

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409552

ANGELA NORDSTROM	CLAIMANT
STAFFMARK	RESPONDENT
AIG CLAIM SERVICE INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 11, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents represented by FRANK NEWELL, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 14, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on October 22, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 29, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$242.00 for temporary total disability and \$181.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's low back injury of July 29, 2004.

2. Temporary total disability from August 9, 2004, to a date to be determined.

3. Related medical.

4. Attorney's fee.

In regard to the foregoing issues the claimant contends that she was injured on July 29, 2004, while lifting boxes. After her injury she continued working and went home that night. The pain became intense and she went to the emergency room on August 2, 2004. She called and checked in with Violet from Staffmark on that date and no one instructed her on how to fill out the appropriate paperwork for a workers' compensation claim. She was released to work and the pain progressively grew worse until she was unable to work at all as of August 9, 2004. The claimant is seeking benefits for TTD, medical expenses and attorney's fees.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a lumbar injury arising out of and in the course of her employment. Respondents reserve the right to reserve a notice defense under Ark. Code Ann. §11-9-701 with regard to claimant's initial medical care.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The parties submitted a joint medical exhibit marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she began working for the respondent in June 2004 and was placed at the Glad Factory at the beginning of July 2004. The claimant testified that initially she had the job of stuffing explaining that she was to make sure that the garbage bags were in the boxes as they were going down the conveyor belt. The claimant testified that she worked with other employees of the respondent as well as full time employees for Glad. The claimant testified that on July 29, 2004, she was working in packaging. The claimant described this work as putting boxes of garbage bags into larger boxes and sending them down a conveyor belt. The claimant stated that then these boxes were taken off the conveyor belt, taped up and placed on pallets. The claimant testified that on July 29, 2004, she was lifting boxes which weighed between five and ten pounds and were about a foot square in shape off of the conveyor belt, turning and placing them on the pallet. The claimant testified that at the time of her injury she was working with six or seven other employees and that she told Lisa that her back was hurting. The claimant stated that she told Lisa, "Man, I did something to my back." The claimant stated that at the time she figured that it would go away but it did not. The claimant estimated that this event took place about two or three in the morning. The claimant testified that her shift began at 6:00 p.m. in the afternoon and ended at 6:00 a.m. the next

day. The claimant testified that she did finish her shift and that she did not report her injury to any supervisory person at that time.

The claimant testified that after she finished her shift, she went home and went to bed. The claimant testified that after she got up she was hurting worse and that she began taking Ibuprofen in hopes that that would improve her situation. The claimant testified that around 4:00 in the morning on August 2 she could not handle the pain anymore and went to the emergency room. The claimant testified that after she got out of the hospital emergency room she called Glad and left a message to let them know that she had a doctor's note and would not be able to come back to work until the 9th of August. The claimant testified that she finally got to talk with Violet and told her that she had hurt her back at work. The claimant stated that Violet told her that maybe she should see about finding something else to do. The claimant testified that she tried getting hold of the respondent several times but no one would ever call her back and she would just leave messages. The claimant testified that she did go to the respondent's office and she was told that they would get back with her but no one ever did. The claimant testified that no forms were filled out and no forms were offered to her to be filled out.

The claimant testified that Deborah Sweatt released her to go back to work on August 9. The claimant testified that she did go to work on August 9, and worked until 4:30 in the morning at which time she told one of the respondent's employees, Carl, that she was

hurting. The claimant testified that Carl told her to make sure that it was ok with the person over the two packing lines if she could go home. The claimant testified that she went home on August 9 and has not worked since. The claimant agreed that she is currently off work under her doctor's recommendations.

The claimant testified that she was eventually sent for an MRI and after she underwent her MRI she was referred by Dr. Audibert to Dr. Raben. The claimant testified that Dr. Raben performed surgery on her back on October 6 performing a microscopic discectomy at the L5 level.

The claimant testified that she was not having any problems with her back prior to July 29, 2004. The claimant remembered at back in the year 2000 when she was working at a prison she did have some trouble with her back. The claimant testified that as a result of this 2000 injury she was off for about one week but then was able to return to work with no problems performing her job. The claimant testified that she also has been in two different automobile accidents but has never been diagnosed with anything other than a strain or sprain prior to July 29, 2004.

On cross examination, the claimant testified that when she went to work for the respondent no one ever told her to report an injury if she experienced one at work. The claimant testified that she did report her back injury to Lisa who was working with her but did not report her injury to anyone in administration. The claimant testified that at the time of her injury she felt a pop and then was a little sore but did not think at the time that it

was anything to worry about. The claimant testified that her back popped while she was lifting and turning. The claimant testified that she did not tell the hospital on August 2 that she had a history of sciatica and had been experiencing a flair up over the last two days. The claimant testified that she did tell the hospital that she strained her back back in 2000. The claimant testified that when she saw Deborah Sweatt on August 5, she reported to her that she had strained her back in 2000 but that was all. The claimant testified that she reported to Ms. Sweatt that she had been lifting boxes at work. The claimant testified that Ms. Sweatt did not seem to be paying particular attention to her and did no writing while she was in the room. The claimant testified that on August 12 when she was seen at St. Mary's Hospital she reported that she thought it happened that she hurt her back at work lifting boxes. The claimant testified that she did not know how it happened and did not know what was wrong with her at the time. The claimant testified that she knew that she had hurt herself at work but did not know how she had done it. The claimant testified that at the time of her injury while she was lifting boxes and felt a pop, she did not have pain right off. The claimant testified that she did not have pain until she woke up the next afternoon and it was hurting. The claimant testified that she did not tell the people at the hospital on August 12 that her symptoms started three and a half weeks ago nor did she tell anyone there was an injury. The claimant testified that when she was seen by Dr. Bicak on August 17 she did not tell him that when she went

to work she had symptoms. The claimant stated that she told Dr. Bicak that she did not know if the respondent had workers' compensation and he was the one that told her about workers' comp. The claimant testified that as soon as she was released she has plans to go back to work. The claimant testified that when she called into Staffmark after July 29 she did not tell them that she was sick but reported to them that she had injured her back and could not come to work until August 9.

On redirect examination, the claimant testified that it was not until after her MRI that she realized the extent of her injuries. The claimant testified that when she left work on July 29 she did not know at that point how bad she was hurt but that her symptoms progressively got worse and worse. The claimant testified that after she left work on July 29, she did nothing to injure her back. The claimant was asked about the intake form which was filled out on August 2 when she went to the emergency room and stated that she did not tell anyone that she had a new job lifting at home. The claimant testified that after she got over her back strain in the year 2000 she had no trouble working at her other jobs.

Chris Lairson testified that he met the claimant approximately two weeks before she started working at Glad. This witness testified that prior to July 29, 2004, they began dating and that his observation of the claimant was that she was very active and active with her five children. Mr. Lairson testified that currently he and the claimant are living together but they were not

living together on July 29, 2004. This witness testified that one of the claimant's children called him and told him that the claimant was in bed crying and that when he showed up she, in fact, was in bed crying. This witness testified that the claimant told him that she had hurt herself at work but that she did not explain to him what she was doing when she hurt herself. Mr. Lairson testified that the claimant's condition continued to get worse and that he took her to the emergency room on the morning of August 2. Mr. Lairson testified that the claimant did not report or mention any possibility of anything hurting her other than her work.

On cross examination, Mr. Lairson testified that he and the claimant began living together in October.

Michael Shane Goodson testified that he had known the claimant for approximately a year. Mr. Goodson testified that he and the claimant lived together for four or five months and during this period of time he did not notice her having any problems or complaints with her back or legs. This witness testified that the claimant did not have any trouble doing a variety of activities such as bending, stooping and lifting, noting that she climbed into his truck which sets high off the ground. Mr. Goodson testified that when he came in from work after July 29 he asked the claimant why she was not at work and she told him that she was hurting.

Violet Mkwamba testified that she was the on site manager for the respondent at Glad. This witness testified that she remembers seeing the claimant at Glad and knows that she was employed by the respondent at Glad. This witness testified that the claimant

called in on August 2 to advise them that she was sick that day. This witness testified that she did not talk to the claimant but got this information on a note which was made at the time the claimant called in. Ms. Mkwamba testified that on August 9 she talked with the claimant and the claimant told her that she had been very sick and she had a doctor's note. This witness testified that she asked the claimant to bring the doctor's note to her but the claimant never did. This witness testified that when an employee is hired by the respondent they are told that they are to report any injuries. This witness testified that an orientation is given to the employees at Glad and that all emergency numbers are made available to them if they are injured on the job and need to contact someone. This witness testified that employees are instructed to contact someone with the respondent immediately if they are injured at work. This witness testified that it was not until around September 15 that she got an e-mail from the respondent asking for paperwork concerning the claimant's injury. This witness testified that she told the respondent that she did not have any paperwork on the claimant, that she was unaware of an incident. This witness was asked if the claimant's testimony concerning the work she was doing lifting boxes sounded accurate and this witness testified that it was pretty accurate.

On cross examination, Ms. Mkwamba testified that the notes which she received from the Glad personnel concerning the claimant do not mention her being sick. This witness testified that it was her conversation with the claimant where she learned that the

claimant was sick and that was the reason for her being absent from work. This witness testified that no one within the Glad plant had ever reported to her that the claimant was not able to do her job prior to July 29. When asked, this witness testified that when she visited with the claimant she never offered her any forms.

On rebuttal, the claimant testified that when she talked with Violet she told her that she had hurt her back at work and that she could not come back to work until the 9th of August. The claimant testified that she did not mention anything to Violet about being sick. The claimant testified that she was never offered any workers' compensation forms, noting that she had never filed for workers' compensation benefits before.

On cross examination, the claimant testified that from August 2 on she would call Glad leaving messages that she had hurt her back and was not able to come to work. The claimant testified that she spoke with Violet on August 4 or 5 after she had seen Deborah the first time. The claimant testified that she told Violet that she had to go to the doctor but did not know when she would be able to come back to work because she had hurt her back.

The respondent recalled Violet Mkwamba who testified that there is no benefit for the respondent not to report an injury. On cross examination, Ms. Mkwamba testified that the record which she took based on her conversation does not say one way or the other whether the claimant was injured or whether she was sick.

The medical records set forth that the claimant was seen at St. Mary's Hospital on August 2. The ER reports indicate that her

problems started times two days and up above it is written times two weeks. On the intake sheet where recent injuries are asked, possibly is checked and there is also the notation that it is a new job lifting where at home. On past history it is noting that the claimant had a prior back injury with prior back pain and this was episodal. The claimant was diagnosed with low back pain and acute sciatica. The ER records indicate that the claimant was prescribed medications and released to go home. Deborah Sweatt writes on August 2004 that she has seen the claimant for follow up after being seen at the ER on August 2, 2004. Ms. Sweatt notes that the claimant reports that she had severe sciatica when she was seen at the emergency room. This history sets forth that the claimant reports that she does have a prior history of having a similar problem several years ago and she denies any traumatic injury to the back. After examination, the claimant was diagnosed with having sciatica and was prescribed medications, low back exercises were recommended and she was to follow up if her symptoms persisted. The claimant was seen at St. Mary's Hospital on August 12 where it is reported that her complaints started three and a half weeks ago due to a recent new job with lifting. It is also marked in the recent injury section that this happened about three and a half weeks ago lifting at work. The ER doctor scheduled the claimant for an MRI. It was recommended that the claimant limit her activities for ten days and no work until August 22. The claimant underwent an MRI of her lumbar spine on August 13, 2004, which revealed a large central disc herniation at L5-S1

demonstrating an inferiorly extruded component, resulting in at least moderately severe central and lateral recess stenosis. This report sets forth that the disc herniation abuts the right and left S1 nerve roots, with the left S1 nerve root compressed in the left lateral recess. The report further sets forth that there is a small central focal disc protrusion at L4-5 but that this does not result in any significant central or lateral recess stenosis.

The claimant was seen by Dr. A. D. Bicak on August 17, 2004, to discuss her MRI. Dr. Bicak writes that the claimant's MRI did reveal a large central disc herniation at L5-S1. It is noted that the claimant reports that her symptoms happened at work and she has not decided if she is going to pursue workers' compensation. Dr. Bicak referred the claimant to Dr. Raben for consultation and medications were prescribed. Dr. Cyril Raben writes on August 31, 2004, that he has seen the claimant for complaints of low back and left leg pain beginning some three weeks ago. Dr. Raben notes that she was working for Glad manufacturing and when lifting and twisting she was injured. After examination of the claimant's MRI as well as of the claimant herself, Dr. Raben recommended surgery and also recommended that she seek a second opinion. Dr. Raben also arranged for the claimant to have epidural steroid injections while she is considering her options. On September 3, 2004, the claimant underwent epidural steroid injections performed by Dr. Raben. On September 17 Dr. Raben writes that the claimant reports that she had four or five days worth of relief from her injections and would like to undergo an injection that day as well as go ahead

with the schedule of surgery. Dr. Raben writes on October 18, 2004, that the claimant has some soreness from her incision and spasm in her left leg but she is better. Dr. Raben notes that the claimant's incision is healing nicely and he would like to start her on physical therapy.

After consideration of all the evidence presented in this matter, I find that the claimant has proven by a preponderance of the evidence that she sustained a work related injury while working for the respondent on July 29, 2004. The claimant has testified to a specific incident occurring at work which she reported to a co-worker. The claimant testified that at the time of her incident she was unaware that her problems were serious, therefore, she did not report a work related injury. The claimant's testimony is that within a few hours after she had her injury, her symptoms became quite noticeable and progressively got worse until she had to be seen at the emergency room on August 2, 2004. It is noted that there are several inconsistencies as to the ER notations but there are definitely notations that the claimant experienced her problem while lifting, while lifting at work and that this was some two days prior to August 2. The medical records set forth that this claimant has objective medical findings of a herniated disc. The respondents, therefore, should pay for the cost of this claimant's medical treatment for her compensable back injury after August 2. The claimant, by her own testimony, stated that she did not report her work related injury to the respondent until August 2 after she had already been to the ER. The respondents should pay temporary

total disability to this claimant from August 2, 2004, to a date to be determined.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 29, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$242.00 for temporary total disability and \$181.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on July 29, 2004. See discussion above.

5. The respondents should pay for this claimant's medical treatment for her compensable injury subsequent to August 2, 2004. See discussion above.

6. The respondents should pay temporary total disability to this claimant from August 2, 2004, to a date to be determined as a result of her compensable injury. See discussion above.

7. The respondents have controverted this claim in its entirety.

8. That the claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her back on August 29, 2004, while working for the respondent.

The respondents should pay for the cost of this claimant's medical treatment for her compensable injury subsequent to August 2, 2004. The respondents should pay temporary total disability to this claimant from August 2, 2004, to a date to be determined.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE