

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304762

JESSICA FORD,
EMPLOYEE

CLAIMANT

CONWAY HUMAN DEVELOPMENT CENTER,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS,
CARRIER

RESPONDENT

OPINION FILED NOVEMBER 3, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL in
Conway, Faulkner County, Arkansas.

Claimant represented by HONORABLE THOMAS W. MICKEL, Attorney
at Law, Conway, Arkansas.

Respondents represented by HONORABLE RICHARD S. SMITH,
Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on
September 21, 2005 in Conway, Arkansas. A Prehearing Order
was entered in this case on June 27, 2005. This Prehearing
Order set out the stipulations offered by the parties and
outlined the issues to be litigated and resolved at the
present time. A copy of this Prehearing Order was made
Commission's Exhibit No. 1 to the hearing record.

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

1. To the employee-employer-carrier relationship on
the date of injury, May 2, 2003, and at all pertinent times.

2. Compensable head and ear injuries on that date.

3. AWW=\$322.80; WCR for TTD=\$215.00 and for PPD=\$161.00.

4. Respondents have accepted the claim for the head/ear injuries, and have paid all benefits known to be due for those.

5. Respondents have controverted the claim for a back injury.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited in the prehearing order to the following:

Claimant:

1. Whether claimant sustained a compensable injury to her low back by specific incident on May 2, 2003.

2. Controversion and attorneys' fees.

Respondents:

1. Compensability of claimant's alleged back injury.

The record consists of the September 21, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant contends that she sustained a low back injury, in addition to her admittedly compensable head and ear injuries, when she fell backwards out of a golf cart onto asphalt during the course of her employment on May 2,

2003. The respondents contend that the claimant's alleged back injury is not established by objective medical findings as required by the Arkansas Workers' Compensation Law. The claimant's attorney explained at the hearing that an MRI in the medical record contains degenerative changes, and the claimant contends that these degenerative changes were aggravated by the fall from the golf cart, even though the degenerative change may have preexisted that fall. The claimant's attorney has specifically noted from that MRI a bulge at the T11-12 level of the spine, degenerative disk disease at the L3-4, L4-5, and L5-S1 levels of the spine, and abnormality in the facets at the L3-4 and L4-5 levels of the spine. (T.32-33)

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place

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

Regarding the objective findings requirement for an aggravation type injury, I note that a claimant must establish the existence of an alleged aggravation by objective findings of an acute injury, and the claimant cannot carry her burden of proof merely through objective findings of preexisting degenerative conditions. Furthermore, a claimant is required to establish a causal connection between any objective finding in the record and the alleged compensable injury, even if the alleged compensable injury is an aggravation of a preexisting condition. Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

In the present case, I see no indication in the medical record that any physician has ever suggested that the claimant's low back symptoms at issue might be consistent with the disk bulge at the T11-12 level of the spine noted by MRI. Therefore, I find that the claimant has failed to establish a causal connection between her low back symptoms at issue and the T11-12 disk bulge indicated by MRI on July 20, 2004.

With regard to the degenerative conditions cited by the claimant's attorney also found on that MRI, I am unable to

locate from that MRI report or anywhere else in the medical record any objective findings of the alleged aggravation itself, and as discussed above, the claimant cannot carry her burden of proof merely with objective findings of the preexisting condition which she asserts was aggravated by a work-related injury. Under these circumstances, I am constrained to find that the claimant has failed to establish the existence or extent of any new injury or aggravation of a preexisting condition in her low back by objective medical findings. Therefore, I find that the claimant has failed to establish one of the elements necessary to establish that she sustained a compensable low back injury, in addition to her admittedly compensable head and ear injuries, on May 2, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed on the date of injury, May 2, 2003, and at all pertinent times.
2. The claimant sustained compensable head and ear injuries on that date.
3. AWW=\$322.80; WCR for TTD=\$215.00 and for PPD=\$161.00.

4. Respondents have accepted the claim for the head/ear injuries, and have paid all benefits known to be due for those.

5. Respondents have controverted the claim for a back injury.

6. The claimant has failed to establish the existence or extent of her alleged low back injury with medical evidence supported by objective findings as required by Ark. Code Ann. § 11-9-102(16). The claimant has therefore failed to establish one of the elements necessary to establish the occurrence of a compensable injury.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

HONORABLE MARK CHURCHWELL
Administrative Law Judge