

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F411634

WANDA BRADLEY, Employee	CLAIMANT
WASHINGTON REGIONAL MEDICAL CENTER, Employer	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED MAY 5, 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 TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On May 5, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 26, 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 existed between the parties on June 17, 2004.
3. The claimant was earning an average weekly wage of \$324.00 which would entitle her to compensation at the weekly rate of \$216.00 for total disability benefits.

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

1. Compensability of injury to claimant's back on June 17, 2004.
2. Temporary total disability benefits.
3. Medical benefits.
4. Attorney fee.

Prior to the hearing the claimant withdrew as an issue her entitlement to temporary total disability benefits.

The claimant contends she sustained a compensable injury on or about June 17, 2004 when she bent over to empty a wash bucket. She has been seen by Dr. Steven Wilson and Dr. Gary Moffitt.

The respondents deny that claimant sustained an accidental injury to her back on June 17, 2004, or on any other date for that matter. There are no objective measurable findings to substantiate the existence of an injury. The medical proof will show that the claimant suffers from moderate degenerative disc disease including but not limited to anterior spurring throughout the lumbar spine. Respondent contends the claimant cannot prove by a preponderance of the credible evidence that she sustained an accidental injury at the respondent's place of business at any point in time subsequent to her date of hire on May 12, 2004.

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 January 26, 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 back while working for the respondent.

FACTUAL BACKGROUND

The claimant is a 56-year-old woman with a sixth grade education who has primarily been employed as a housekeeper. Claimant became employed by the respondent as a housekeeper on May 12, 2004. Claimant testified that on June 17, 2004, she was in the process of pouring a bucket of mop water down a drain in the janitor's closet when she felt a sharp pain in her back. Claimant stayed in the closet for a period of time before resuming her work duties. Claimant finished her shift, clocked out, and went home. Claimant was not scheduled to work on June 18 and she testified that she spent the day at home taking several baths and applying medication to her back. On Saturday, June 19, the claimant was scheduled to work but did not go to work; instead, claimant sought medical treatment at the Northwest Family Clinic. Claimant was evaluated at the clinic by Lucy Jones, a nurse practitioner, who diagnosed claimant as suffering from an acute thoracic strain. Claimant was taken off work three days and given medication.

When claimant reported the incident to the respondent claimant was referred to the Lowell Medical Clinic where she was evaluated by Max Beasley, a nurse practitioner, on June 23, 2004. Beasley diagnosed claimant's condition as a lumbar strain, prescribed medication, exercises, and work restrictions. Claimant followed up one week later with an evaluation by Dr. Moffitt on June 30, 2004. Dr. Moffitt's report indicates that claimant's condition was some better, but that she still suffered from back pain. Dr. Moffitt stated that he believed the claimant's condition was muscular in nature and recommended physical therapy for two weeks. Dr. Moffitt also indicated that claimant could continue working with restrictions. Claimant did not seek any medical treatment for her back from July 8, 2004 through October 14, 2004. When claimant sought additional medical treatment in October an MRI scan was performed which revealed mild to moderate multi-level degenerative disc changes. The scan also revealed a small disc protrusion at the L4-5 level.

Claimant has filed this claim contending that she suffered a compensable injury to

her back on June 17, 2004, and requesting payment for medical treatment.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her back while emptying a bucket of mop water on the night of June 17, 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 while employed by the respondent. Specifically, I find that claimant has failed to prove by a preponderance of the evidence that she suffered an injury which arose out of and in the course of her employment with the respondent.

My finding that claimant failed to meet her burden of proof is based upon several factors. First, as previously noted, claimant testified that she suffered the injury to her back while lifting a bucket of mop water on the night of June 17, 2004. While claimant

testified that she admitted she knew she was to report all work-related injuries, the claimant did not report a work-related injury to her supervisor on the night of June 17. Furthermore, claimant did not report a work-related injury to her supervisor or anyone with respondent the next day, June 18. Claimant did not report a work-related injury even though according to her own testimony she was in a great deal of pain which she treated with multiple baths and the application of Icy Hot.

Even on June 19, two days after the alleged injury, claimant still did not report a work-related injury to the respondent, but instead sought medical treatment on her own from a nurse practitioner. The notes from the nurse practitioner indicate that claimant gave a history of her pain having begun at work. However, despite claimant's current testimony that the back pain was a direct result of a specific incident emptying a bucket of mop water, the nurse's note of June 19, 2004, states that the claimant "denies specific injury." The nurse's note does not reflect a history of claimant's back pain having begun while emptying a bucket of mop water.

Finally, I believe it is also important to note that the medical records indicate that claimant had some prior back problems for which she sought medical treatment which resulted from incidents at a former employer. While the medical records indicate that claimant did not seek any additional medical treatment for her back problem subsequent to August 2000, the testimony of the witnesses, including that of the claimant, indicates that claimant nevertheless continued to suffer from back problems. Testifying on behalf of the respondent was Kathy French, supervisor of environmental services. French testified that shortly after the claimant began working for the respondent she asked to wear Birkenstock shoes to work because her back hurt and the shoes helped her. French testified that on more than one occasion while working claimant would mention her back hurting. French also testified that the cardiac rehabilitation department where claimant worked required a special solution containing a ph neutralizer in the mop water. French

testified that this solution is kept in a locked area with her and another individual having the only keys. French testified that on the night of June 17, 2004 as she was getting the special solution for the claimant the claimant indicated at that time that her back was hurting and that she thought she had pulled a muscle. This was before the claimant emptied the bucket of mop water.

Claimant initially testified that she remembered asking for permission to wear the Birkenstock shoes because her back hurt. However, claimant subsequently indicated that she requested to wear the shoes because of foot pain, not back pain. On the other hand, claimant indicated that she would not deny mentioning complaints of back pain the first night she worked and admitted that she might have mentioned her back hurting for most nights for the entire six weeks she worked prior to June 17, 2004.

In summary, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her back which arose out of and in the course of her employment with the respondent. Here, claimant contends that she suffered a compensable injury to her back while emptying a bucket of mop water on the night of June 17, 2004. Despite claimant's admission that she knew she was to report work-related injuries, claimant did not report a work-related injury at that time. Furthermore, despite claimant's testimony that she was in a great deal of pain for which she took multiple baths and applied Icy Hot, claimant still did not report a work-related injury on June 18, the day after the alleged injury. Claimant did seek medical treatment on June 19, 2004, but still did not report a work-related injury. Furthermore, the nurse's note of June 19 indicates that while claimant's back pain began at work she denied having suffered a specific injury. Finally, the medical records indicate that claimant has had some history of prior back problems. While claimant has not sought medical treatment for those back problems, the evidence also indicates that claimant has made numerous complaints of continued back pain prior to June 17, 2004. In fact, claimant's supervisor, Kathy French, testified that

claimant was making complaints of back pain shortly before she began mopping on June 17, 2004.

Given all of this evidence, I simply 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 while employed by the respondent.

ORDER

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

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE