

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407821

MARY S. ROCHELL, EMPLOYEE	CLAIMANT
H & L POULTRY PROCESSING, EMPLOYER	RESPONDENT
AIG CLAIMS SERVICE, CARRIER	RESPONDENT

OPINION FILED DECEMBER 9, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on December 3, 2004, at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE KENNETH A. HARPER, Attorney at Law, Monticello, Arkansas.

Respondents represented by the HONORABLE CAROL L. WORLEY, 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 the compensability of the claim 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.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on May 13, 2003 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$221.00/\$166.00, in the event this claim is found to be compensable.

The claimant contends she slipped on the floor injuring her back, tailbone and left leg. She seeks payment of medical expenses, temporary total disability benefits from May 14, 2003 to a date

yet to be determined and attorney's fees.

The respondents contend the claimant did not suffer an injury arising out of and in the course of her employment. At the time of the accident she was on a break and not performing employment services. Respondents further contend the medical evidence does not show an objective injury and does not support any claim for indemnity benefits.

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

The following witnesses testified at the hearing: the claimant and plant nurse, Patricia Diane Dawn.

The claimant, age 47 (D.O.B. October 18, 1957) has a high school education with work experience as a retail clerk. She began work for the respondent-employer in 2000, deboning chickens on a production line.

Employees periodically receive unpaid break time throughout the day. A bell rings and the employees cover tubs of chicken, walk to a bank of sinks to wash up, remove or dispose of hats, aprons, and gloves before they enter the break room, restroom, or go outside. The employees are required to leave their workstation so the production line can be cleaned with high pressure water hoses.

On May 13, 2003 the claimant was walking from her work station to the sinks to clean up in preparation for her break when her foot struck a palletizer and she tripped and fell on her tailbone. She reported the incident to the plant nurse, Ms. Dawn, but declined medical attention.

The claimant continued to work regular duty until she broke her finger and missed work from July to August, 2003. The claimant explained that she slipped when entering the bathtub at home

and reached out with her hand to stop her fall. Her finger struck the wall, bent backward and broke. She denied falling in the bathtub. During the summer, the claimant sold Home Interior products. She also took a motorcycle trip to New Orleans.

Over four and one-half months after the accident at work, the claimant returned to the plant nurse in late September and asked to see a doctor for her tailbone, left leg and right knee injury. The claimant stated no action was taken and she returned to the nurse the first week of October to get the necessary paperwork.

The plant nurse, Ms. Dawn, testified the claimant did indeed report an injury on May 13, 2003 but the injury was limited to her right wrist. There was no mention of a back or leg injury and the claimant declined medical attention. The claimant reported her right foot struck the palletizer on the way to break and she used her right wrist to break her fall. The claimant then missed a couple of months of work when she broke her finger in the bathtub incident.

Ms. Dawn testified the claimant routinely came to the nurse's station to tape her hands before beginning work but never mentioned any more problems until October 27 when she stated that riding her motorcycle made her tailbone hurt. The claimant asked the nurse if she thought this would be related to the May slip and fall. Ms. Dawn reviewed the file and reminded the claimant she did not report a back or tailbone injury. The only injury reported was her right wrist.

Nevertheless, the claimant was allowed to complete a Report of Injury, Form AR-N on November 17. The carrier investigated and denied the claim on December 5. The claimant did not receive medical treatment until December, 2003, over seven months after the accident.

MEDICAL EVIDENCE

The medical records show the claimant visited her general practitioner, Dr. Pennington on June 30, 2003, a little over one month after the incident at work on May 13, 2003. She was treated for respiratory problems but there is no mention of any accident at work or symptoms regarding her back, tailbone or leg.

The claimant saw Dr. Pennington again on July 16, 2003 and August 6, 2003 for a fracture of her right index finger “when she fell in the tub.” Once again, there is no mention of back, tailbone or leg symptoms.

The claimant returned on August 19, 2003 for a gynecological exam. There is no mention of an incident at work or medical symptoms until December, 2003, seven months after the incident at work.

Karen Richardson’s Report of 12-15-03:

Back pain. Apparently fell back in May while taking a break at work. Since that time, she has had pain in the left buttocks which is radicular... There is point SI joint space tenderness bilaterally...DJD with probable musculoskeletal strain and spasm; possible nerve impingement secondary to contusion...

The claimant was scheduled for x-rays, an MRI, and physical therapy (from January 14, 2004 to February 3, 2004). She was also prescribed medication and a home exercise plan. Diagnostic testing of the lumbar spine and coccyx was negative. The test results however did not change the diagnosis.

Karen Richardson’s Report of 3-4-04:

Here with complaints of back pain; numbness in the legs intermittently and feels as though there is an electrical current radiating down the back of both legs... She had an MRI on 12/31, which showed some nonspecific soft tissue density in the L5-S1 area. She underwent physical therapy, and the pain resolved. At work, she

does quite a bit of standing while pulling breasts at the chicken plant.

There is point SI joint space tenderness and mid to low paraspinous tenderness... Recurrent back pain with spasm; paraspinous pain with radiculopathy.

The MRI scan was repeated on March 25, 2004 and interpreted as negative. The claimant was offered more physical therapy which she declined.

The claimant returned to her doctor in April, 2004 with complaints of back and right leg pain. She was diagnosed with “persistent back pain with probable coccydynia secondary to fall... spasm of the lumbar spine with radiculopathy.”

Karen Richardson’s Report of 4-9-94:

Complaints of low back pain. Has had pain in the left buttocks and leg. It has moved over to the right, but she has been guarding the left and standing more on the right.

The claimant was taken off work beginning April 9, 1994, prescribed medication and injections, and resumed physical therapy (April 12, 2004 to May 3, 2004).

Karen Richardson’s Report of 5-3-04:

Radiology states no abnormalities of the coccyx. Coccydynia with chronic back pain secondary to trauma and DJD.

The claimant was prescribed a TENS unit and scheduled for a CT scan of the coccyx. The results of the test could not be located in the exhibit packet.

Dr. Pennington resumed the claimant’s care in May, 2004.

Dr. Pennington’s Report of 5-28-04:

Left sided hip discomfort for the past week. No known trauma. No radiation into her legs. There is mild tenderness just lateral to the SI joint on the left side into the iliac crest. There is mild tenderness of the right SI joint.. Lumbar strain with some spasm.

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.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A “compensable injury” is defined as “an accidental injury . . . arising out of and in the course of employment....” Ark. Code Ann. §11-9-102(4)(A)(i)(Supp. 2003). A compensable injury does not include an “[i]njury which was inflicted upon the employee at a time when employment

services were not being performed. . . .” Ark. Code Ann. §11-9-102(4)(B)(iii)(Supp. 2003. An employee is performing “employment services” when he or she is doing something that is generally required by his or her employer.” White v. Georgia-Pacific Corp., 339 Ark. 474, 478, 6 S.W.3d 98, 100 (1999). The test for determining whether the employee was performing employment services at the time of the injury is “whether the injury occurred within the time and space boundaries of the employment, when the employee [was] carrying out the employer’s purpose or advancing the employer’s interest directly or indirectly.” Pifer v. Single Source Transp., 347 Ark. 851, 69 S.W.3d 1 (2002).

A compensable injury is one arising out of and in the course of employment, Ark. Code Ann. §11-9-102(4)(A)(1). The claimant must prove, among other things, a causal relationship between her employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

The Court has held that if:

[a] claimant’s disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee’s condition, we may say without hesitation that there is no substantial evidence to sustain the [C]ommission’s refusal to make an award. Clark v. Ottenheimer Bros., 229 Ark. 383, 314 S.W.2d 497. But if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the [C]ommission’s conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172.

Hall v. Pittman Constr. Co., 235 Ark. 104, 105-106, 357 S.W.2d 263, 264 (1962).

In summary, the evidence of record shows the claimant tripped on a palletizer on her way to clean up before taking a break. The fact that she was not paid during this time is not determinative

of employment services. Caffey v. Sanyo Mfg., ___ Ark. App. ___, ___ S.W.3d ___ (2004). At the time of the incident, the claimant was performing tasks required by her employer, leaving her work station, disposing of aprons, gloves, hats and washing up and furthering the interests of her employer by keeping the break room clean. Therefore, I find the claimant was performing employment services at the time of the incident.

However, based on the lay testimony and medical records, I find the claimant has failed to prove a causal connection between her symptoms and her employment. After the incident the claimant reported a wrist injury, not a back, tailbone, or leg injury. There is also a gap in time between the incident and the development of any symptoms even though the claimant was seeing her physician on a regular basis for other health matters. There is also the possibility that her fall in the bathtub or her motorcycle trips caused or contributed to her problems. Finally, there is no evidence of an acute injury based on diagnostic testing and nothing in the test results substantiates her claims of radiculopathy. Therefore, I find the claimant has failed to meet her burden of proof.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on May 13, 2003.
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