

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311790

RONDA HAMMER

CLAIMANT

AREA AGENCY ON AGING

RESPONDENT

RISK MANAGEMENT RESOURCES,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED JANUARY 13, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE WALKER ,JR., Attorney, Fort Smith, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on November 19, 2004, in Fort Smith, Arkansas. A pre-hearing order was previously entered in this case on August 10, 2004 . This pre-hearing order purported to set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of this hearing, certain changes were made in the stipulations and issues by agreement of the parties. A copy of the pre-hearing order with those amendments noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. During August of 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. The claim is controverted in its entirety.

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

1. Whether the claimant sustained a compensable injury to her back as a result of a specific incident during August of 2002.

2. The claimant's entitlement to the payment of medical expenses.
3. Whether the claimant is barred from entitlement to any benefits accruing prior to November 4, 2003 pursuant to Ark. Code Ann. § 11-9-701(a)(i).

In regard to these issues, the claimant contends:

- a. The claimant contends that in early June of 2002 she sustained a compensable injury to her back when she was assisting a patient and the patient fell.
- b. The claimant contends that she is entitled to reasonable and necessary medical treatment.

In regard to these issues, the respondents contend:

"The respondents contend the claimant did not sustain an injury arising out of and in the course of her employment. In the event that the Commission finds that the claimant has sustained a compensable injury, the respondents contend that they did not receive notice until the filing of the AR-C on or about November 4, 2003, and therefore benefits should not be awarded until that date."

DISCUSSION

_____The central issue in this case, is the question of whether the claimant sustained a "compensable injury" to her back as the result of a specific employment related incident during August of 2002. The burden rests upon the claimant to prove all of the statutory elements necessary to establish this alleged "compensable injury."

The first of these elements are found in Ark. Code Ann. § 11-9-102(4)(D). This subsection requires the claimant to prove by medical evidence the actual existence of the physical injury or condition alleged to be compensable. This subsection further requires that the actual existence of this physical injury or condition must be based upon or supported by "objective findings." Further, the term "objective findings" is defined to mean the independent observation of findings beyond the claimant's voluntarily control, Ark. Code Ann. § 11-9-102(16)(A).

The claimant must also prove that any medically "established" and objectively documented physical injury or condition satisfies all of the definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. § 11-9-102(4)(A)(i). These definitional requirements are:

- a. That the physical injury or condition arose out of and occurred in the course of the employment;
- b. That the physical injury or condition was caused by a specific incident;
- c. That the physical injury or condition is identifiable by time and place of occurrence;
- d. That the physical injury or condition resulted in internal or external physical harm to her body;
- e. That the physical injury or condition required medical services or resulted in disability.

The claimant initially sought medical treatment, on September 6, 2002. At that time, Dr. Keith Mitchell diagnosed her back difficulties as a muscular strain. This diagnosis appears to be based solely on the claimant's subjective complaints of back pain and Dr. Mitchell's findings on physical examination of "some reproducible tenderness over the paraspinous muscles over the lumbar area." There is no record of any "objective findings," at that time. Dr. Mitchell also noted normal results on neurological testing and no complaints were recorded of any complaints of difficulties involving, the claimant's lower extremities.

At the hearing, the claimant testified that she experienced the onset of "throbbing" pain in her lower back contemporaneous with the occurrence of a specific employment related incident in August of 2002. She also testified that she started having leg pain several days later. Finally, she stated that these symptoms continued, unabated, until her treatment by Dr. Dietze. In her deposition, the claimant indicated that she experienced an immediate onset of left leg pain that was contemporaneous with the occurrence of the specific employment related incident. She offers no explanation as to why there is no mention of any difficulties with her legs or lower extremities in the initial medical records of Dr. Mitchell.

The medical record reflects that the claimant sought no further medical treatment for any difficulties involving her back, until she returned to Dr. Mitchell on July 17, 2003, some ten months later. During this period of time, the claimant had returned to Dr. Mitchell (on December 2, 2002), but her only complaints were those of a rash on her abdomen, slight abdominal pain, and severe

headaches. On this visit, there was no mention of any continuing difficulties with her back. During this time, the claimant also continued to perform her regularly assigned employment tasks for the respondent, which required relatively strenuous physical activity.

On July 17, 2003, the claimant returned to Dr. Mitchell with complaints of pain involving her lower back and voiced new complaints of periodic episodes of pain going down into her legs (as well as a complaint that her hair was falling out). As a result of these new potentially radicular symptoms, Dr. Mitchell ordered an MRI of the lumbar spine. This study was performed on July 29, 2003, and was interpreted as indicating:

“Mild narrowing and dessication of the intervertebral disc at L4-5 with a small protrusion laterally in the neural foramina at this level.”

No direct nerve root compression was shown by the MRI study, but the disc was observed to “minimally impress” the anterior portion of the thecal sac on the left side.

Following this test, the claimant was referred by Dr. Mitchell to Dr. J. Brett Dietze, a neurosurgeon. Following his review of the MRI study and an evaluation of the claimant, Dr. Dietze opined that the MRI study showed no compromise of any “neural elements,” that there was no evidence of any neurological deficit, and that there was no evidence of any significant surgical pathology. As a result, Dr. Dietze recognized only conservative treatment, in the form of medication and physical therapy.

The claimant’s testimony and the physical therapy records indicate that the claimant experienced significant rapid improvement of her difficulties involving her back and lower extremities. After only 9 of the 12 scheduled physical therapy visits, the claimant had sufficiently improved to the point where she was discharged from further physical therapy to continue only on a home exercise program.

It is my opinion that the claimant has presented sufficient medical evidence to “establish” the actual existence of a physical injury or defect involving her lumbar spine, which is in the form of:

“Mild narrowing and dessication of the intervertebral disc at L4-5 with a small protrusion laterally in the neural foramina at this level.”

Further, the actual existence of this physical injury or defect is clearly supported by “objective findings” noted on the MRI study of July 29, 2003. Thus, in regard to this condition, the claimant has satisfied the statutory requirements of Ark. Code Ann. § 11-9-102(4)(D).

The claimant must next prove that this particular injury or defect meets the definitional requirements of Ark. Code Ann. § 11-9-102(4)(A)(i). To meet the first three of these definitional requirements, the claimant must show the existence of a causal relationship between this physical injury or defect and the described specific employment related incident in August of 2002. The only direct evidence to prove this causal connection is the claimant’s own testimony. Although the testimony of a party is never considered uncontradicted, this does not mean that it can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. There is no doubt that the claimant’s testimony would be legally competent to show the existence of a close temporal relationship between the initial onset of her difficulties with her back and lower extremity that would be indicative of the occurrence of a discal injury and the specific employment related incident that is described as occurring in August of 2002. Her testimony would also be legally competent to establish a continuation of these difficulties, thereafter.

However, after consideration of all the evidence presented, it is my opinion that the claimant’s testimony is not sufficiently credible to prove this necessary causal relationship. Contrary to the claimant’s testimony, the initial medical reports and records did not indicate any radicular complaints involving her legs or lower extremities. There was also no findings noted during her initial visit that would in any way indicate the occurrence of a discal injury. Based upon her complaints and examination, her difficulties, at the time of this visit, were diagnosed as merely a muscle strain. There is no substantial basis to doubt the accuracy of this diagnosis.

The claimant’s testimony concerning continued complaints involving her lower back and lower extremity after the August 2002 incident, is clearly contradicted by the fact that she sought

no further medical treatment for these complaints for over ten months following her initial visit. Yet, during this time, she continued to perform her regular strenuous job duties for the respondent. It is of particular note that she did return to Dr. Mitchell, only three months following her initial visit, but made absolutely no mention of any continuing difficulties with her lower back or any difficulties involving her lower extremities. It is difficult to accept that the claimant could have experienced a discal injury (such as that indicated by the MRI study) in August of 2002, and would still have been able to perform regular strenuous employment activities for a ten month period, without the apparent necessity of seeking any medical treatment. The claimant offers no satisfactory explanation for her failure to seek continued medical care after her initial visit with Dr. Mitchell on September 6, 2002, or her failure to mention any continuing complaints on her visit with Dr. Mitchell in December of 2002.

I do feel that the claimant likely did sustain an injury to her low back, in the form of a simple lumbar strain, in August of 2002. It further appears that this injury resolved, soon after the claimant's visit with Dr. Mitchell on September 6, 2002. However, there is no evidence that the actual existence of this lumbar strain was supported by any "objective findings," as required by Ark. Code Ann. § 11-9-102(4)(D).

The claimant's difficulties in July of 2003, which led to the discovery of the various degenerative changes and small protrusion of the L4-5 disc, have simply not been proven to be, in any way, causally related to any specific employment related incident in August of 2002. In fact, the greater weight of the evidence would indicate that the difficulties, which the claimant experienced during and after July of 2003, and the medical services these difficulties required were far more likely due to some activity or incident that occurred subsequent to August of 2002, and more closely in time to the claimant's episode of back difficulties with accompanying radicular complaints in July of 2003.

In summary, the claimant has failed to prove the existence of a causal relationship between any specific employment related incident in August of 2002, and the medically "established" and

“objectively” supported injury or defect involving her L4-5 intervertebral disc. Thus, she has failed to prove that this particular injury or defect “arose out of and occurred in the course of her employment” with the respondent and was caused by a “specific incident,” as required by Ark. Code Ann. § 11-9-102(4)(A)(i). While the claimant may have proven by the greater weight of the credible evidence the existence of a casual relationship between the specific employment related incident in August 2002 and a simple lumbar strain, the medical evidence fails to show any objective findings to support the actual existence of this muscular strain, as required by Ark. Code Ann. § 11-9-102(4)(D). Therefore, the claimant has failed to prove that in August of 2002, she sustained a physical injury to her lower back or lumbar spine that would satisfy all of the requirements for a “compensable injury” mandated by the Act.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, during August of 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a “compensable injury” to her lower back or lumbar spine, as the result of a specific incident that occurred during August of 2002. Specifically, she has failed to prove by the greater weight of the credible evidence that during August of 2002, she sustained a physical injury to her lower back or lumbar spine, as a result of a specific incident that satisfies all of the requirements for a “compensable injury” mandated by the Act.
4. The respondents have denied the occurrence of a compensable injury and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge