day of her injury Harris took her to a physician who massaged her head and neck. She also indicated that this occurred on only one occasion. This is significant since the medical record from the Northwest Medical Center on January 31, 2003 indicates that when claimant sought medical treatment for headaches, nausea, and dizziness on that date she indicated that she had gone to Washington Regional Medical Center that day and had a doctor massage her head and that this treatment had made her condition worse. Thus, this incident where claimant received a head or neck massage from a treating physician apparently occurred in January 2003, not June 2003.

The evidence also indicates that claimant requested to be off work for a two-week period in June 2003. Claimant signed a document indicating that she needed to be off work because of an emergency in Mexico. As a result, claimant was off work from June 9, 2003 through June 23, 2003. Claimant did not indicate at that time that she had suffered an injury to her neck while mopping. In fact, claimant admitted that she did not report a work-related injury to her supervisor at any time.

Although claimant contends that she suffered an injury to her neck while mopping for respondent in June 2003, the medical evidence indicates that claimant sought medical treatment for vaginal warts from Dr. Adkins on June 20, 2003. Dr. Adkins' medical report does not mention any neck complaints or mention of a work-related injury. Claimant was also evaluated by Dr. Adkins on July 17, 2003 for her annual exam. Again, Dr. Adkins' medical report makes no mention of any neck complaints or a work-related injury. Claimant was also seen at the emergency room at Washington Regional Medical Center on August 9, 2003. Claimant was complaining of migraine headaches at that time. The medical report contains no mention of a neck injury or neck pain.

Pain in the claimant's neck is not mentioned in a medical report until August 11, 2003 when claimant sought medical treatment from Dr. Adkins. At that time the claimant was complaining of pain in her left shoulder with radiation to her neck and upper back area. Although Dr. Adkins noted that the claimant's condition worsened after working, his medical report does not contain a history of claimant's pain having begun as a result of working.

Subsequent to this evaluation by Dr. Adkins the claimant underwent the MRI scan and was evaluated by Dr. Gallaher on September 10, 2003. Although Dr. Gallaher noted that the MRI scan revealed a small herniated disc at the C5-6 level, his medical report does not relate claimant's condition to her employment with the respondent. Instead, Dr. Gallaher's report contains a history that claimant's neck and arm pain had begun two months earlier. However, there is no indication that this onset was related to claimant's employment with the respondent.

In summary, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her neck while employed by the respondent. The medical reports indicate that claimant has a history of headaches relating to a motor vehicle accident which occurred in Mexico. Dr. Wilson's medical report

of January 14, 2002 indicates that claimant hit the top of her head against the dashboard during that accident. Since that time the claimant has had headaches on almost a daily basis for which she has sought medical treatment on numerous occasions. While claimant contends that she suffered a compensable injury while mopping in June 2003 which she reported to a co-worker, Randy Harris, Harris testified that claimant never reported a work-related injury to him. To the contrary, Harris testified that claimant reported headaches and neck pain due to a motor vehicle accident in Mexico. The massage which claimant contends she received from a physician at Washington Regional Medical Center on the date of her accident actually occurred in January 2003 according to the medical report from Northwest Medical Center dated January 31, 2003. Furthermore, claimant admittedly did not report a work-related injury to her supervisor. In addition, even after this alleged injury in June 2003 claimant sought medical treatment from her family physician, Dr. Adkins, in June 2003 and again in July 2003 and those reports fail to mention any complaints of neck pain or a work-related injury. Claimant also sought medical treatment from the emergency room on August 9, 2003 and that medical report contains no mention of neck pain or a work-related injury. The first mention of neck pain is contained in a medical report from Dr. Adkins dated August 11, 2003. Although claimant indicated that her pain worsened after working, Dr. Adkins did not indicate that claimant's pain had begun while working for the respondent. Finally, Dr. Gallaher indicated that claimant's neck and arm pain had begun two months prior to September 10, 2003; however, there is no indication that this onset was related to claimant's employment. Given this evidence, I simply find that claimant has failed to meet her burden of proof.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her neck while working for respondent. Therefore, her claim for

compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE