

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310907

RUTHE SEAWOOD, EMPLOYEE	CLAIMANT
LITTLE ROCK SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE - WCT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 5, 2004

Matter before Chief Administrative Law Judge David Greenbaum on September 30, 2004, Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James W. Stanley, Jr., Attorney-at-Law, North Little Rock, Arkansas.

Respondents represented by Mr. J. Chris Bradley, Attorney-at-Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted June 24, 2004, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

This claim has an unusual procedural history. A prehearing conference was conducted in this claim on March 8, 2004, before Administrative Law Judge Dail Stiles and a Prehearing Order was filed on said date. At the conference, the parties stipulated to the employment relationship on September 27, 2003, and to compensation rates of \$135.00 per week for temporary total disability and \$101.00 per week for permanent partial disability in the event

compensability was overcome. The parties agreed that the issue to be litigated be limited to compensability.

The claimant contended, in summary, that she sustained a compensable injury on September 27, 2003; that she was entitled to temporary total disability benefits from September 29, 2003, through October 9, 2003, as well as attendant medical benefits and attorney's fees. Respondents controverted the claim in its entirety while maintaining that work was made available to the claimant within her medical restrictions on October 9, 2003. In the alternative, respondents contended that the claimant would not be entitled to any benefits prior to notice being given of the injury which it stated was on October 8, 2003. A hearing was scheduled for April 1, 2004.

Pursuant to a request from the respondents, by letter dated March 25, 2004, the case was rescheduled for April 15, 2004. Because Judge Stiles had accepted an administrative law judge position with the Office of Hearings and Appeals, Social Security Administration, the claim was reassigned to Administrative Law Judge Cynthia Estes (Robinson) Rogers. The parties were advised that the hearing scheduled for April 15, 2004, would remain as scheduled and that Judge Rogers would conduct the hearing. As reflected by letter dated April 15, 2004, from Judge Robinson to the parties, the claimant failed to appear at the hearing scheduled on April 15, 2004, and, accordingly,

the case was rescheduled for June 24, 2004.

A hearing was conducted on June 24, 2004. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions remained as set out in the March 8, 2004, Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

The claimant testified in her own behalf. Morlin McCoy and Audrey Walker were called as witnesses for the respondents. The record is composed solely of the transcript of the June 24, 2004, hearing containing several exhibits.

The claim was submitted for decision on July 15, 2004, upon receipt of the transcript. By letter dated September 9, 2004, Administrative Law Judge Cynthia Estes Rogers recused from deciding the case. The parties were advised that unless an objection was made within ten (10) days, the case would be reassigned and a decision issued based upon the record compiled at the June 24, 2004, hearing. The case was subsequently reassigned to Administrative Law Judge C. Michael White who has since left the employment of this Commission. Accordingly, the case was then reassigned to this administrative law judge in order for a decision to be made, again based upon the record of the June 24, 2004, hearing.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The relationship of employee/employer existed between the claimant and the Little Rock School District at all relevant times, including September 27, 2003, at which time the claimant earned sufficient wages to entitle her to compensation rates of \$135.00 per week for temporary total disability and \$101.00 per week for permanent partial disability in the event her claim was found compensable.
3. The claimant has failed to show, by a preponderance of the credible evidence, that she sustained an injury arising out of and during the course of her employment with the Little Rock School District which caused internal or external, physical harm to the body and which required medical services or resulted in disability supported by objective medical findings and caused by a specific incident identifiable in time and place of occurrence.

4. The claimant has failed to show, by a preponderance of the evidence, that she sustained an injury arising out of and during the course of her employment with the Little Rock School District which caused internal or external, physical harm which required medical services or resulted in disability, and is supported by objective medical findings which was not caused by a specific incident or which is not identifiable by time and place of occurrence.
5. The claimant has failed to show, by a preponderance of the credible evidence, that her physical complaints and need for medical treatment after September 27, 2003, are in any way causally related to an injury sustained while employed by the respondents.
6. Respondents have controverted this claim in its entirety.

DISCUSSION

The record in this claim is replete with inconsistencies and contradictions. In fact, the claimant's own testimony is self-contradicting. Although the claimant contended that she sustained a compensable injury on September 27, 2003, there is no credible evidence of a work-related incident. Further, the record is void of any medical evidence supported by objective findings necessary to establish a compensable injury under the Act.

The claim turns entirely upon the credibility of the claimant. A claimant's

testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

I did not find the claimant to be a credible witness. As will be set out further below, on cross-examination, the claimant's testimony vacillated. She appeared to be unresponsive to direct questions. Further, the claimant's testimony concerning the reasons she felt her alleged injury was work-related, are mere conclusions that were not supported by the record as a whole. As previously pointed out, the claimant has failed to offer any medical evidence supported by objective findings necessary to establish injury. Even if medical evidence had been presented, it would require sheer speculation and conjecture to attribute the claimant's alleged back injury to her employment and/or a work-related injury. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Const. Co. vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Ark. Methodist Hosp. vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

The claimant, Ruthe Seawood, is fifty-eight (58) years old. She has a high school education. The record reflects that the claimant has worked for the

Little Rock School District for several years in various capacities. The claimant was working for the District at the time of the within hearing, apparently, having been provided with a light-duty position in an after school student care program due to physical restrictions limiting her lifting. On and before September 26, 2003, the claimant worked in food service which admittedly required her to lift dishes as well as food product which she maintained was physically more than she could handle. The claimant did not identify any specific event of incident at the workplace which caused her injury. Her description of the injury is set out below :

Q Okay. So [how] did you come to injure yourself?

A At the end of the day after I fed everybody, I went to help with the dishes. We all were supposed to pitch in. So I took all the dishes out of the dishwasher and put them on the cart. I took them out and proceeded to stack them because I was intending to get the work done that day.

Q How much did that weigh?

A Anywhere from 50 to 60 pounds. There's a whole lot of lifting and strain back and forth, and it's extremely hot. There's a fan hitting you.

Q How did it affect your back?

A It affected me, the fan hitting me.

Q Tell the Judge about that.

A When I left the job that day after I finished everything, I was totally upset. I was more or less a cabbage case. I left the job and said, "Well, I'm gone." When I hit the door, the sun hit me; and when I got in the car, my back started hurting. When I got over to McDermott to Care, I was hurting so bad that I just

barely could walk.

Q Where was the pain?

A (Indicating) Right down in the lower back, right down here.

Q In the middle of the left or the right?

A Right down both sides in the middle of the lower part.

Q Had you ever had a pain like that before?

A No, sir.

Q What did you do as a result of this pain?

A I called over there from McDermott and talked to Ms. McCoy. I left her a message that I was going to the doctor on Monday because my back was in severe stress and pain. I was in severe pain.

Q Okay. Did you go to the doctor on Monday?

A I went to the doctor that Monday and seen Doctor Oakum.

Q Now, who is Doctor Oakum?

A She's a women's health doctor over at the VA Hospital. (Tr.13-14)

* * * * *

Q But that day, it wasn't until you walked outside that you felt this pain in your back?

A Yes, sir, that was it.

Q So there had been no specific incident there at work where you might have slipped or tripped or fallen down; correct?

A No, sir. I came there wearing a knee band.

Q There was no incident there where you lifted up a pan of hamburgers and

then felt something go in your back where you had to put those hamburgers down?

A Yes, sir, there was. The fan was a problem. The fan was hurting my back, and I indicated to the other lady that I could not take it under a fan. Fans was a problem to me. It caused severe back pains, but the one was so that she had to have the fan on.

Q You mean fans that blow air?

A Blowing all over my back. The minute that I started receiving these pains was like a week ago, but the pains didn't get severe until I started all this lifting of these hamburgers and everything. But I indicated to her that the fan was bothering me. That was a problem.

Q So you didn't have a single incident where you were lifting the hamburgers and then had an attack of pain and had to stop work?

A No, I didn't have to stop work, but there was pain involved.

Q Your problem was the fans blowing on you?

A Yes, sir.

Q And you didn't have the episode of pain until you walked out into the sun on September 26th?

A That's right.

Q Now, you didn't go back inside the school and talk to Ms. Workman about your back that day; did you?

A No, sir, not that day.

Q You didn't work on Saturday?

A No. We don't work on Saturday.

Q You didn't work on Sunday?

A No.

Q And it wasn't until Monday, September 29, that you went to the doctor; is that correct?

A Right.

Q You didn't go in to work that day; did you?

A No, sir.

Q So you wouldn't have seen Ms. Workman that day?

A No, sir.

Q And you wouldn't have seen Ms. McCoy that day?

A I believe I went over there and gave them the doctor's statement that day.

Q You went over where?

A To the office and saw Ms. Audrey and Ms. McCoy and also Judy, the insurance clerk.

Q So you're testifying that on September 29, you went over to the Central Office and saw Ms. McCoy and Ms. Walker and Judy, the insurance clerk?

A I believe it might have been Monday or the day after; I don't know. I was hurting so bad I don't know if it was Monday or Tuesday, but I know I went over there with the paperwork. (Tr.29-32)

The claimant was initially examined and treated at the VA Hospital by Dr. Miriam R. Oakum. While Dr. Oakum placed restrictions on the claimant's work activities, she did not find the claimant to be disabled and the claimant was medically cleared to return to work with restrictions on lifting. As previously noted, there was no objective findings of injury. The restrictions were imposed

because of the claimant's complaints of pain. (Cl. Ex. 1-2)

The record reflects that the claimant voluntarily resigned on September 30, 2003. (Resp. Ex. 1-2)

On cross-examination, claimant appeared to vacillate concerning her knowledge of how to report a work-related injury, as well as seeing any notices concerning workers' compensation claim filings being posted at the school. The record reflects that the claimant has made prior workers' compensation claims. She further indicated that she felt management did not treat her fairly, indicating that she was discriminated against because of personality conflicts and the fact that she was Pentecostal. (Tr.11, 22-23, 27-28)

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

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 medical findings, as defined in A. C. A. §11-9-102(16), establishing 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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim, and compensation must be denied. *Mikel vs. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

To establish a gradual onset back injury, which is not caused by a specific incident or which is not identifiable by time and place of occurrence, Ark. Code Ann. §11-9-102(4)(A)(ii)(b), the claimant must still prove the casual connection with the employment, and offer medical evidence to support a work-related injury.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be

weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); Wade vs. Mr. C.Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); Fowler vs. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The record in this case is replete with inconsistencies and contradictions. There is no credible evidence that the claimant sustained a work-related injury, either the result of a specific incident identifiable in time and place of occurrence or, alternatively, a gradual onset back injury. The record does not contain any medical evidence supported by objective findings.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that she sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge