

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401827

CATINA JAMISON, EMPLOYEE	CLAIMANT
ST. BERNARDS MED. CTR., SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED JANUARY 7, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 7, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine claimant's entitlement to additional workers' compensation benefits.

On October 26, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Catina Jamison, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Catina Jamison, the claimant, with a date of birth of July 28, 1972, is a high school graduate with two years of post-secondary education. Claimant commence her employment with respondent on September 15, 2003, and last discharged employment duties on February 25, 2004.

Claimant denies that she experienced back complaints or required medical treatment relative to same prior to February 24, 2004. Further, claimant denies that she had ever suffered an injury to her back prior to February 24, 2004. There is no evidence in the record to reflect that claimant experienced physical limitation or restrictions on her employment activities prior to February 24, 2004.

Claimant discharged the duties of a patient care tech in her employment with respondent. Claimant's duties entailed assisting patients during their admission at the hospital. Services performed by claimant included making the patient's bed, assisting patients to the bathroom, bathing the patient, and aiding the patient in their mobility. Claimant worked first shift, 7:30 a.m. until 2:45/3:00 p.m. Claimant received shift differential with a base hourly rate of pay of \$8.00, for a forty-hour week. Claimant also worked overtime on occasions.

On February 24, 2004, while assisting a patient from a chair to his bed, the patient loss his balance held him up under his arms as he made it to the bed. Claimant experienced a "stinging" sensation in her back following the incident. The injury was reported to supervisory personnel of respondent, the charge nurse - - Ms. Pat Tate. Claimant did not obtain medical treatment for her complaint on the date of occurrence, but rather proceeded home at the conclusion of her shift. Claimant utilized home treatment measures, which included heat, to address her low back symptoms.

When claimant reported for work on February 25, 2004, she informed her supervisor that her symptoms were such that she was in need of medical treatment. Claimant was directed to the emergency room of respondent. Following an examination claimant was given an injection for her pain, directed to remain off work, and provided a prescription. Claimant was also directed not to engage in lifting more than ten (10) pounds for one week. The February 25, 2004, emergency room report reflects that claimant was directed to remain off work for two (2) days. (RX. #1, p. 9) (RX. #1, p. 11).

On February 26, 2004, claimant completed a Form AR-N. (RX. #1, p.12). An incident/accident report was also completed by the claimant on February 26, 2004.(RX. #1, p.13). Claimant relayed to appropriate supervisory personnel of respondent that she was in need of further medical treatment relative to the injury February 24, 2004.

On February 26, 2004, claimant was referred to Dr. Michael Lack at Occupational Health Partners, by respondent. Claimant's testimony reflects that her medical treatment under the care of Dr. Lack consisted of x-rays, a week of physical therapy, and release to light duty work. The February 26, 2004, office note of Dr. Lack reflects relative to the claimant:

PT states that she was transferring a patient from the chair to the bed when he stumbled. She states that she had to lift him herself. She had pain in her lower back about two hours later. She stated that she used a heating back that night when she got home. The next day she had pain when she got out of bed. She states that she is having sharp pains that come and go in her R leg. She is also having pain across the top of her back between the shoulders blades.

* * *

Pt has normal reflexes at the knee and ankle. No sensory deficit. However, light touch aggravates pain in right thigh. No motor or

sensory deficit. Pt states that she can not sit up straight. Pt cried with light touch over the lower lumbar region. Pt can stand on heels and toes. Lateral flexion causes pain both left and right. No spasm detected.(RX. #1, p.14-15).

Dr. Lack noted the history of the claimant's medical treatment relative to the February 24, 2004, injury to include ER visit the morning following the injury. Claimant was taking Flexeril, hydrocodone, and ibuprofen without benefit to her symptoms as of the February 26, 2004, visit to Dr. Lack . Dr. Lack assessed the claimant's complaint as a lumbar strain, and released her to return to work effective 02/26/2004, with restrictions of "no heavy manual labor, no stooping crawling or bending, not to lift/push >5 lbs". (RX. #1, p. 15). Claimant was directed to return to Dr. Lack in "approximately" one week. (RX. #1, p. 17).

Claimant's testimony reflects that because of severe pain the following day she attempt to schedule another appointment with Dr. Lack, however was told the he would be out of the office for a week. Claimant then scheduled an appointment with her PPO physician, Dr. Armenthry Zshvetta Jones. The medical in the record reflects that on February 27, 2004, claimant was seen by Dr. Jones for complaints growing out of the February 24, 2004, incident. The February 27, 2004, clinic note of Dr. Jones reflects, relative to the claimant:

HPI: Patient presents complaining of low back pain. Pain is sharp in nature and radiates down the right leg. Pain is continuous. Pain intensity is rated 8/10. She has been taking ibuprofen, flexeril, and vicodin with suboptimal improvement.(RX. #1, p. 18).

Claimant was given in injection of Decadron, and provided medication by Dr. Jones during the visit. Thereafter claimant returned to the care and treatment of Dr. Lack.

The medical in the record reflects that x-rays ordered by Dr. Lack disclosed the presence of acute muscle spasm and narrowed L5 interspace. (RX. #1, p. 20-21). On March 1, 2004,

claimant attended her first visit to the physical therapy ordered by Dr. Lack. Claimant denied being non-compliant with the physical therapy. Claimant relayed that she attempted to perform the routine, however could not physically due to residuals of her injury. There is no indication the physical therapist was aware of the x-ray findings relative to the claimant. (RX. #1, p. 19; 23-30).

On March 5, 2004, claimant underwent a MRI of her lumbar spine pursuant to the directions of Dr. Lack. (RX. #1, p. 31-34). Claimant was seen in follow-up by Dr. Lack on March 8, 2004. Dr. Lack noted that since last being seen by him claimant had obtain an injection at Regions Hospital for pain. Following his examination during the March 8, 2004, visit, claimant was released to return to work with the same physical restrictions. Dr. Lack recommended referral of the claimant to a physiatrist. (RX. #1, p. 35-36).

The credible testimony of the claimant reflects that she continued to require medical treatment relative to the February 24, 2004, injury. Having been discharged from the care and treatment of Dr. Lack, claimant sought treatment at the emergency room of Region Hospital, and from the care of her ppo physician, Dr. Jones. Claimant utilized her health insurance to obtain the afore treatment until it terminated as a result of the termination of her employment.

On July 20, 2004, a Change of Physician Order was entered by the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission whereby Dr. Gregory Ricca, a Jonesboro neurosurgeon, became the claimant's authorized treating physician relative to the February 24, 2004, injury. (RX. #2). Claimant was seen by Dr. Ricca on August 18, 2004, pursuant to the afore. The August 18, 2004, report of Dr. Ricca reflects in pertinent part:

Neurological: I reviewed copies of a lumbar spine series at Dr.

Lack's office of February 26, 2004. These were of good quality and showed marked straightening of the lumbar spine. The study was otherwise normal. The radiologist, I believe read that the L4-L5 disc space was diminished in height and I disagree.

I reviewed the lumbar MRI done at SBRMC on March 5, 2004. This shows mild degenerative disc disease at L5-s1 with a central bulging disc without neurocompromise. The remaining disc are all normal. She has loss of lumbar lordosis.

IMPRESSION:

1. Severe low back pain with numbness and tingling to the right lower extremity.

In talking with the patient and examining her it appears that she may have an HNP with neurocompression. Her MRI however does not show this. I reviewed the options with the patient and a gentleman who accompanied her which includes further workup such as lumbar myelogram, lumbar flexion/extension, and possibly even a bone scan. I also reviewed further treatments and we agreed to proceed with this.

PLAN:

1. Lumbar blocks.

I will keep the patient off work and provide her with refills of Darvocet Flexeril. (RX. #1, p. 39).

Claimant was referred by Dr. Ricca to Dr. Gera for pain management, lumbar blocks.

Respondent refused to pay the cost of the claimant's treatment as recommended by Dr. Ricca, to include the referral to Dr. Gera.

Claimant has not worked since she completed her shift the day of her February 24, 2004, injury. Claimant acknowledged that she received a telephone call from respondent approximately one and one-half weeks following the February 26, 2004, light duty release of Dr. Lack, informing that a light duty position had been located. Claimant relayed to respondent that she was unable to do any work due to the residuals of her injury. The record does not reflect

evidence of the nature of the “light duty” job offered by respondent.

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers’ Compensation has jurisdiction of this claim.
2. On February 24, 2004, the employment relationship existed between the parties.
3. On February 24, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits at the rate of \$182.00/154.00, for temporary total/permanent partial disability.
4. On February 24, 2004, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period beginning February 25, 2004, and continuing through the end of her healing period, or until such time she is returned to appropriate work by her authorized treating physician, a date to be determined.
6. Medial treatment rendered to the claimant subsequent to March 8, 2004, to include emergency medical treatment and that had under the care of Dr. Armenthry Zshvetta Jones, was reasonably necessary and related to her February 24, 2004, compensable injury.
7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of February 24, 2004.
8. The respondent has controverted the payment of all temporary total disability benefits; the payment of medical benefits subsequent to March 8, 2004; and claimant’s

entitlement to medical treatment under the directions of her authorized treating physician subsequent to March 18, 2004.

CONCLUSIONS

Claimant reported to appropriate supervisory personnel of respondent the occurrence of a work-related back injury of February 24, 2004. Respondent provided medical benefits of behalf of the claimant relative to the February 24, 2004, injury through March 8, 2004. Respondent also offered a “light duty” job to the claimant approximately one and one-half weeks following the time she was first released by respondent’s designated medical provider with physical limitations on her work activities. Claimant asserts entitlement to additional workers’ compensation benefits to include indemnity and additional medical benefits. Respondent maintains that all appropriate benefits have been provided.

The present claim is one governed by the provisions of Act 796 of 1993 in that claimant asserts entitlement to workers’ compensation benefit growing out of an injury having been sustained subsequent to the effective date of the afore provision. While respondent acknowledge that claimant reported on February 24, 2004, the occurrence a work-related incident, the subsequent onset of symptoms in her back injury and legs, and later providing medical treatment relative to the afore, a compensable injury is not acknowledged by same.

There is no evidence in the record to reflect that claimant experienced complaints, limitations or restrictions relative to her low back prior to her September 15, 2003, employment by respondent. Claimant performed the job duties of a personal care tech in her employment with respondent through February 24, 2004. The credible evidence in the record reflects that claimant successfully discharged all of the duties of her job responsibilities without physical

limitations or restrictions until the February 24, 2004, incident, which occurred while assisting a patient from a chair to his bed. Claimant experienced a stinging sensation in her back as she helped the stumbling patient. Approximately two hours later, after she had gotten off work, claimant experienced pain in her back and treated same with heat.

On February 25, 2004, claimant reported to work and informed supervisory personnel that she was unable to perform her job due to residuals of her February 24, 2004, accident. Claimant received medical treatment at the emergency room of respondent for her injury. The medical treatment included medication, and direction to remain off work for two days. Claimant was later referred to respondent's designated medical provider, Dr. Michael Lack, where a physical examination was conducted, x-rays obtained, medication provided, and a release to return to work with restriction was authored. Respondent was provide the light duty release. While Dr. Lack failed to appreciate muscle spasms in the claimant's low back during his examination the x-rays were more discerning noting "straightening consistent with acute muscle spasm". *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W. 3d 167 (2000).

In order for claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirement of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: proof by a preponderance of the evidence of an injury arising out of and in the course of employment; 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; medical evidence supported by objective medical findings, as defined by Ark. Code Ann. § 11-9-102 (16), establishing the injury; and 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. Claimant has sustained her burden of proof by a preponderance of the evidence each of the requirement for establishing a compensable injury in the instant claim.

Respondent provided medical treatment to the claimant through March 8, 2004, at which time she was seen by Dr. Lack and the results of MRI scan of her lumbar spine were reviewed. Respondent asserts that as of the date of the March 8, 2004, visit with Dr. Lack claimant no longer had objective finding of a work-related injury occurring on February 24, 2004.

The evidence preponderates that as of the March 8, 2004, visit to Dr. Lack claimant continued to experience residuals of her injury, having not been symptom since the February 24, 2004, incident. Dr. Lack concluded that the MRI showed no stenosis or nerve entrapment, but only a “slight bulge”. On the basis of the finding Dr. Lack concluded that the claimant needed to be active and had no physical findings, only complaints of pain. Claimant was released to return to work with the same physical restrictions as were in place following her initial visit to Dr. Lack on February 26, 2004. The March 8, 2004, clinic note of Dr. Lack also reflects “Referred to: Physiatrist”. Respondent refused to furnish further medical benefits to the claimant subsequent to March 8, 2004.

The credible evidence in the record reflects that claimant remained within her healing period relative to the February 24, 2004, injury and in need of medical treatment relative to same. Claimant sought treatment subsequent to March 8, 2004, at the emergency room of an area hospital and under the care of her ppo physician, Dr. Jones.

Ark. Code Ann. § 11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee’s injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W. 3d 764 (2000). Whether a medical procedure or device is

reasonable and necessary treatment is a question of fact. In the instant claim the medial services sought by claimant subsequent to March 8, 2004, were to address her complaints of severe pain. While even Dr. Lack had recommended a referral to a physiatrist on March 8, 2004, respondent refused to provide same. The evidence in the record preponderates that medical treatment rendered to the claimant subsequent to March 8, 2004, was reasonably necessary treatment in relation to her February 24, 2004, compensable injury. Respondent has controverted same.

The credible evidence in the record reflects that claimant was informed by Dr. Lack during the March 8, 2004, visit that her continuing complaints of pain was the product of degenerative disc disease or arthritis brought on by her weight. At the outset it is noted that in workers's compensation law, an employer takes the employee as he finds him, and that employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). Further, a claimant does not have to support a continuing need for medical treatment with "objective medical findings". *Chamber Door Industries, Inc. v. Graham*, 59 Ark App. 224, 956 S.W. 2d 196 (1997).

Pursuant to a petition for a change of physician, on July 20, 2004, a Change of Physician Order was filed by the Medical Cost Containment Department of the Commission authorizing the claimant to initiate treatment under the care of Dr. Gregory Ricca, a Jonesboro neurosurgeon, relative to the February 24, 2004, injury. (RX. 2). Dr. Ricca Dr. Ricca concluded that further medical treatment was warranted following his review of prior pertinent medical of the claimant and physical examination. Among the treatment recommended by Dr. Ricca was a referral to Dr. Sunil Gera for lumbar blocks, pain management treatment. Respondent refused to pay the cost of the claimant's medical treatment, other then the initial visit to Dr. Ricca, to include the pain

management of Dr. Gera.

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W. 2d 550 (1996). At minimum the claimant's current complaint is a compensable aggravation of a pre-existing condition. The MRI disclosed mild degenerative disc at L5-S1 with a central bulging disc without neurocompromise. Dr. Ricca's findings suggest the present of a herniated disc with neurocompression. Respondent has controverted the claimant's entitlement to medical benefits subsequent to August 18, 2004.

Claimant has not discharged employment duties since the conclusion of her shift on the date of her compensable injury, February 24, 2004. Following the initial visit to the emergency room of February 25, 2004, pursuant to the direction of respondent, claimant was directed to remain off work for two days. On February 26, 2004, claimant was released to limited duty work by Dr. Lack, respondent's designated medical provider. Claimant was not contacted about reporting to a "light duty position" until a week and one-half following the February 26, 2004, light duty release. Claimant credibly testified that she has been physically unable to perform any employment duties, light or otherwise, as a result of the residuals of her injury. The physical limitations imposed on the claimant's employment are quite restrictive - - no heavy manual labor, no stooping, crawling, or bending, no lifting/pushing or pulling greater than 5 lbs.

The evidence preponderates that claimant's physical condition has not improved since the first time she was seen by a medical provider relative to same. Additionally, the evidence preponderates the prior to the August 18, 2004, evaluation by Dr. Ricca the true extent of the

claimant's February 14, 2004, injury had not been appreciated. Claimant was taken off work by Dr. Ricca during the visit.

Ark. Code Ann. § 11-9-526 provides, in pertinent part:

If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

In the instant claim, "light duty work was not offered to the claimant until one and one-half weeks following her initial release to restricted duty. Claimant continued to debilitating symptoms subsequent to the February 24, 2004, compensable injury, to include the time period of the issuance of the light duty release. Claimant's condition has progressively worsen since the occurrence of the compensable injury. The claimant is not obligated to engage in an exercise in futility. The extent of the claimant's injury was not appreciated until she was seen by Dr. Ricca on August 18, 2004. The evidence preponderates that the claimant was justified in refusing the light duty offered by respondent, in that she was totally incapacitated from engaging in gainful employment while within her healing period. The afore is evidenced by the fact that a specific course of treatment was recommended Dr. Ricca during the August 18, 2004, visit, along with claimant being taken off work.

While a claimant remains off work and seeks continued medical treatment for a compensable injury there is no need for any subsequent treating physician to opine that the employee should be off work. *High Capacity Products v. Moore*, 61 Ark. App. 1, 962 S.W. 2d 831 (1998). The claimant is entitled to temporary total disability during her healing period if she shows by a preponderance of the evidence that she has a total incapacity to earn wages. *Carroll*

General Hospital v. Green, 54 Ark. App. 102, 923 S.W. 2d 878 (1996). Ark. Code Ann. § 102 (12) defines the healing period “as that period for healing of an injury resulting for an accident.” The healing period continues until the claimant is as far restored as the permanent character of the injury will permit. Whether an employee’s healing period has ended is a factual determination to be made by the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W. 2d 25 (1995). Correspondingly, the duration of an employee’s total incapacity to earn wages within the healing period is likewise a purely factual determination. The evidence in this record preponderates that the claimant has remained totally incapacitated from engaging gainful employment and within her healing period since February 25, 2004, as a result of the February 24, 2004, compensable injury. Respondent has controverted the claimant’s entitlement to all indemnity benefits, to include temporary total disability benefits.

Claimant commenced her employment with respondent on September 15, 2003, and last discharged employment duties on February 24, 2004, representing twenty-four (24) weeks.. Claimant earned a hourly wage rate of \$8.00, plus overtime and shift differentials. Claimant’s total earnings during her employment with respondent was \$6,563.69. The afore represents a average weekly wage of \$273.48, and weekly compensation benefits rates of \$182.00/\$154.00, for temporary total/permanent partial disability.

AWARD

Respondent is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of \$182.00, for the period commencing February 25, 2004, and continuing through the ending of the claimant’s healing period or until such time as she is released by her authorized treating physician to appropriate work, a date yet to be determined, as

a result of her February 24, 2004, compensable injury. Said sums accrued shall be paid in lump with discount.

Respondent is further ordered and directed to pay all reasonably related medical, hospital, nursing and other apparatus expenses, to include medical related travel, growing out of the compensable injury of February 24, 2004, which includes that medical treatment rendered to the claimant subsequent to March 8, 2004.

Maximum attorney fees are awarded to the claimant's attorney, the Honorable R. Theodor Stricker, on the controverted portion of this award pursuant to Ark. Code Ann. § 11-9-715, § 11-9-801, and WCC Rule 10. Pursuant to the Full Commission decision of Coleman v. Holiday Inn, (November 21, 1990) (D708577) and Chamness v. Superior Industries, (March 5, 1992) (E019760), the claimant's portion of the controverted attorney's fee is to be withheld from and paid out of, indemnity benefits and remitted by respondent, directly to the claimant's attorney.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge