

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F203933

CLARA DOTSON, EMPLOYEE

CLAIMANT

ST. VINCENT HEALTH SERVICE, INC., EMPLOYER

RESPONDENT

**ALTERNATIVE INSURANCE MANAGEMENT
SERVICES, CARRIER**

RESPONDENT

OPINION FILED OCTOBER 25, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on July 27, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on March 20, 2002 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$215.00, in the event this claim is found to be compensable.

The claimant contends she injured her back on March 20, 2002. She seeks payment of medical expenses and attorney's fees.

The respondents contend the claimant did not suffer a compensable injury pursuant to Ark. Code Ann. §11-9-102(4)(A)(i).

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant, her supervisor, Robert Woods, and Mr. Wood's supervisor, Steve Elliott. The respondents' objection to some of the testimony was overruled. Although some of the witnesses were not identified in the claimant's initial answers to interrogatories, they were disclosed either at the claimant's deposition or through amended answers to interrogatories. Additionally, the claimant's testimony about her conversations with supervisory personnel was allowed. Respondents' request to leave the case open for Linda Wilson's deposition was also overruled as unnecessary. The parties are reminded to complete discovery prior to requesting a prehearing conference to avoid these problems in the future.

The claimant, age 53 (D.O.B. February 15, 1952) has a high school education. She has a sporadic work history drawing AFDC from 1976 to 1986 and farm work and housecleaning from 1986 to 1996. She began work for the respondent-employer in 2000 as a housekeeper. Her health history includes a spinal cyst, diabetes, seizures and high blood pressure. Her family physician is Dr. Carter.

On March 20, 2002 at approximately 10:40 or 11:00 A.M., the claimant injured her back while cleaning a room and folding up a mattress. She reported the incident to her supervisor, Robert

Woods but he didn't offer her medical treatment or fill out an accident report.

The claimant went to St. Vincent's Family Practice Clinic where she saw Drs. Stout and Etheridge before going to the emergency room at UAMS and seeing Dr. Addada.

Steve Elliott and Linda Cole, supervisors, called the claimant and asked her to complete some paperwork and discuss a light duty program. She reported to the laundry department, but a suitable job was not offered to her. She was called again by another supervisor, Marlene Campbell, of the Human Resource Department, to fill out paperwork, which was accomplished. The claimant has not returned to work.

On cross-examination, counsel emphasized that reports dated January 12, 2001 from Dr. Stout and March 19, 2002 from Dr. Perry show the claimant suffered from back pain prior to any incident at work. Counsel also referred to Dr. Ebel's report of March 21, 2002 indicating a two week history of back pain, with no history of a specific injury. The claimant also saw Dr. Simpson on March 29, 2002 for back pain and denied any trauma.

Robert Woods and Linda Code were the claimant's supervisors. Mr. Woods testified the claimant missed time from work due to her high blood pressure and diabetes, but he does not remember any report of a back injury. He recalled an incident when the claimant passed out because of high blood pressure and was taken to the ER in a wheelchair. Mr. Elliott was informed of the incident.

Mr. Woods also testified that it was the employer's policy that accident reports are completed by a security officer and the company doctor for workers' compensation purposes is St. Vincent's ER staff. He was not aware of a April 2, 2002 accident report claiming a back injury.

Steve Elliott is Robert Woods' supervisor. Mr. Elliott testified that the claimant met with him on March 20, 2002 to discuss her problems with high blood pressure. Mr. Elliott was concerned about her appearance and had her sit in a wheelchair to calm down before she left work early. Subsequently, the claimant spoke with Marlene Campbell to complete FMLA paperwork for a non-work related back problem. After her leave ran out, the claimant never returned to work.

MEDICAL EVIDENCE

The claimant's exhibit packet contains pages of irrelevant reports which should have been omitted. Relevant medical records show the claimant had complaints of low back and leg pain prior to the date of the alleged injury on March 20, 2002.

Dr. Perry's report of March 19, 2002, indicates the claimant complained of back pain, muscle spasm (which the doctor did not observe) and a catch in her right hip. The report further shows, "she does not recall any injury. She has not been doing any heavy lifting." Dr. Perry diagnosed an acute lumbar strain with instructions to follow up with Dr. Stout.

Immediately after the date of injury, the claimant saw Dr. Ebel on March 21, 2002 and related a two week history of back and leg pain but no specific injury. Dr. Simpson's report of March 29, 2002 indicates the claimant was having trouble working due to back and leg pain. Once again, he records "no trauma reported to her back." Dr. Ebel and Simpson excused the claimant from work and Dr. Simpson referred the claimant to physical therapy.

The first mention of any specific back injury appears in the physical therapy records dated April 2, 2002. The history of injury is described as lifting a bed on two occasions – 3-20-02 and 3-29-02.

An MRI scan taken September 5, 2002 revealed an annular tear at L4-5 and protrusion at L5-S1 with discogenic changes at L4-5 and L5-S1. There was no evidence of nerve root impingement. Dr. Stout opined the claimant was not a surgical candidate.

ACCIDENT REPORT

The claimant signed a form supplied by her employer on April 10, 2002, entitled, "Workers' Compensation Treatment Form." The history of injury is listed as "lift up on bed on 5 floor in Room 11th." The date of injury is shown as March 20, 2002 but two other dates, March 21 and March 29 are listed in the upper right hand margin. The claimant's supervisors testified they were unaware of this report. The form has a place for the signature of the authorizing personnel and their title, but this was left blank. Also the form does not designate what doctor the claimant is being authorized to see for an evaluation.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence

- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements.

Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

“Arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of employment” refers to the time, place and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 692 S.W.2d 879 (1985).

The test for arising out of the employment requires that a causal connection exist between the injury and the employment. The injury must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980).

Although the lay testimony is conflicting, the medical records clearly show the claimant was treated for back pain prior to the date she claims she was hurt at work. Accordingly, I find the claimant cannot meet her burden of proving the injury “arose out of and in the course of her employment.”

1. The Workers’ Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on March 20, 2002.
2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident,

arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.
IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge