

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406122

JEAN EASLEY	CLAIMANT
ST. JOHNS HOSPITAL BERRYVILLE	RESPONDENT
CROCKETT ADJUSTMENT SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 16, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 4, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on October 11, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On December 4, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$192.00 for temporary total disability and \$154.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's left side injury.
2. Related medical.
3. Temporary total disability from April 4, 2004, to a date to be determined.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was injured on December 4, 2002, when she hurt her left hip. At this particular time she went out the door and slid on ice before she got to the steps. She maintains that she is entitled to TTD and medical.

In regard to the foregoing issues the respondents contend that there are no objective findings to support a compensable injury on or about December 4, 2002. Further, respondents contend the claimant cannot establish a compensable specific incident injury on the date in question. Respondents contend the medical records do not support entitlement to TTD benefits in the event compensability is found. In the alternative, the respondents contend that the claimant was not performing employment services at the time of her injury.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and non-medical records marked Claimant's Exhibit No.
2. The respondents submitted medical records marked Respondents'

Exhibit No. 1 and non-medical records marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was fifty-three years old and started working for the respondent three years ago doing housekeeping. The claimant explained that her duties involved mopping floors, sweeping floors, making beds, dusting, washing windows, carrying garbage and cleaning bathrooms. The claimant testified that on December 4, 2002, she was working the day shift. The claimant remembered that it had been snowing and was icy that day. The claimant testified that she was walking with two other ladies to clock out when they were stopped by a nurse just before they got to the time clock and told them they needed to have a bed changed. The claimant testified that the other two girls said that they were not staying. The claimant testified that she knew the hospital needed the bed fixed so she stayed an extra thirty minutes to make up the room. The claimant testified that after she finished the room she clocked out and as she was exiting the building there was ice that she did not see and when her feet hit the ice, her feet flew out from under her and since there was nothing to grab to, she landed on her left hip on the bottom of four concrete steps. The claimant testified that her son was waiting outside for her and he jumped out of his truck and came over to help her. The claimant testified that she told her son that she could not get up because she was passing out and that he kept trying to get her up so he could get her in a wheelchair. The

claimant testified that he finally got her up and into the break room. The claimant stated that while her son was out moving his truck, she felt scared because she was passing out and called the office and told them her name and that she had fallen outside and was passing out. The claimant testified that the respondent sent two or three people down with a wheelchair, put her in it and took her to the emergency room.

The claimant testified that she did go into work the next day but that her hip and back were hurting and that she was sore. The claimant testified that she was taking over the counter medications such as Ibuprofen and the other pills that she usually takes. The claimant testified that for a period of three weeks, she continued to have pain which in one spot was very very severe. The claimant remembers that due to the pain, she had problems sleeping and that she continued to have trouble doing her work duties. The claimant testified that her supervisor, Martha Bell, was aware of her accident but that no paperwork, to her knowledge, was filled out. The claimant testified that she was also involved in an incident where she slipped on a wet floor and landed on her knee which she reported to her supervisor but she does not know whether any paperwork was filled out on that incident either. The claimant testified that after her fall on the steps she and some of the other ladies were having to push an old cart loaded with laundry around the hospital and after doing this task all day long, she had difficulty standing up straight. The claimant testified that she thinks she missed some work because of this incident. The claimant

testified that her supervisor was also aware of the cart incident but again does not know if any paperwork was ever filled out.

The claimant testified that she hurt all of the time and when it got to the point where she could not stand up straight and it would take her several days to be able to straighten up before she was able to go back to work and that she was missing work because of her physical problems she quit her job. The claimant remembers that at the time she quit her job she filled out papers indicating that her reason for quitting was so that she could stay home with her grandchildren. The claimant testified that the respondent was good to her and that she did not want to put down that her reason for quitting was that she was hurting. The claimant testified that normally two weeks notice are necessary but that the respondent told her that she was a good worker and paid her for her last two weeks and let her go home.

The claimant testified that she had been receiving treatment from a doctor in Springfield, Missouri, initially for her hip and eventually was given steroid shots in her back. The claimant testified that this doctor also had her undergo an MRI. The claimant testified that she still has pain in her back, hips and into her legs and that this pain has gotten worse.

On cross examination, the claimant agreed that at the time of her slip and fall accident, she had clocked out and was outside the building getting ready to go down the steps of the hospital. The claimant testified that when she was taken to the emergency room immediately after her fall, she was complaining of dizziness and

reported to the doctor that she had fallen on her hip and elbow. The claimant agreed that x-rays were done of her hip only. The claimant further agreed that after her December 4, 2002, emergency room visit it was not until January 19, 2004, that she began getting medical treatment again for her problems. The claimant testified that she continued to work for the respondent and that her jobs and duties at the hospital were not modified during the period of time that she continued to work for them. The claimant testified that she did not fill out any workers' compensation claims or file for benefits during the period of time she was working for the respondent. The claimant testified that she continued to work for the respondent up through March 2004 and did not miss but a couple of days as a result of her fall. The claimant agreed that she did fill out the termination reports and exit interview herself without the assistance of anyone else and agreed that she had written on the form that she was resigning because she wanted to stay home with her grand kids.

The respondents called Taya James to testify. Ms. James testified that she was vice president of human resources for the respondent and had been so for the past thirteen years. This witness stated that she was familiar with the claimant as well as her workers' compensation claim. Ms. James testified that the employees' clock out area is in the middle of the building in the co-workers' lounge. Ms. James testified that it was her understanding that the claimant fell outside the back door of the building which is some distance from the clock out area. Ms. James

testified that the claimant never complained about having any physical problems with her hip, back and elbow or anything associated with the incident of December 4, 2002, and no modifications were made to her job as a result of her December 2002 event. Ms. James testified that she was present during the claimant's exit interview and that the claimant did not indicate to her that she was discontinuing her employment because of physical problems. This witness agreed that the only reason the claimant gave for terminating her employment was wanting to be home with her grandchildren.

The medical records set forth that the claimant was seen at the respondent's ER on December 4, 2002, after she slipped on ice and fell on her left side. X-rays taken that day were negative and the claimant was sent home to use ice packs, Tylenol or ibuprofen for discomfort. These medical records set forth that the claimant was seen again on January 19, 2004, for low back discomfort after pushing a cart at work. It was recommended that the claimant return the next day for x-rays but can return to work on January 21, 2004. Dr. Curtis Evenson writes on February 25, 2004, that he has seen the claimant for her complaints of back pain off and on in the past but in the last two months she has had exacerbation of her pain. The doctor notes that she complains of pain in the right lower lumbosacral area. The doctor notes that the claimant's plain film does reveal degenerative disc problems at L4-5 but there was no scoliosis or any significant facet arthrosis. Injections were administered and an MRI was discussed. The claimant received

injections in her right sacroiliac joint administered by Dr. Evenson on March 11, 2004, and at this time he recommended that she undergo an MRI. Following the claimant's MRI, Dr. Evenson writes on April 9, 2004, that her MRI scan does reveal a disc protrusion at L4-5 which could be the cause of foraminal narrowing at L4-5 foramen. Dr. Evenson continued the claimant with injection therapy that day as well as on April 22, 2004. The claimant underwent a diskogram on May 28, 2004, which revealed that she had degenerative disc by radiographic findings at L3-4, L4-5 and L4-5 appeared to be showing a positive concordant pain response. This test indicates that it was not chemical sensitive but mechanically sensitive. Dr. Curtis Evenson writes on June 14, 2004, that he had discussed the claimant's diskogram results indicating that it was only her L4-5 which proved to be painful. Dr. Evenson notes that the pathology of the disc showed a disc protrusion on the right which would go along with some of her leg symptomatology, noting that the disc is mechanically sensitive. Dr. Evenson discussed with the claimant her need to stop smoking if she is to proceed with any further back treatment programs. Dr. Evenson notes that the claimant is complaining of right knee pain and swelling and she has been complaining of this for some time.

After a review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on December 4, 2002, while working for the respondent. The claimant testified that she had already clocked out and was exiting the building to be picked up by her son

when she slipped on ice on the exterior steps, fell and was injured. Ark. Code Ann. §11-9-102(4)(A) sets forth compensable injury means: (i) An accident injury causing physical harm to the body arising out of and in the course of employment which requires medical services. This statute sets forth that an injury is accidental only if it is caused by a specific incident and is identifiable by time and place of occurrence. At 11-9-102(4)(B)(iii) it sets forth that a compensable injury does not include an injury which was inflicted upon the employee at a time when employment services were not being performed. The Arkansas Supreme Court has set forth in Collins v. Excel Specialty Products, 347 Ark. 811, 69 S.W. 3d 14 (2002) that an employee is performing employment services when he or she is doing something that is generally required by his or her employer. The Court goes on to write that we use the same test to determine if an employee is performing employment services as we do when determining whether an employee is acting within the course of employment. The test is whether the injury occurred within the time and space boundaries of the employment when the employee was carrying out the employers' purpose or advancing the employers' interest directly or indirectly. In this specific case, the claimant was outside the space and boundaries of her employment although on the premises and she was not performing employment services as she was beginning to descend the steps to go to her son's truck to be taken home. Therefore, I find that this claimant was not performing employment

services at the time of her slip and fall accident on December 4, 2002.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On December 4, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$192.00 for temporary total disability and \$154.00 for permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury according to Arkansas law when she slipped and fell on December 4, 2002. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury, according to Arkansas law, on December 4, 2002. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE