

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202991

SHEILA TAYLOR	CLAIMANT
TYSON POULTRY, INC.	RESPONDENT
TYNET CORPORATION INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 24, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by THEODOR STRICKER, Attorney, Jonesboro, Arkansas.

Respondents represented by MELISA YOPP, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 20, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on November 10, 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 January 14, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her back, neck and shoulder on January 14, 2002.

4. Medical expenses have been paid to January 21, 2002.

5. The claimant was terminated on January 29, 2002.

6. The claimant is entitled to a compensation rate of \$207.00 for temporary total disability and \$155.00 for permanent partial disability.

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

1. Additional medical.

2. Temporary total disability from January 20, 2002, to a date to be determined.

3. Attorney's fees.

All other issues are reserved.

In regard to the foregoing issues the claimant contends that she suffered a compensable injury to her spine on January 14, 2002. The claimant contends that she is entitled to temporary total disability benefits from her last date of work, January 14, 2002, to an indeterminate future date. The claimant contends that she is entitled to permanent partial disability benefits. The claimant contends that she is entitled to permanent total disability benefits. The claimant contends that she is entitled to additional medical benefits, past and future. The claimant contends that she is entitled to mileage. The claimant contends that she is entitled to attorney fees.

In regard to the foregoing issues the respondents contend that the injury suffered by the claimant on January 14, 2002, was accepted as compensable. Respondents contend that Dr. Cotner was the treating physician. Respondents contend that appropriate

medical care was provided and claimant was released at maximum medical improvement on January 21, 2002. Respondents further contend that Dr. Cotner released claimant to full duty on January 21, 2002. Respondents contend that claimant is not entitled to temporary total disability benefits based on the lack of medical evidence to support these benefits and claimant's termination due to a positive drug screen. Respondents further contend that no permanent partial disability benefits or permanent total disability benefits are due as no impairment rating has been assessed by the treating physician. Respondents contend that additional medical benefits are not reasonable and necessary as claimant reached maximum medical improvement on January 21, 2002. Respondents contend that attorney's fees are not appropriate as claim was not controverted.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1. The respondents submitted medical information marked Respondents' Exhibit No. 1, non-medical information marked Respondents' Exhibit No. 2, the deposition of the claimant marked Respondents' Exhibit No. 3 and the deposition of Emily Frein marked Respondents' Exhibit No. 4. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she began working for the respondent in 1994. The claimant testified that on January 14,

2002, a Monday, there had been some repair work on the floor of the respondent's plant and there was a slight mound of concrete. The claimant testified that she was working and stepped on that mound, slipped and fell on her buttocks really hard. The claimant testified that she was not able to get up and that the girls she was working with eventually turned the line off and went to get the supervisor since she was unable to get up on her own. The claimant testified that she could not move her hands and that her legs and hands were both numb but by the time the supervisor got there she was able to pick herself up. The claimant testified that her supervisor sent her to the nurse's station where the nurse helped her fill out the paperwork and took down a statement. The claimant testified that no medications were given to her that day nor was an offer made to take her to the doctor. The claimant testified that she did return to the line and finish out her shift.

The claimant testified that the next day she was very sore, stiff and had difficulty getting out of bed. The claimant testified that when she got to work she reported to her supervisor, Billy Scarbarry, that her back was hurting and he sent her to the nurse's station. The claimant testified that in the nurse's station they put hot packs on her back and offered to put her on light duty. The claimant testified that again she returned to her work but this time performing light duty, although she was uncomfortable. The claimant explained that her discomfort covered a wide area from the middle of her back down to the lower part of her back. The claimant remembered that initially her neck was not

bothering her but by Wednesday her neck did start hurting and she could hardly turn her head, her throat was closing up and she had difficulty swallowing. The claimant testified that she reported to the nurse that she needed to go to the doctor because of her back and the nurse refused to send her. The claimant then reported that she could not swallow, her head would not turn and she was in pain. The claimant testified that the nurse told her that she could go see the doctor for her throat but she could not go see him for her back problems.

The claimant testified that she went to see Dr. Brian Cotner on January 17, 2002, at her own expense. The claimant testified that the doctor did not perform any tests or take x-rays or perform an MRI. The claimant testified that the doctor wanted to take these tests but that the respondent would not authorize them so no tests were done. The claimant testified that Dr. Cotner released her to a modified schedule due to her neck pain and she took this note to the respondent but the respondent put her back to her regular duty. The claimant testified that she was able to do her work but it was very uncomfortable. The claimant recalled that Dr. Cotner prescribed medications, one being Flexoril and another an allergy prescription and Naproxen. The claimant testified that the respondent offered to pay for the Flexoril but not the other medications. The claimant testified that because she could not afford to fill her prescriptions immediately, on Thursday when she got home she took some of her husband's Tylenol with Codeine which he had been prescribed for his back injury. The claimant

testified that there was no need to fill the prescription for Flexoril because she had some at home. When asked, the claimant testified that the Tylenol with Codeine was not a prescription which she had been prescribed and that she had no idea that this medication would result in any kind of unfavorable drug test.

The claimant testified that the next day she was not able to go to work but the respondent's nurse called her on her cell phone and asked her to come in and fill out some papers. The claimant testified that her daughter took her to the nurse's station where papers were filled out and a drug test was performed. The claimant testified that she reported to the nurse that she had taken Tylenol with Codeine the night before so that she could rest and the nurse told her not to worry that it would not show up on the test. The claimant then was asked if she was aware that she had tested positive for Codeine and Morphine and the claimant responded, "Yes." The claimant testified that she had not taken any illegal drugs and had only taken this one table of Tylenol with Codeine because she had not intended to go into work the next day because she already had a doctor's note to be off when she took the pill.

The claimant testified that she has only been to the doctor one time and that was on the January 17, 2002. The claimant was handed a document which was reported to have the date of January 21, 2002, from Dr. Cotner and the claimant testified that she had never seen that note nor had she ever taken it to the company nurse. The claimant testified that she is still in pain and in need of additional medical treatment as well as testing to

determine what her problems are. The claimant testified that other than her attempt to return to work for the respondent she has not gone back to work for anyone else. The claimant testified that she has applied for and began receiving unemployment benefits beginning in November 2002 and she received these benefits until she believes May 2003. The claimant testified that she has applied for social security but has not been approved to date. The claimant testified that she has applied for some jobs but has not been called.

The claimant testified on cross examination that she currently is living rent free in a home in Ozark in exchange for looking after some cows and watching two houses. The claimant explained that she also helps run errands or pick up medications from one of the houses on the farm when different medications are needed for the farm animals. The claimant was asked if she reported to Dr. Cotner that she was hurting when she went to see him in January 2002 and the claimant responded, "I reckon I didn't tell him at all, because I was instructed by Nurse Judy not to tell him anything and not to see him about my back." The claimant testified that she did report to the doctor that she could not turn her head and she could not swallow. When asked about the medications she was prescribed by Dr. Cotner the claimant testified that she was given a prescription for Flexoril, an allergy prescription and Neproxcin. The claimant testified that the respondent agreed to pay for the Flexoril but since it was late she did not fill this prescription and that is why she took her husband's medication. The claimant testified that she is not currently being treated by

a physician, that since January 21, 2002, she has not sought medical treatment, that she has not requested a change of physician and she does not have a note from a doctor stating that she is in need of continuing medical treatment for her back. The claimant indicated that Dr. Tackett, in his August 18, 1997, report, was incorrect when he wrote that she had a Crack addiction and is refusing drug treatment. The claimant testified that, "I didn't have a Crack addiction."

Judy Spencer testified that currently she is the benefit's counselor for the respondent but in January 2002 she was an LPN for the respondent. Ms. Spencer testified that she was acquainted with the claimant and was one of the nurses that provided care for her following her January 14, 2002, injury. Ms. Spencer testified that she was not the first nurse to see the claimant but she was the nurse that treated the claimant with moist heat and modified her job duties. Ms. Spencer was asked if the claimant ever asked to be seen by a doctor and the nurse responded, "No." Ms. Spencer reviewed her nurse's notes which are Respondents' Exhibit 1 page 14 and read from these notes concerning the claimant, "The team member states she feels great. Denies any problems and was advised to return PRN." There was a second notation on this same date which sets forth that a fax had been received from Dr. Cotner and the claimant had been released to regular duty without restrictions. Ms. Spencer testified that she was the one who initiated workers' compensation papers for the claimant stating that the claimant came to her station on January 18 with documentation from the doctor and

she had started the necessary paperwork and drug screen at that time. Ms. Spencer testified that her notes reflect that on the 17th and 18th of January that the claimant phoned in sick due to a personal illness and then on the 18<sup>th</sup> there is a notation that the claimant was absent from work yesterday and today regards to personal illness upper respirator infection and she is to return to work on Monday, January 21, 2002. This witness testified that she was the one that completed the claimant's first report of injury on the January 16, 2002, and agreed that this was before the claimant was seen by Dr. Cotner. Ms. Spencer testified that she performed a drug screen on the claimant and that the claimant had signed the documents in her presence. Ms. Spencer testified that the claimant did not ask her questions about the form or about the urine test.

On cross examination, Ms. Spencer testified that it was common practice and she in fact had contacted the doctor's office after the claimant reported to her that she was feeling great and wanted to return to regular duty. Ms. Spencer testified that with this information they would follow up with contact with the physician to get a release to regular duty. Ms. Spencer testified that she does not know why the claimant was not sent to physical therapy when her doctor had recommended physical therapy for her. Ms. Spencer testified that it is possible that the claimant taking a Tylenol with Codeine would have created a positive drug test.

Mr. Eddie Lindsey testified on behalf of the respondents stating that he is currently the assistant complex human resource manager. Mr. Lindsey testified that he was acquainted with the

claimant and was involved in her termination. Mr. Lindsey testified that the claimant's separation notification sets forth that she was terminated for violation of the drug policy. This witness testified that it is the respondent's company policy that any time an employee tests positive for drugs it is grounds for immediate termination. Mr. Lindsey testified that the claimant's drug screen came back positive for Codeine and he had asked her to supply with the prescription for that drug and she could not produce such a prescription. The claimant was then told that since she could not supply a prescription prescribing her Codeine she was terminated.

Emily Frein testified by way of deposition stating that she was currently not employed by the respondent but before her currently employment she had worked for the respondent as a complex nurse manager. Ms. Frein testified that she was acquainted with the claimant and was aware of her January 2002 compensable injury. Ms. Frein testified that she at no time ever told the claimant she could not file a workers' compensation claim and that after the claimant was released by her doctor on January 21, 2002, the claimant never indicated to her that she was still having problems and needed to see a doctor. This witness testified that to her knowledge after the claimant was terminated she never called back to the respondent requesting to be seen by a doctor. Ms. Frein testified that the generic name for Flexoril is Cyclobenzaprine. This witness then identified a physician's service group's form that is used by the respondent which reflects that on January 18,

2002, the claimant filled a prescription for Cyclobenzaprine at the cost of \$25.66 to the respondent. See Ms. Frein's deposition Exhibit No. 2. When asked, Ms. Frein testified that Codeine as well as Morphine are a narcotic analgesic. Ms. Frein also testified that plain Tylenol would not show up in a drug screen but that Tylenol with Codeine would show up on a drug screen but not as Morphine. Ms. Frein explained that Tylenol with Codeine would show as Codeine on a drug screen. This witness testified that to her knowledge none of the health nurses for the respondent refused to let the claimant file a claim for workers' compensation due to her injury. Ms. Frein testified that when an employee requests to be seen by a physician they are allowed to do so by the respondent. Ms. Frein testified that normally a nurse will accompany an employee on their trips to the doctor for workers' compensation claims but no one accompanied the claimant when she went to Dr. Cotner because she did not let them know that she was going to see him. Ms. Frein testified that she did not ever tell Dr. Cotner that he could not perform x-rays or diagnostic testing on the claimant. Ms. Frein was asked if she ever had a conversation with the claimant about filling her prescriptions that she received from Dr. Cotner and she responded, "Not to my knowledge." This witness testified that on the note dated January 17, 2002, from Dr. Cotner he did not write anything about physical therapy for the claimant. When asked, Ms. Frein explained that the trapezius is a triangular muscle between the shoulder blades. Ms. Frein testified that to

her knowledge the claimant never requested any further medical treatment after she was released by Dr. Cotner on January 21, 2002.

On cross examination during the deposition, Ms. Frein testified that she was not in the nurse's station all the time and it was not normal that a team member would be talking to her as to their need for a doctor. This witness testified that they could talk to her but she did not stay in the nurse's station all the time. There was a brief discussion of the use of Codeine and Morphine and Ms. Frein testified that Morphine is certainly not something you would see prescribed for a trapezius spasm. Ms. Frein testified that there was no mention of physical therapy on Dr. Cotner's hand written note which the nurse's station received but there is a mention of physical therapy when he dictated his notes.

The medical records set forth that the claimant was seen by Dr. Brian Colter on January 17, 2002, for complaints of a sore throat, nasal drainage, stiff neck where it is noted that she fell Monday at work. Upon examination, Dr. Colter notes that the claimant is positive for trapezius spasm and diagnoses her with an upper respiratory infection and neck pain recommending physician therapy as well as medications. The claimant was released from work on January 17, 2002, to January 18, 2002. There is a second note from Dr. Colter with no date as to her being in his office but stamped received by Tynet on January 21, 2002, which indicates that the claimant may return to full duty with no restrictions on January 21, 2002.

The early medical records indicated that on August 18, 1997, the claimant was seen by Dr. Lee Tackett where it is noted that she is still doing Crank and refuses drug treatment. The claimant was seen one week later by Dr. Kuykendall where it is noted that she has a crick in her neck and that she has had no drugs for one week on examination it is noted that she had needle sticks to her right arm and was assessed with muscle spasm as well as drug addiction.

The medical records set forth that beginning in 1996 following a motor vehicle accident, the claimant has had sporadic but consistent complaints of low back pain and occasional neck pain and neck stiffness. On July 1, 1999, Dr. Kuykendall notes that the claimant has occasional back pain that radiates to her left hip and leg. The claimant was seen at the Ozark Medical Arts Clinic on February 7, 2000, where she is seen for complaints of low back pain which has been hurting off and on for three years with no injury and has been treated for muscle spasms. There is a rather strange note from Dr. David Richter where he sets forth a consultation with the claimant on May 22, 2000, and according to his narrative she offered him \$100 and asked if he would take her off work for one month because she was having company. It is noted that the claimant was being seen for back pain and he had indicated that he would release her from work for one week due to her back symptoms but was concerned enough about the conversation that he made an appointment to visit with the director of his clinic to determine how to handle the situation. Dr. Richter hand writes on his

narrative that he declined her tip and informed her that it was unethical for him to take the money.

The team member health records indicate that on January 14, 2002, the claimant fell on her back and hand while working and again on January 15, 2002, was complaining of pain between her shoulders relating it to her fall the day before. These same health records set forth that on January 17<sup>th</sup> the claimant phoned in sick with personal illness and again on the 18<sup>th</sup> was absent from work due to personal illness (there is upper respiratory infection) but is to return Monday. On January 21 the claimant was seen for neck pain and it is noted that the claimant reports she feels good and denies any problems.

After a review of this complete record, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable fall on January 14, 2002. The respondents accepted as compensable her fall and subsequent injuries to her neck and back but these problems appear to have been temporary and have resolved even in accordance with the claimant's report that she was feeling great and denied any problems on January 21, 2002. The medical history sets forth that this claimant has an ongoing sporadic bought with back problems for which she has been seen and been given treatment. It is not questioned that this claimant temporarily aggravated whatever pre-existing condition she might have in her back and neck but, even according to her own words, these had resolved by January 21, 2002. The physicians who had

seen the claimant had not recommended additional medical treatment in their last notations. The claimant's credibility is greatly in question with her denying under oath that she had reported to her physician and had been treated for crack addiction, not once but twice, as set forth in Dr. Tackett's notes. The claimant had also testified that she did not have time to fill her prescription for Flexoril and that was the justification for her taking the Tylenol with Codeine tablet which her husband had been prescribed. In Emily Frein's deposition there was admitted a document setting forth that the claimant filled her prescription for Cyclobenzaprine (Flexoril) on January 18, 2002, and the bill was sent to the respondent. It is also found that the claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from January 20, 2002, to a date to be determined. There is nothing in this record that would indicate that the claimant was released by her treating physician from work subsequent to January 21, 2002. In fact the claimant had been released to return to limited duty work on January 18, 2002, and released to full duty on January 21, 2002. The claimant has also testified that she is working in exchange for her rent by helping with some cows and looking after some property in the Ozark area.

#### FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 14, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her back, neck and shoulder on January 14, 2002.

4. Medical expenses have been paid to January 21, 2002.

5. The claimant was terminated on January 29, 2002.

6. The claimant is entitled to a compensation rate of \$207.00 for temporary total disability and \$155.00 for permanent partial disability.

7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. See discussion above.

8. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from January 20, 2002, to a date to be determined. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or temporary total disability as a result of her compensable fall of January 14, 2002. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

---

ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE