

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F404787

SHEILA BLAS-LEON, Employee	CLAIMANT
PERSONNEL CONSULTANTS, Employer	RESPONDENT
ST. PAUL TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 9, 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 ROBERT MONTGOMERY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 19, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 16, 2005, 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 on February 10, 2004.

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

1. Compensability of injury to claimant's low back on February 10, 2004.
2. Temporary total disability benefits.
3. Medical.
4. Attorney fee.

At the time of the hearing the claimant withdrew and reserved the issue of her entitlement to temporary total disability benefits.

The claimant contends she was injured on February 10, 2004 when she injured her lower back due to lifting too many large patients in one shift. She contends she is entitled to reasonable and necessary medical benefits.

The respondents contend the claimant did not suffer a compensable 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 witnesses and to observe their 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 February 16, 2005, 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 she suffered a compensable injury to her low back while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 43-year-old woman who went to work for the respondent, a temporary employment agency, in February 2004. Claimant's first assignment for the respondent was to work at Concordia, a nursing home facility, on February 10, 2004. Claimant testified that she worked the 3:00 p.m. to 11:00 p.m. shift and was responsible for taking care of 14 patients. Claimant's job responsibilities included making sure the individuals were fed and cleaned, and the taking of vital signs.

Claimant testified that at some point during her shift she noticed her back was hurting and as she started to lift one particular patient "I felt my back really, like, give." Claimant testified that after this incident her back was hurting and that she took a 15-

minute break to sit in her car. Claimant testified that she returned to her job and completed the remainder of her shift which lasted an additional two hours.

Claimant subsequently received two other assignments from the respondent, one on February 12, 2004 at Holland Nursing Home and the second on February 15, 2004 at Holland Nursing Home. Claimant testified that at some point she informed Lisa, her supervisor at the respondent, that she had injured her back and could no longer work. As a result, claimant received no additional assignments subsequent to February 15, 2004.

On February 24, 2004 the claimant sought medical treatment from a chiropractic physician, Dr. Estes. Claimant received treatment from Dr. Estes on a number of occasions before she sought medical treatment from Dr. Conover and his nurse practitioner. As a result of that treatment claimant underwent an MRI scan on May 17, 2004 which revealed some bulging and degenerative disc disease. Since that time the claimant has been evaluated on several occasions with her most recent treatment coming from Dr. Moon beginning in February 2005.

Claimant has filed this claim contending that she suffered a compensable injury to her low back while working for respondent on February 10, 2004. She seeks payment of medical treatment provided in connection with her compensable injury.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her low back while working for respondent on February 10, 2004. Claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;

(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.

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 she suffered a compensable injury to her back.

First, I note that by claimant's own admission she did not report a work-related injury to the respondent on the date it occurred. When asked why she did not report the injury on that day claimant indicated that she did not know how badly she had been injured. However, according to claimant's testimony her injury at that time was severe enough that she was barely able to drive and was crying.

Q. And after you finished the shift, did you report this injury?

A. I didn't. I thought - - I didn't know how badly I had hurt my back. When I got - - I was barely able to get in the car. I was crying by the time I left to go home that night. I didn't even know if I was going to be able to drive myself home.

Claimant also admitted that she was not sure when she first reported the injury to the respondent, whether it occurred after February 10 on February 11, or whether it was after her work assignment on February 12. In connection with claimant's failure to report an injury, I also note that claimant initially testified that when she was hired by the respondent she was not provided any information regarding the reporting of injuries. On cross-examination claimant was shown several documents, including a form dealing with

work-related injuries and acknowledged that her signature was on those documents.

It is also important to note that claimant did not seek any medical treatment for her back injury until February 24, 2004, some two weeks later. Dr. Estes' notes indicate that claimant was making complaints of low back and neck pain but do not contain a history of any injury at work. Dr. Estes' reports indicate that claimant received treatment on 13 occasions between February 24, 2004 and March 29, 2004. Claimant paid for Dr. Estes' treatment through a group health insurance policy.

Subsequent to the medical treatment from Dr. Estes, claimant sought medical treatment from Dr. Conover and his nurse practitioner. Claimant was also seen at St. Mary's on June 1, 2004 for complaints involving her foot and ankle following a fall. At the hearing claimant attributed her fall to her back condition; however, a review of the medical report does not mention any complaints of back pain or a history of the fall having been caused by claimant's back condition.

Claimant also sought medical treatment on July 21, 2004 from the Gravette Medical Center. That medical report does indicate that claimant has had some back pain since February 2004 but it does not attribute that back pain to claimant's work.

The first mention of an injury at work while lifting a patient is not contained in the medical records until Dr. Conover's report of October 5, 2004, almost eight months after claimant's alleged injury.

In summary, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by the respondent. First, claimant admittedly did not report an injury to the respondent on the day it occurred. While claimant testified that she did not know how badly she was injured, claimant also testified that her back pain was so great that she was crying and had difficulty getting into her car. Furthermore, while claimant initially denied receiving information regarding the reporting of injuries, claimant later acknowledged that

her signature was on a document which had been provided to her by the respondent regarding the reporting of injuries. Claimant did not seek any medical treatment for her alleged injury until February 24, 2004, two weeks later. Furthermore, the medical reports from Dr. Estes did not contain a history of any work-related injury. In fact, the medical reports do not contain a history of a work-related injury caused by lifting a patient until October 5, 2004, almost eight months after February 10, 2004. Given this evidence, I find that claimant has failed to meet her burden of proof.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her back while employed by the respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE