

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313054

DORIS M. JAMES

CLAIMANT

ST. VINCENT HEALTH SERVICE

RESPONDENT EMPLOYER

PREFERRED PROFESSIONAL INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED JANUARY 12, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE STEVEN MCNEELY, Attorney at Law, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on November 17, 2004. A prehearing conference was held on September 28, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was introduced into evidence as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and prior to the hearing, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on November 5, 2003.
2. The compensation rate is the maximum for a 2003 injury.

The claimant contends that she sustained a specific incident injury on November 5, 2003 and is entitled to medical benefits. The claimant further contends that she is

entitled to temporary total disability benefits from January 14, 2004 to a date to be determined and attorney's fees.

The respondents deny the claimant sustained a compensable injury arising out of and in the course of her employment. An initial medical visit was paid by respondents.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an employer-employee relationship on November 5, 2003.
2. The compensation rate is the maximum for a 2003 injury.
3. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment on November 5, 2003.

4. The respondents are responsible for reasonable and necessary medical treatment the claimant has pursued.

5. The claimant has proven by a preponderance of the evidence that she remained in her healing period and totally unable to earn wages from January 14, 2004 through October 7, 2004.

DISCUSSION

The claimant, 33 years old, was working as a nurse for the respondent on November 5, 2003. As the claimant was assisting another nurse, Gay Hall, in pulling a patient up in the bed, she felt a sharp pain between the shoulder blades with pain radiating down her arm. The claimant's shift was 7:00 a.m. until 7:00 p.m. The incident happened about 5:00 p.m. Ms. Hall got Tylenol for the claimant to take and she completed her shift. The claimant testified that she was in severe pain and she tried to locate her manager to make a report. The claimant went to the emergency room the following morning after calling in to her supervisor. The claimant next treated with Dr. Michael Stout and Dr. Robert Casper. The claimant described her pain as starting between the shoulder blades and going up the neck and down the arms. The claimant had spasms about half of the day with movement making the pain worse.

The claimant underwent two weeks of physical therapy and was off work some but the respondents paid for the medical treatment and she worked light duty during 2003. The claimant had appointments to see Dr. Steven Cathey and Dr. Kevin Collins and was told by the adjuster to keep both appointments. However, after the claimant saw Dr. Cathey, the claims adjuster advised her that Dr. Collins' visit was not authorized. The claimant testified that she continued to have pain and muscle spasms

after the insurance company told her the claim was controverted.

Medical evidence was offered through April 7, 2004; however, the claimant testified she has seen Dr. Collins and Dr. Nichols since that date and remains unable to work or perform many household activities. The claimant last worked for respondents on January 13, 2004 and was terminated in the spring. The claimant verified that before the November 5, 2003, incident, she was not having any muscle spasms in her neck or upper back area.

Under cross examination, the claimant verified that she had a previous work-related injury in March 2002, a low back injury, and remained off work from March 2002 until May 2003. This injury resulted in back surgery. The claimant is 5 feet 11-1/2 inches tall, weighing over 350 pounds. The claimant testified that obesity causes problems to include degenerative disc disease. The claimant verified that she received medical treatment following the November 5, 2003, incident and was released to return to work on occasions and she did not return to work sometimes because she felt physically unable to do so. The claimant did verify that she had been involved in two automobile accidents, one in May 2000, where she sustained some facial injuries and another vehicle accident in June or July 2000, where she had bruising from the seat belt.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical

evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has proven by a preponderance of the evidence that she sustained a specific incident injury arising out of and in the course of her employment on November 5, 2003. The claimant presented a credible account of a lifting incident where she and another employee were pulling a patient up in bed and she felt a sharp pain between her shoulders. Proper reporting was made and some medical benefits were provided. It seems the medical benefits were denied after the claimant saw Dr. Cathey on January 5, 2004. The medical records document muscle spasms and this satisfies the objective findings requirement for a compensable injury. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999).

While Dr. Cathey performed an independent medical evaluation on the claimant on January 5, 2004, he did not prescribe any medication or treatment even though he noted that she might benefit from anti-inflammatory medication and continued conservative treatment. Dr. Collins' January 14, 2004, report indicates that the claimant had a new injury that is unrelated to her previous back injury. He described her problem as "what I feel as costovertebral lesion at T7 area with some muscle spasm around it." Cl. Exh. No. 1, p. 28. Dr. Collins wanted to try a different pain medication

and to keep her off work for a period.

The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes and Travelers Ins. v. Beard*, 82 Ark. App. 607, 190 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

After considering all the credible evidence, I give the opinion of Dr. Collins greater weight than the opinion of Dr. Cathey. Dr. Collins has prescribed medication, physical therapy and injections. On April 7, 2004, Dr. Collins completed a physician's form and indicated at that time that the claimant would reach maximum medical improvement in six months. He further indicated the claimant was not able to work as of April 7, 2004. I find respondents are liable for reasonable and necessary medical treatment the claimant has pursued for her compensable November 5, 2003, injury.

The claimant next contends she is entitled to temporary total disability benefits from January 14, 2004 to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant has been treating with Dr. Kevin Collins and he has treated her conservatively with physical therapy, medication and injections. His last report in evidence is an April 7, 2004, physician's form where he indicates that the

healing period will end in six months and that the claimant has not been released to return to work. Based on the claimant's testimony and the most recent doctor's reports, I find the claimant has proven by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from January 14, 2004 through October 7, 2004. The October 7, 2004, time frame is based on six months from the last physician's form in evidence where Dr. Collins opined the healing period will end.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment on November 5, 2003. The respondents are responsible for reasonable and necessary medical treatment the claimant has pursued. The claimant has proven by a preponderance of the evidence that she remained in her healing period and totally unable to earn wages from January 14, 2004 through October 7, 2004.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**