

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308156

T. K. SHOPE	CLAIMANT
SPARKS REGIONAL MEDICAL CENTER	RESPONDENT
MANAGEMENT CLAIM SOLUTIONS, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 4, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by RANDOLPH SHOCK, Attorney, Fort Smith, Arkansas.

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 11, 2003, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on October 2, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$183.00 for temporary total disability and \$137.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to her neck, right shoulder and arm.

2. Related medical.

3. Temporary total disability from July 2, 2003, to a date to be determined.

4. Attorney's fees.

5. The respondents' raised the defense of lack of notice until July 31, 2003.

The claimant objected to the respondents raising the defense of lack of notice, this objection was overruled and this issue will be considered. The claimant's objection was noted for appeal.

In regard to the foregoing issues the claimant contends that she suffered an accidental injury arising out of the course of her employment on July 1, 2003, to the neck, right shoulder and right arm while maneuvering a food cart. Claimant is entitled to temporary total disability from July 2, 2003, through a date yet to be determined. Claimant is entitled to reasonable and necessary medical care. Claimant is entitled to the maximum statutory attorney's fees on all benefits awarded.

In regard to the foregoing issues the respondents contend that the claimant did sustain a compensable injury to her neck/right shoulder and or arm as that term is defined by Act 796; see response under subsection a.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1 and the deposition of the claimant marked Respondents' Exhibit No. 2. The claimant objected to the admission of the claimant's deposition, this objection was overruled and the deposition was admitted into evidence over the claimant's objection.

DISCUSSION

The claimant testified that she was forty-seven years old and had been working in the food service area for the respondent for approximately two years. The claimant explained that part of her job involved delivering food to the patients throughout the hospital. The claimant testified that food trays are placed into metal carts that are approximately six feet tall, two and a half to three feet wide and two and a half to three feet long with metal casters. The claimant testified that on July 1, 2003, she was pulling one of these big carts and a smaller cart delivering trays to the various patients. The claimant remembered that her big cart was loaded with a least twenty-seven trays and she would pull these carts along the hallways stating that they roll fairly easy on the tile but are more difficult to pull on the carpet. The claimant stated that after the patient's finish their meal she must retrieve the trays, replace them into the carts and take the carts back down to the food area. The claimant testified that due to a personnel

shortage she was having to work especially rapidly as well as be responsible for more duties around July 1, 2003.

The claimant testified that prior to July 1, 2003, she had never filed a workers' compensation claim for any injury to her neck, right shoulder or right arm nor has she had any type of injury to her right shoulder, neck and arm for which she required medical attention except that she had been diagnosed with arthritis.

The claimant testified that on July 1, 2003, she was about a third of the way through delivering the trays when she felt a snap and a burning pain in her right shoulder. The claimant testified that she thought to herself, "Oh God. I'm getting old." The claimant testified that this pain did not go away stating that the pain is in the muscle at the base of her neck and ran along the top of her right shoulder. The claimant testified that it was hurting severely but she just toughed it out and finished her shift. The claimant testified that at the end of the day she went home, took her shower and went to bed but the next morning she could not get out of bed or turn her head. The claimant testified that she was scheduled to work so she called in to report that she was going to go to the doctor and would not be in that day because she had hurt her neck and could not turn her head. The claimant testified that she could not get in to see her doctor that day but was able to get in to see him the following day. The claimant testified that her doctor took her off work and she contacted the respondent to report that her doctor had taken her off work. The claimant testified that since this date she has seen several doctors and many different

treatments have been tried but that to date she still has not been released to return to work. The claimant testified that she has been through physical therapy two different times, had injections in her neck and taken pain medications, muscle relaxers as well as anti-inflammatories. The claimant testified that she has continued to have problems and she has physical limitations as a result of her injury in that she cannot do much sitting and walking and she does not even bend, stoop or reach indicating that she could not do much of anything. The claimant testified that she would not be able to perform the job duties required of her position with the respondent.

On cross examination, the claimant admitted that she had not been truthful on her application for the respondent in that she had marked that she had never had any previous problems with substance abuse when in fact some twenty years ago she did have such a problem. The claimant agreed that she does recall being in the hospital having seizures due to alcohol withdraw as well as fainting or passing out in her front yard due to being intoxicated. The claimant was confronted with her answers to one of her questions dealing with whether she had been treated for or had indication of a disease for pain of the bones or joints and the claimant testified that she did not recall answering that question positively. In response the claimant testified, "I must not have been paying attention if I wrote that." The claimant testified that at the time she was hired by the respondent she was taking Flexoril for the arthritis in her neck. The claimant testified that she has

arthritis in several parts of her body and occasionally will take medication for this problem. The claimant agreed that in her direct testimony she had stated that when she got home on the evening of July 1, 2003, she took a Darvocet and a muscle relaxer, explaining that her doctor had prescribed these medications for her to take when needed. The claimant agreed that her injury occurred on the first day she was back after a four-day weekend. The claimant testified that when she called in on July 2 to report that she was not able to come in, she reported that she got up with a stiff neck and was going to a doctor, agreeing that she was calling in sick. The claimant agreed that in her orientation before she went to work for the respondent, the procedure for reporting a job related injury was covered in the program. The claimant testified that she cannot remember exactly what date her accident report was in fact filled out and filed but she knows that it was definitely after her injury stating that she should have done it immediately and she did not. The claimant agreed that when she started taking off on the second of July she began receiving pay for leave that she had acquired. The claimant testified that she believed that this acquired leave was to run out sometime in August. When asked, the claimant testified that when Lela Taskey called and woke her up she was "zonked out on my muscle relaxers and pain pills." The claimant testified that her actual supervisor was Kay Madison but she does not recall if she reported this incident to Ms. Madison but that, "I talked to a lot of them. I am not sure what I said to them."

On redirect examination, the claimant testified that in her medical history questionnaire that she filled out before she began working for the respondent she indicated that she had a history of arthritis, rheumatism, bursitis, pain in the bones and joints and muscle spasms as well as neck and shoulder problems. The claimant testified that due to her life of hard physical labor she has suffered from arthritis and back pain for which she has been prescribed muscle relaxers and pain pills which she has had for many years. The claimant also agreed that she had made this known to her employer before she went to work. The claimant testified that the pain which she is currently experiencing because of the events on July 1, 2003, are much different from the discomfort she has from arthritis. The claimant testified that when she first saw her doctor on July 3, 2003, she did report to him that she hurt herself pulling a cart at work for the respondent.

Kay Madison testified that she worked for the respondent as the dietary supervisor in food service and was the claimant's supervisor. Ms. Madison testified that to date the claimant has never come to her and told her that she hurt her neck and shoulder while working for the respondent.

Lela Taskey testified that her company is the third party administrator for the respondent for their workers' compensation program. Ms. Taskey agreed that it was her job to investigate claims. Ms. Taskey testified that she took a statement from the claimant and the claimant reported to her that she had reported a work related claim to her supervisor on July 1, 2003. On cross

examination, Ms. Taskey testified that she had this conversation with the claimant on August 4, 2003. This witness testified that the claimant reported to her that she felt a pop in her right shoulder while pushing a food cart and delivering meals. Ms. Taskey also testified that the claimant denied ever having any previous problems with her right shoulder other than a little arthritis.

The medical records set forth that the claimant was seen by Dr. John L. Kientz on July 3, 2003, where she reports that she has had neck pain for seven weeks with pulled muscles. The note set forth that the claimant was pulling cart at work and treated it with a hot shower, heating pad and Darvocet. The claimant was diagnosed with a cervical strain and a right shoulder muscle strain. Dr. Kientz saw the claimant again on July 11, 2003, where it is noted that she still has lots of pain in the right shoulder although her neck may be a little better. The claimant was prescribed rest, physical therapy and medications. A medical clearance was signed by the doctor on July 7, 2003, indicating that she should be restricted in her lifting to five pounds as well as to restrict her extension, pushing and pulling for a period of two to three weeks. The doctor indicated that the claimant does not have any degree of permanent disability related to her problem. The physical therapy treatment plan dated July 14, 2003, indicates that the claimant's onset of problems was June 23, 2003. This rehabilitation/physical therapy plan is set forth by the therapist. There is a medical clearance form signed by Dr. Kientz on July 18, 2003, where it is indicates that the claimant's lifting should be restricted to ten pounds and

she should restrict her extension, pushing and pulling for a period of one month. Dr. Kientz writes on July 18, 2003, that the claimant has improved but still has pain in her neck and shoulder and on examination notes that the claimant has limited range of motion in her right shoulder. Dr. Kientz again diagnosed the claimant with having right shoulder and cervical strain for which he prescribed physical therapy as well as medication. Dr. Kientz saw the claimant again on July 30, 2003, where he writes that the claimant is reporting her pain is better but is still having pain in the right upper trapezoid. The doctor continued the claimant on her medications as well as physical therapy. On August 1, 2003, the claimant was released to return to sedentary work.

The claimant was seen at the River Valley Orthopedic Center on August 8, 2003, for her neck and shoulder problems. Dr. Cheyne writes on August 8, 2003, that he has seen the claimant for her complaints of cervical and right shoulder pain resulting from her work for the respondent. Dr. Cheyne conducted an examination which indicated that the claimant had limited range of motion and the x-rays of the claimant's right shoulder indicated no acute findings and the x-ray of the cervical spine indicated moderate degenerative disc disease at C5-6. Dr. Cheyne diagnosed the claimant with having probable subacromial bursitis in her right shoulder and an acute cervical strain. Dr. Cheyne recommended an injection for her right shoulder as well as prescribed Celebrex. On October 15, 2003, Dr. Jerry Lenington notes that he has seen the claimant for her complaints of neck pain. Upon examination and review of the

claimant's x-rays, Dr. Lenington notes that there is straightening of the normal cervical lordosis and that range of motion of her right shoulder is severely limited. Dr. Lenington writes that he could feel a little muscle spasm in her neck area. Dr. Lenington writes that he talked to the claimant about injecting this area and then did in fact inject the area he had discussed with her.

I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable neck, right shoulder and arm problems while working for the respondent. Certainly from the claimant's testimony and from the doctor's notes, it is indicated that the claimant had long-standing arthritis in her neck, shoulder and arm as well as other parts of her body and that she has received treatment or medication to alleviate the discomfort from these problems. I further find that the claimant most likely did exacerbate a pre-existing problem which she had while moving some carts on July 2, 2003, but there are no objective medical findings to substantiate any type of injury by any of her treating physicians until October 2003 when Dr. Lenington notes muscle spasm in her neck area and a straitening of the curve of her neck. These problems, however, were not noted by any of her other treating physicians and Dr. Lenington's observation was some four months past the date of her alleged injury. The claimant, on July 14, 2003, in a physical therapy note, indicated that her problems began on June 23, 2003, which is several days prior to the date of her alleged injury. Even if I had found this injury to have been compensable, no benefits would have been awarded prior to July 31, 2003, for her

failure to give notice to the respondent. The claimant has testified that she did not report her injury on the day that it allegedly occurred and in her testimony she did not indicate to the respondent that the reason she was seeking medical treatment was for any job related injury.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$183.00 for temporary total disability and \$137.00 for permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on July 2, 2003. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on July 2, 2003. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE