

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F412728

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| DEBBRAE CAPPS, EMPLOYEE | CLAIMANT |
| MEDICALODGES, INC. | RESPONDENT |
| TRAVELERS INSURANCE COMPANY, CARRIER | RESPONDENT |

OPINION FILED SEPTEMBER 26, 2005

Hearing held June 30, 2005, before the HONORABLE DALE DOUTHIT, Administrative Law Judge, at Texarkana, Miller County, Arkansas.

Claimant represented by HONORABLE NELSON V. SHAW, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE ROBERT MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on June 30, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing telephone conference was conducted on March 30, 2005, and a prehearing order was filed on that same day. At the hearing the parties announced that the stipulations, issues and their respective contentions were properly set out in the prehearing order, subject to additional stipulations, contentions and issues agreed to at

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the hearing. A copy of the prehearing order was introduced into evidence as Commission Exhibit "1" and made a part of the record, without objection.

At the hearing the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The claimant's average weekly wage at the time of the alleged compensable injury was \$484.30 per week.
- 3) That the claimant was terminated from her employment on November 30, 2004, and that the claimant has alleged the compensable injury occurred on November 30, 2004.

By agreement of the parties, the primary issue concerns compensability. If overcome, claimant's entitlement to associated benefits and attorney fees must be addressed.

At the hearing, claimant contended she suffered a compensable injury to her right upper extremity on November 30, 2004, while cleaning out a cabinet at Medicalodge, Inc., in Texarkana, Arkansas. Claimant further contended that as a result of the compensable injury she is entitled to TTD benefits from November 30, 2004 through February 14, 2005, associated medical benefits, and attorney fees.

Respondents contended at the hearing the claimant did not sustain a compensable injury while in their employ, and that the claim is controverted in its entirety. Further, the respondents contended the claimant had been terminated prior to

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the alleged injury and, therefore, it was not a compensable injury.

The only witness called by the claimant's attorney, was the claimant, Debrae Capps. The respondents called Kelly Parks, executive director of Medicalodge Progressive Care and Rehabilitation. The record is composed of the transcript of the June 30, 2005 hearing containing two medical records exhibits submitted by the claimant, and admitted as Claimant's Exhibits "1" and "2".

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 claimant 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 AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right upper extremity on November 30, 2004.
- 4) The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits, to be paid by respondents, from December 1, 2004 through February 14, 2005.
- 5) The claimant has proven by a preponderance of the evidence that respondents are responsible for all medical treatment related to

claimant's right upper extremity injury of November 30, 2004.

6) The claimant is entitled to the maximum attorney's fee allowed by Arkansas Law consistent with the findings herein.

7) The respondents have controverted this claim in its entirety.

DISCUSSION

The claimant was a social service director and admissions coordinator for the respondent-employer. Approximately eleven to fourteen days prior to the alleged compensable injury, the claimant was given notice of her termination, but allowed to work through the end of November, 2004. Ms. Kelly Parks, the claimant's supervisor, testified as follows regarding the claimant's termination:

A. There were a few issues that we have been working on that wasn't showing much improvement and my supervisor and I had been speaking in detail about her performance and we had both come to the conclusion that it was time to terminate. When I called Debbrae in my office that day I explained to her that we were going to be terminating her employment. I did - it was an emotional moment for both of us because it wasn't anything personal, strictly professional, and I gave her the option, I told her, or you can walk out of here with dignity and tell the rest of the staff that you are resigning your position and no one

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has to actually know that you are being terminated, that the 30th will be your last day, but understand that on the 30th it will still be a termination, not a resignation, and we both agreed to that.

Q. And then do you recall offhand when that was that you were talking with Ms. Capps?

A. I thought it was two weeks prior to.

Q. I take it that she continued to work up until the 30th?

A. She did. Yes, sir.

Q. And then on the 30th, do you recall if she was there that day?

A. She was there. Yes, sir. (T. pgs 32 & 33 - lines 15-25 & 1-14)

It is undisputed that the claimant was in the respondents' employ on November 30, 2004. The claimant testified as follows regarding the alleged compensable injury on November 30, 2004:

Q. You did go to work on November 30, 2004, did you not?

A. Yes.

Q. What did you do once you got to work at Medicalodge that day?

A. I clocked in and went back to my office and made coffee. We normally have department head at 9:00 o'clock but I missed that because I was giving someone a tour of the facility. I then went back to my office

and somewhere around 9:30, 10:00 o'clock, I was cleaning out the bookshelf, refiling stuff in the file cabinet, and the file cabinet fell over, a vase fell off and shattered, and that's when the vase cut my hand.

Q. Were you on the clock when that happened?

A. Yes.

Q. And when you say you were giving someone a tour, what do you mean by that.

A. A family came in and wanted to see the facility, wanted to see what we offered, you know, which was part of my job.

Q. Were you doing anything on the morning of November 30th that was not a part of your job?

A. No.

Q. Who was your supervisor at that time?

A. Kelly Park.

Q. What time of morning did this injury occur? Just approximately.

A. Approximately 10:00, a little before 10:00 o'clock that morning.

Q. And what was the precipitating factor that caused the injury to your hand?

A. When the file cabinet fell over and the vase shattered. I think it hit the corner of the file cabinet and I had my hands on the file cabinet when it

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started over because I was trying to catch it from falling. Then the glass shattered and just instantly - that instant, I don't know which happened first.

Q. And the shattering of the glass caused what?

A. The severing of the tendon in my thumb.
(T. pgs. 10 & 11, lines 11-25 & 1-25)

I find the claimant testified credibly about the November 30, 2004 incident, and that her filing was related to her employment.

After the incident, the claimant was taken to the Wadley Regional Medical Center Emergency Room. (CX 1, p. 2) Due to the right thumb tendon laceration, Dr. Carey Alkire performed surgery to repair the extensor pollicis brevis on November 30, 2004. (CX 1, pg. 9) Dr. Alkire conducted follow-up examinations of the claimant's right upper extremity on 12/14/04, 1/13/05 and 2/14/05. (CX 2, pg. 2) On 2/14/05, Dr. Alkire released the claimant to full duty. (CX 2, pg. 1).

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A.C.A. §11-9-102(4)(A)(ii) must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of the employment;
2. Proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which requires medical services or resulted in disability or death;

3. Medical evidence supported by objective findings, as defined in A.C.A. §11-9-102(16), establishing the injury; and
4. Proof by a preponderance of the evidence that the injury was caused by a specific incident and is identified by time and place of occurrence.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to establish compensability of the claim, and compensation must be denied. **C. Mikel v. Engineered Specialities Plastics**, 56 Ark. App. 126, 938 S.W. 2d 876 (1997)

In the case at hand, the respondents contended that since the claimant had been terminated prior to the alleged injury, that the injury of November 30, 2004 could not be considered compensable. I disagree. In this case, the respondents' witness testified she allowed the claimant to work through November 30, 2004, and that it was agreed November 30, 2004 would be the claimant's last full day to work. An employee's last day of work has no more significance than any other day of work when addressing compensability. It is similar to an employee announcing retirement at the end of the year. Would any injuries between the announcement and the last day worked be deemed non-compensable simply because of the announcement? I think not, and find that contention without merit.

The respondents also argued that since the claimant was cleaning out her office

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in preparation to leave, that she was not performing services within the scope of her employment. As stated above, I find the claimant testified credibly regarding the incident. She testified she was filing things in the file cabinet when it tilted, causing a vase to shatter and severing a tendon in her thumb. I find the work the claimant was doing in her office on November 30, 2004 to be within the scope of her employment.

I find the claimant has proven every element of compensability by a preponderance of the evidence, and find the respondents are responsible for all medical treatment to the claimant's right upper extremity related to the November 30, 2004 compensable injury.

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during her healing period, or until she returns to work, which ever occurs first. A.C.A. §11-9-521(a). **Wheeler Construction Co. v. Armstrong**, 73 Ark. App. 146, 41 SW. 3d 822 (2001). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of her injury will permit, and there is nothing further in the way of treatment that will improve her condition. Whether the healing period has ended is a question of fact. The claimant has contended she is entitled to TTD benefits from 12/1/04 through 2/14/05. I find that based upon claimant's credible testimony, and claimant's Exhibit No. "2"; that she is entitled to TTD benefits from 12/1/04 through 2/14/05, plus a maximum attorney's

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fee.

AWARD

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right upper extremity on November 30, 2004. That she is entitled to all associated medical benefits to be paid by the respondents, TTD benefits from 12/1/04 through 2/14/05, plus attorney fees. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusion of law set forth herein.

The claimant's attorney, Mr. Nelson V. Shaw, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to A.C.A. §11-9-715.

All awarded sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to A.C.A. §11-9-809.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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