

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F405681

TERRI L. CLARK, EMPLOYEE

CLAIMANT

**STANT MANUFACTURING INC.,
EMPLOYER**

RESPONDENT

**INSURANCE CO. OF STATE OF PENNSYLVANIA,
GALLAGHER BASSETT SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED MARCH 10, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on December 10, 2004, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

A hearing was held on December 10, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer relationship on December 5, 2003. It was further stipulated that the claimant was earning an average weekly wage of \$302.00.

Claimant contends that she sustained compensable back and carpal tunnel injuries on December 5, 2003, while at work. She further contends that she remains

symptomatic, that additional medical treatment is reasonable and necessary, and that she is entitled to indemnity benefits beyond those which were paid, if any. Claimant requests that the issue of permanency be held in abeyance.

Respondents controvert the claim in its entirety, contending that any carpal tunnel conditions from which claimant suffers were pre-existing and were not sustained as a result of her employment with the respondent on December 5, 2003. In regard to the claimant's alleged back injury, respondents contend that no objective, measurable findings exist to support a back claim and that the first notice the employer had that the claimant was alleging a back injury from December 2003 was in May of 2004. Respondents, therefore, contend that in the event the claim is found to be compensable, they should not be responsible for benefits prior to May 2004, pursuant to Ark. Code Ann. § 11-9-701.

STATEMENT OF THE CASE

Claimant is a forty-four-year-old female who testified that she had worked for respondent-employer for nineteen years at the time of her alleged injury on December 5, 2003. She testified that the last day she worked there was December 12, 2003. It is undisputed that claimant had a previous carpal tunnel injury for which some benefits had been paid by a previous carrier for respondent-employer.

Claimant testified that during the morning of December 5, 2003, she injured her back at work while she was attempting to lift a thirty-eight-pound box of gas caps

from a flat scale that was slightly lower than tabletop-height, down to a pallet-like “skid.” Claimant testified that a full skid holds about eighteen to twenty boxes and that, at the time of her injury, she had put about twelve or thirteen boxes on that particular skid. She testified that when she hurt herself, she felt a “pinching in the lower part of my back.” Claimant testified that she reported the injury to Janet Johnson, secretary for Human Resources, and that Ms. Johnson is the person to whom she was supposed to report an injury. Claimant admitted that she did not, at any time, report the alleged injury to any of her supervisors.

Claimant testified that she made it clear to Ms. Johnson that she had hurt herself on the job, but that when she asked Ms. Johnson if she needed to fill out a workers’ compensation form, Ms. Johnson said, “No, just do a medical,” indicating that claimant’s regular medical insurance would be the proper way to handle it. Ms. Johnson testified that she does not remember claimant indicating that it was work-related.

Claimant admitted that she had filed previous workers’ compensation claims during her nineteen years of work for respondent-employer, including the previous claim for her carpal tunnel syndrome. Claimant testified that she, therefore, knew the proper procedure for filing a workers’ compensation claim. However, she claims that she did not tell Ms. Johnson how the injury happened or what she was actually doing at the time of alleged injury because Ms. Johnson “wasn’t concerned.”

Claimant testified, and the medical evidence is clear, that claimant had suffered from carpal tunnel problems prior to December 5, 2003. Claimant testified that on December 5, 2003, she was still having carpal tunnel problems that had begun to worsen. Claimant testified that after she had been put on light duty by Dr. Phillips in June of 2002 of no lifting over ten pounds for her carpal tunnel condition, she was moved to the manual job of assembling gas caps, which is what she was doing on December 5, 2003, when she allegedly sustained the back injury. She testified that this job also aggravated her carpal tunnel, as it required more intense use of her wrists.

Claimant had previously treated with Dr. Chakales for her carpal tunnel problem. Medical records reflect that claimant first went to see Dr. Chakales for her *back* on December 10, 2003, five days after her alleged back injury. His notes of December 10, 2003, indicate that he had not seen claimant for approximately one year at that time. Claimant testified that she told Dr. Chakales on December 10th that she had injured her back at work in a lifting incident. However, Dr. Chakales's notes make no reference to a lifting incident or any work-related injury.

Claimant testified that Dr. Chakales ordered therapy for her back for two days and then referred her to Dr. Phillips because claimant could not handle working, due to the pain. Claimant chose not to have steroid injections because she has diabetes. Claimant testified that Dr. Phillips took her off work and that she continued physical

therapy for about six to eight weeks. Dr. Phillips's notes reflect no mention of a lifting incident or any work-related injury at all. At her third visit with Dr. Phillips, however, on January 5, 2004, an "Attending Physician's Statement," signed by Dr. Phillips, states that claimant's diagnosis and concurrent conditions were "chronic back pain, diabetes mellitus," and when asked if the condition is due to injury or sickness arising out of the patient's employment, "No" is checked. There is a handwritten note halfway down on the side of the form that states, "error - accident happened 12-10-03." Still, however, no mention is made of whether that was a work-related "accident," or exactly what type of "accident" it was that occurred on December 10, 2003, rather than December 5th, as claimant has herein alleged.

Claimant testified that she saw Dr. Phillips on December 15, 2003, December 30, 2003, and January 5, 2004; she then returned for a regularly-scheduled appointment with Dr. Chakales on January 7, 2004. She testified that workers' compensation did not pay for any of these doctor visits or medical treatment. Claimant testified that she had missed two to three weeks of work due to her carpal tunnel problem and that respondents (through a previous carrier) had paid some benefits and medical bills while she was off work for that injury.

Claimant testified that Dr. Chakales referred her to Dr. Coburn Howell on March 17, 2004, for nerve conduction testing that has also not been paid. Dr. Chakales's notes of July 9, 2004, state, "[U]ntil her claim is decided, there's really

nothing I can do for her. I've given her some Celebrex and Darvocet today.”

Claimant testified that Dr. Chakales was considering surgery.

Claimant testified that Dr. Chakales released her to return to work on light duty on September 23, 2004, but that she had been terminated by respondent-employer on June 18, 2004, without her knowledge. Claimant testified that she had been, at one time, a licensed cosmetologist and that she has recently reinstated her license in order to try to get back into that field. She maintains that cosmetology work would be lighter duty than that with respondent-employer.

Claimant testified that she had never hurt her back before December 5, 2003, although she did admit that she had seen Dr. Phillips in the past for “back strain” and was taken off work for a couple of days. Claimant testified, however, that this was due to “female problems.” Claimant further admitted that she had also seen Dr. Verma, a neurologist, in the past for a “lumbar strain and back pain,” and was put on an absence from work under the Family Medical Leave Act (FMLA), as it was not a work-related condition. Claimant admits that in 1994 she had some therapy for her neck and shoulders, but not her back. Claimant contends that the therapy for her back ordered by Drs. Chakales and Phillips has helped some but that she still has to take medication daily.

Claimant testified that in regard to her alleged back injury of December 5, 2003, she initially filed it on her group health insurance, which paid in the beginning.

However, she testified that later, when she was ready to have surgery, her group health insurance notified her that it was not going to pay because the claim should have been a workers' compensation claim. Claimant contends that she has tried to pay her medical bills herself but that she was unable to, and they have not been paid.

Claimant admitted that she collected short-term disability benefits through her health insurance for six months, from January 2004 through June 2004. She testified that she filled out an FMLA and, when that ran out, it automatically switched to short-term disability. For the paperwork claimant filled out, the records reflect that she noted "12/10/03" as the accident date and where it asks, "Were you at work," claimant wrote "Privacy Act. Has not been determined."

Claimant admits that she never went to Kelly Massey, the Human Resources Manager, to let him know that she needed to file a workers' compensation claim, and that Ms. Johnson had advised her not to, until May of 2004. Mr. Massey testified that he asked her why she had not come to him to report the injury. He testified:

I asked her why she didn't report it, and that's when she stated to me that Janet Johnson had told her that she couldn't report it, that she needed to put it on her insurance. And, frankly, at that point I told her I did not believe her and I knew that she was well aware of our procedures. And I told her that if Janet had told her that, I was certain that she [claimant] would have come to my office because she'd done that on several occasions before when she had issues."

Claimant admitted that it was not until after her short-term disability and health insurance medical benefits ran out and she was denied unemployment benefits, that she then decided to file a workers' compensation claim, in May of 2004.

FINDING OF FACT

Claimant has failed to prove by a preponderance of the credible evidence that she sustained any compensable injury arising out of and during the course and scope of her employment on December 5, 2003, or that any work-related injury she may have sustained was the major cause of her condition.

DISCUSSION

In order to prove compensability of a claim, a claimant must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) the injury was a major cause of the disability or need for treatment; and (4) the injury must be established by medical evidence supported by objective findings. *See Ark Code Ann. § 11-9-102(4)(A)(ii)(a) and 11-9-102(4)(E)(ii); West v. Arkansas Electric Cooperative Corp.*, CA 03-1450 (September 15, 2004); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). In addition to satisfying the "major cause" requirement, however, a claimant must also prove a causal connection between his employment and the injury. *Id.*

Causation remains an essential element to be proven by a claimant in order to establish a claim of compensability.

Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(I). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*,

337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra*; *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, no mention is made in any medical record in evidence of any alleged work-related incident. No objective medical findings exist to establish that a work-related back injury or carpal tunnel injury, or aggravation of same, occurred on December 5, 2003. Further, claimant admittedly never reported an alleged work-related injury to her employer until May of 2004, after all her group health insurance benefits had been exhausted and her attempt for unemployment benefits had been denied. Claimant's failure to timely report her alleged injury, coupled with the paperwork she filled out along the way, stating that it was *not* a work-related injury, but rather noting "Privacy Act," as well as the void of any mention of a work-related injury in her medical reports, all constrain her credibility, in this examiner's opinion.

In short, claimant has simply failed to prove by a preponderance of the credible evidence that she sustained any compensable injury on December 5, 2003, or that any injury she did sustain was the major cause of her need for treatment.

For all of the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge