

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F407848

**CYNTHIA G. POWELL,
EMPLOYEE**

CLAIMANT

**ARLINGTON HOTEL CO., INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

**ARKANSAS HOSPITALITY
WORKERS' COMPENSATION TRUST;
CROCKETT ADJUSTMENT,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED DECEMBER 9, 2004

Hearing conducted December 8, 2004, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Ms. Sherri Arman R. McDonough, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant and

Mr. Gail O. Matthews , Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the claimant's contention that she suffered a low back injury during her employment as a maid while pulling sheets from a bed.

Specifically, she contended that on June 7, 2004, she sustained a compensable low back injury and should be awarded benefits, including reasonably necessary medical and related expenses, as well as benefits for temporary partial and temporary total disability. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that a compensable injury cannot be established by medical evidence, supported by objective findings; alternatively, that additional medical care is not

reasonably necessary in connection with the alleged compensable injury; and that the claimant has not suffered temporary total or temporary partial disability as a result of the injury.

The record was closed at the conclusion of the hearing and included the testimony of the claimant and Maria Viretbauer, as well as documentary evidence.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times including June 7, 2004; an accident was reported and medical benefits were initiated; the claimant's average weekly wage was \$234.00; and the case has been controverted in its entirety effective on or about September 8, 2004.

3. The preponderance of the evidence shows that on or about June 7, 2004, the claimant sustained a compensable injury, established by medical evidence supported by objective findings, arising out of and in the course of her employment for which she is entitled to benefits, including reasonably necessary medical and related expenses previously incurred for treatment by Dr. Michael Atta, Dr. Ross Hardy, and by her family physician, as well as such additional care as may be reasonably necessary within the meaning of the Act.

4. The preponderance of the evidence shows that as a result of her compensable injury the claimant remained in a healing period and was partially incapacitated to earn wages for a period

beginning on June 8, 2004, and continuing through September 7, 2004, so that she is entitled to temporary partial disability benefits in the total amount of \$442.00.

5. The preponderance of the evidence shows that as a result of her compensable injury the claimant remained in a healing period and was totally incapacitated to earn wages for a one week period beginning September 10, 2004, so that she is entitled to temporary total disability benefits.

6. The preponderance of the evidence shows that as a result of her compensable injury the claimant remained in a healing period and was partially incapacitated to earn wages from September 18 through October 20, 2004, so that she is entitled to additional benefits for temporary partial disability in the total amount of \$449.00.

7. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

DISCUSSION

The claimant, 40 years of age at the time of the hearing, suffered a low back injury June 7, 2004, during her employment with the housekeeping department of the respondent employer where her primary duties involved cleaning rooms. Her uncontradicted testimony was that, on the date of injury, she was pulling sheets off of a bed and felt a pop in her left hip, but did not really think she was hurt at the time, but was merely uncomfortable. However, as the day went on, she began to hurt more and reported the incident. Respondent's witness confirmed that the claimant was advised to go home, apply heat, but if she did not improve, she would be sent to the doctor. This, in fact, happened and the claimant was directed to see the company physician, Dr. Michael K. Atta.

Dr. Atta's note shows that the day after the injury, the claimant reported a pop in her left hip with a knotted swelling at the side, burning pain along the posterior aspect of her neck down to the parascapular region and that Tylenol had given only mild relief. His note goes on to indicate that palpation of the claimant's back revealed "some muscular swelling" in the region of the left SI joint, along with tenderness and subjective complaints of pain. He recommended physical therapy, medication, and permitted the claimant to return to work with restrictions, further indicating that she would be seen in the clinic in a week for further evaluation. Dr. Atta's note of June 15, 2004, indicated that the claimant had a left SI joint strain for which he recommended additional physical therapy, medication, and work with restrictions. An MRI was eventually performed, indicating mild degenerative disc changes at L4-5 and L5-S1. The claimant continued to try to work with restrictions and was eventually referred to Dr. Ross Hardy August 4, 2004, for further evaluation.

Thereafter, when the respondents declined to offer additional medical care, the claimant sought the attention of her personal physician who took her off work for one week beginning September 10, 2004. She later received additional care from Dr. Hardy and from Dr. Atta.

The record indicates that the employer has a policy, known to the claimant, of offering light duty work for persons injured on the job. While the claimant was willing to attempt to perform light duty work, she was not always able. It was the claimant's uncontradicted testimony that she worked as much as she could but when her pain kept her from going forward, she got permission from her supervisor and went home. Respondent's witness agreed that the claimant was a hard worker, one that did, in fact, work well with her in the office, as well as in housekeeping.

Because the claim has now been controverted, it is the claimant's burden to prove the occurrence of a compensable injury, arising out of and in the course of her employment, and to

establish that injury by medical evidence supported by objective findings. On these points, the claimant offered credible testimony concerning the occurrence of her injury at work, while performing employment services. The medical evidence shows that the company physician palpated muscular swelling the day following the incident at work, a sufficient showing of objective findings.

To be entitled to temporary disability benefits, the claimant must show that she continued in a healing period and was incapacitated to earn wages, as a result of the injury. Total incapacity during the healing period entitles her to temporary total disability benefits. Partial incapacity entitles her to temporary partial disability benefits, which are $66\frac{2}{3}\%$ of the difference between her average weekly wage and wage earning capacity during the period of partial disability. Ark. Code Ann. §11-9-520. Review of the pay records with counsel for the parties reveals that temporary partial disability benefits in the amount of \$442.00 attached to the first period of temporary partial disability, going through September 7, 2004, while \$449.00 in temporary partial disability benefits accrued in the second period of temporary partial disability ending October 20, 2004.

The medical record, including the continuing treatment of the company physician, shows that the claimant has remained in a healing period for the times specified above, receiving medication, physical therapy, the use of a TENS unit, and that she has been generally compliant with her medical care. Moreover, the medical care provided by Dr. Atta, Dr. Hardy, as well as the claimant's family physician, has been consistent with the nature of her injury and is reasonably necessary within the meaning of the Act.

AWARD

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge