

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F005005

DEBBIE BEATTY KNAPP, Employee	CLAIMANT
LOWELL HOME HEALTH, Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JANUARY 7, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 8, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 29, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her upper back and shoulder area on April 18, 2000.
4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$394.00 for total disability benefits and \$296.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant's cervical disc herniation is causally related to her compensable injury of April 18, 2000.

2. Medical related to cervical disc herniation.

3. Attorney fee.

The claimant contends she is entitled to additional medical for her cervical disc herniation which is causally related to her April 18, 2000 injury.

The respondents contend the claimant has been paid appropriate benefits. Dr. Knox has recently recommended physical therapy based upon his conclusion that the claimant has suffered a cervical herniation related to her compensable injury. Respondents contend that there is no evidence that the diagnosed herniation is related to the original injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 29, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that her cervical disc herniation is causally related to her compensable injury of April 18, 2000.

FACTUAL BACKGROUND

The claimant was a very nice 41-year-old woman who graduated from college. The claimant suffered an admittedly compensable injury to her upper back and shoulder area

on April 18, 2000 while lifting a patient. After one visit with Dr. Moffitt the claimant came under the care of various physicians for her physical injuries. These included Dr. Kendrick, Dr. Park, Dr. Raben, Dr. Whitelaw, Dr. Walker, Dr. Arnold, Dr. Knox, and physicians at St. John's in Springfield, Missouri. Most of claimant's complaints have centered on her thoracic and shoulder area. In fact, claimant underwent a surgical procedure on her shoulder which was performed by Dr. Park in September 2000. The medical records also indicate that claimant complained of pain in her neck following the injury of April 18, 2000. Dr. Kendrick's report of August 31, 2000 indicates that x-rays of claimant's cervical spine were normal with the exception of some degenerative changes. Dr. Kendrick subsequently ordered an MRI scan of the claimant's cervical spine which was read as unremarkable other than a slight reversal of the cervical spine curvature which might have been related to muscle spasm. Following the claimant's MRI scan Dr. Kendrick in a report dated January 22, 2001 stated that claimant had reached maximum medical improvement with respect to her cervical spine and indicated that claimant had no permanent disability for that condition.

Following that report from Dr. Kendrick claimant continued to receive treatment and evaluations by various physicians for her physical condition. Eventually, claimant was evaluated by Dr. Luke Knox, neurosurgeon, who ordered an MRI scan of the claimant's cervical spine in October 2003. According to a letter from Dr. Knox dated August 12, 2004, that MRI scan reveals a disc herniation at the C5-6 level.

Claimant has filed this claim contending that the cervical disc herniation is causally related to her compensable injury of April 18, 2000. She seeks payment of medical treatment related to the disc herniation as well as a controverted attorney fee.

ADJUDICATION

When an injury is shown to have arisen out of and in the course of employment, an

employer is responsible for any natural consequence that flows from that injury. The basic test is whether there is a causal connection between the primary injury and a physical condition. *Wackenhut Corporation v. Jones*, 73 Ark. App. 158, 40 S.W. 3d 333 (2001).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her cervical disc herniation is causally related to the compensable injury of April 18, 2000.

As previously noted, claimant's cervical disc herniation was discovered following an MRI scan ordered by Dr. Knox. In a report dated August 12, 2004, Dr. Knox stated that claimant had a disc herniation at the C5-6 level which appeared to be the result of her injury which occurred on May 18, 2000. This letter report of Dr. Knox might support a finding of a causal connection were it not for Dr. Knox's testimony at his deposition.

The respondent took the deposition of Dr. Knox on October 29, 2004. At that deposition, Dr. Knox was provided with a copy of the claimant's cervical MRI scan from December 2000. After comparing the December 2000 MRI scan with the second scan of October 2003, Dr. Knox indicated that the herniation was not present in December 2000 and there is no indication that the disc would subsequently become herniated.

Q. All right. Now, let me ask you to look at the December 2000 MRI.

A. Okay.

Q. And to compare the two for me, if you would. And you - - you know what I'm looking for. If you see the same things on that one that you saw on the one that you later ordered.

A. Yes. This - - I - - I do not see that disc herniation on the December 2000 MRI scan.

Q. So there was a change somewhere in between the two.

A. Yes.

Q. Okay. Is there anything in the December 2000 MRI that suggests to you that that was perhaps an incipient problem that looks like the beginning of that problem that you later saw in -- in October of 2003?

A. There were some mild disc space changes.

Q. Anything to suggest, though, that it would eventually result in some kind of a herniation?

A. No.

Q. Okay.

A. Not that I could state.

Based upon his comparison of the December 2000 cervical MRI scan to the scan performed in October 2003, Dr. Knox testified that it would be speculation to say that claimant's injury in April 2000 led to the herniation which was present on the MRI scan of October 2003.

Q. All right. So, really, it's speculation to say that the injury in April could've eventually led to what you saw in October 2003. Is that fair to say?

A. Yes.

In summary, while the MRI of the claimant's cervical spine in October 2003 did reveal a herniated disc at the C5-6 level, the MRI scan of claimant's cervical spine taken in December 2000 did not reveal a herniation. Furthermore, according to Dr. Knox's testimony, there are no findings on the December 2000 MRI scan which would suggest that claimant's condition would result in an eventual disc herniation. Based upon those findings it was Dr. Knox's opinion that it would be speculative to say that the April 2000 injury resulted in the herniated disc present in October 2003. Based upon this evidence and specifically the opinion of Dr. Knox which I find to be credible and entitled to great weight, I find that claimant has failed to prove by a preponderance of the evidence that a

causal connection exists between her cervical disc herniation and her compensable injury of April 18, 2000.

ORDER

Claimant has failed to prove by a preponderance of the evidence that her cervical disc herniation is causally related to her April 18, 2000 compensable injury. Therefore, her claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE