

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F209691/F207940/F211408

ANABELL HOFFMAN, Employee	CLAIMANT
EXCEL CORPORATION, Employer	RESPONDENT
CRAWFORD & COMPANY, Carrier	RESPONDENT

OPINION FILED JANUARY 3, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by J. LESLIE EVITTS, III, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On November 22, 2004, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 11, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed between the parties in January 2002.
3. Respondent has controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's low back and hip in January 2002.
2. Temporary total disability benefits.
3. Medical benefits.
4. Attorney fee.
5. Statute of limitations.

6. Notice.

At the time of the hearing and following the hearing a clarification was made as to the issues to be considered. The first issue to be considered is the compensability of an injury to claimant's low back in January 2002. The second issue involves payment of Dr. Ulmschneider's treatment and whether it is related to claimant's alleged injury in January 2002 or to subsequent compensable injuries of June 12, 2002 and/or August 5, 2002. At the time of the hearing the Commission claim numbers assigned to the injuries of June 12, 2002 and August 5, 2002 were not assigned for the purpose of a hearing. Subsequent to the hearing the parties have both agreed that those claims should be included in the issues to be determined. Accordingly, Claim Number F206940 assigned to the injury of June 12, 2002 and Claim Number F211408 assigned to the injury of August 5, 2002 were subsequently assigned for consideration.

Claimant contends that she suffered a compensable injury to her low back and hip in January 2002. She also seeks payment of chiropractic treatment from Dr. Ulmschneider which she contends is related to the injury in January 2002 or to the compensable injuries of June 12, 2002 and/or August 5, 2002.

Respondent contends that claimant did not suffer a compensable injury while employed during January 2002. With respect to Dr. Ulmschneider's medical treatment, respondent contends that the medical treatment was not authorized, reasonable, or necessary as a result of the June 12, 2002 and/or August 5, 2002 injuries.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 11, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury while working for respondent in January 2002.

3. Claimant has failed to prove by a preponderance of the evidence that respondent is liable for medical treatment received by claimant from Dr. Ulmschneider. Specifically, the medical treatment claimant received from Dr. Ulmschneider was not authorized.

FACTUAL BACKGROUND

The claimant was employed by the respondent as a production worker for approximately two and one-half years until her date of termination on February 2, 2004. The evidence indicates that claimant has suffered multiple work-related injuries while employed by the respondent; including, but not limited to, injuries to her shoulder, back, and knee. Apparently, all of these injuries have been accepted by respondent as compensable with the exception of the alleged injury in January 2002 and medical treatment and chiropractic treatment claimant received from Dr. Ulmschneider.

Claimant testified that on or about January 9, 2002 she injured her low back and hip when she slipped and fell on ice in the respondent's production facility. Claimant testified that she reported this incident to the respondent but was not provided any medical treatment. Claimant subsequently sought medical treatment on her own from her family physician and in addition suffered additional compensable injuries while working for the respondent.

Claimant has filed this claim contending that she suffered a compensable injury

while working for respondent in January 2002. In addition, claimant contends that respondent is liable for payment of medical treatment provided by Dr. Ulmschneider.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her low back and hip when she slipped and fell on ice in respondent's production facility on January 9, 2002. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back and hip while employed by respondent in January 2002.

Although claimant contends that she slipped and fell on ice injuring her low back and hip on January 9, I note that claimant did not receive any medical treatment for this alleged injury until March 26, 2002, more than two months later, when she sought medical treatment from her family physician, Dr. Tackett. Dr. Tackett's medical report indicates

that claimant gave a history of her fall having occurred some three months earlier, not two months earlier. Furthermore, Dr. Tackett's medical report does not contain a history of the claimant's fall having occurred at work.

Finally, and most importantly, Dr. Tackett ordered an MRI scan which revealed degenerative disc disease in the claimant's lumbar spine. According to a letter written by Dr. Tackett dated August 12, 2002, this finding is more indicative of a chronic problem as opposed to a specific incident.

Ms. Hoffman was treated and diagnosed with right L-5 radiculitis. The MRI showed a mild degenerative disc L-5/S-1 per Dr. Burnham. This would be more typically related to chronic problems rather than be reflective of her acute fall in January 2002.

Based upon the foregoing evidence, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her hip and low back while working for respondent in January 2002. First, claimant did not seek any medical treatment following this alleged fall until March 26, 2002, more than two months later. Furthermore, the medical report contains a history of a fall having occurred three months ago, not two months ago, and does not indicate that claimant's fall occurred at work. Finally, according to Dr. Tackett's letter of August 12, 2002, claimant's MRI findings were indicative of a chronic back problem, not a specific injury.

The next issue for consideration involves claimant's contention that respondent is liable for payment of medical treatment she received from Dr. Ulmschneider, a chiropractic physician. The medical records reflect that claimant began treating with Dr. Ulmschneider in July 2003 and continued until November 2003. It is claimant's contention that Dr. Ulmschneider's treatment is related to the injury of January 2002, the injury of June 12, 2002, and/or the August 5, 2002 injury.

Having found that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury in January 2002, respondent cannot be liable for chiropractic treatment received by Dr. Ulmschneider for that alleged injury. In addition, I also find that claimant has failed to prove by a preponderance of the evidence that the treatment by Dr. Ulmschneider was authorized for treatment of her compensable injuries of June 12, 2002 or August 5, 2002.

The documentary evidence indicates that claimant completed Commission Form AR-N on June 12, 2002, contending that she had injured her ankle, knee, left shoulder, and back as a result of an incident at work on that date. Claimant also completed Commission Form AR-N on August 5, 2002, indicating that she had injured her right elbow, right hip, and low back after slipping and falling on ice in the respondent's plant on that date. Respondent accepted both of those injuries as compensable and paid claimant compensation benefits, including medical treatment. However, claimant now contends that chiropractic treatment she received from Dr. Ulmschneider for these injuries is the responsibility of respondent.

A.C.A. §11-9-514(3) states that any unauthorized medical expenses incurred after an employee has received a copy of a notice informing the employee of their rights and responsibilities concerning a change of physician shall not be the responsibility of the employer. In this particular case, the documentary evidence indicates that following both the June 12 and August 5 injuries claimant was provided a copy of Form AR-N which she signed acknowledging her rights and responsibilities regarding a change of physician. Claimant testified that she sought medical treatment on her own from Dr. Ulmschneider, the chiropractic physician. Claimant has offered no evidence that she filed a request to change physicians to Dr. Ulmschneider or that Dr. Ulmschneider was within the chain of referral from her authorized treating physicians.

Absent evidence that Dr. Ulmschneider was within the chain of referral from her

authorized treating physician or evidence that claimant followed the procedure for changing physicians, the medical treatment claimant received from Dr. Ulmschneider was unauthorized; therefore, respondent is not liable for payment of that medical treatment.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her low back and hip while employed by respondent in January 2002. In addition, claimant has failed to prove by a preponderance of the evidence that respondent is liable for payment of Dr. Ulmschneider's medical treatment. Specifically, the medical treatment claimant received from Dr. Ulmschneider was unauthorized.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE