

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F401760

JOYCE A. PARHAM, EMPLOYEE **CLAIMANT**

**CENTRAL FLYING SERVICE, INC.,
EMPLOYER** **RESPONDENT**

**EMPLOYERS INSURANCE COMPANY
OF WAUSAU,
INSURANCE CARRIER** **RESPONDENT**

OPINION FILED JANUARY 24, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 27, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Michael A. LeBoeuf, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 27, 2004, to determine the compensability of the claim filed herein and, if compensable, claimant's entitlement to temporary total disability benefits, medical benefits, wage loss, and attorney's fees.

The parties stipulated to the existence of the employee-employer relationship on August 22, 2003. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$272.00 for temporary total disability and \$204.00 for permanent partial disability benefits. The parties also

stipulated that claimant is alleging a gradual onset injury to her back and shoulders.

Claimant contends that she developed gradual onset back and shoulder injuries as a result of lifting, bending, and slicing meat for nineteen years, while employed for respondent-employer, and that these injuries manifested themselves to the point that she began requiring treatment. Although no specific injury is alleged regarding her shoulder, she does contend that on August 22, 2003, while assisting in the unloading of a delivery vehicle, she sustained an additional back injury.

Respondents controvert the claim entirely, contending that there is no proof that the claimant's condition is related to her employment and that the job is not rapid and repetitive. Further, respondents contend that the claimant's shoulder problem is due to a car wreck and that her back condition is due to degenerative disc disease, of which the major cause is not the employment duties of claimant. Respondents further raise and assert the statute of limitations as a defense to claimant's alleged back injury.

STATEMENT OF THE CASE

Claimant is forty-four years old and had worked for respondent-employer for nineteen years at the Flight Deck Restaurant, as the head cook. Claimant testified that part of her duties as head cook was to put up the groceries that came in from the delivery trucks. She testified that the delivery truck drivers would simply unload the boxes into the hallway, in the aisle, and it was her job to put the groceries away. She

testified that she had no use of a dolly or any device to help lift the boxes. Claimant also testified that one of her duties was to slice meat for the restaurant every other day for several hours per day.

Claimant testified that although she had experienced back problems over the nineteen years she was employed with respondent-employer, she never mentioned anything to her employer about her problems being work-related. She testified that she simply went to a clinic in April of 2003 and began taking muscle relaxers.

Claimant admitted that she had injured her shoulder previously in a car wreck on September 11, 2001; however, she testified that she was last treated for that injury in April of 2002. Medical records from Dr. David Gilliam, however, dated December 15, 2003, state that claimant has had “intermittent, but progressively severe right shoulder pain since a motor vehicle accident more than two years ago.” Claimant also admitted that she had had a back injury about ten years ago, which was work-related; however, she testified that she had fully recovered from that injury. A report from Dr. Vestal Smith on September 8, 2003, however, notes that claimant has had “problems off and on since [her back injury].”

Claimant testified that on Friday, August 22, 2003, she had gotten to work early in the morning and was the only person there, when delivery trucks arrived and unloaded the grocery boxes into the hallway. She testified that while she was dragging a box of lettuce, she felt a pain in her back that caused her to have to stop

what she was doing and sit down for a while. She testified that she went to the office to rest and another co-worker, Mozell, came in at that time and saw her sitting down.

Claimant testified that Mozell asked her why she was sitting down and what had happened. She claims she told him that she had hurt her back. She testified that, shortly after, she continued unloading the boxes with Mozell's help and worked for the rest of the day. She testified that she did not tell Rhonda St. John, her supervisor, about hurting her back, when Ms. St. John arrived at work. Mozell was not called to testify.

Claimant testified that the next day, Saturday, she attempted to pick peas with her sisters but that she could not finish, due to the pain. She went to the emergency room. Medical records do indicate that claimant was seen in the emergency room of UAMS on August 23, 2003, complaining of left side pain; however, records further reflect that no injury was reported and no mention was made of any work-related condition that would have caused her pain. Claimant was released and referred to Dr. Richard Wyatt for a gynecological problem, unrelated to the injuries alleged, that was discovered at the emergency room.

Claimant saw Dr. Wyatt on August 25, 2003, for her gynecological problem and told him also of her back pain. Dr. Wyatt's notes do not mention a work-related injury. Notably, however, Dr. Wyatt's history of claimant's general health and habits states as follows: "She does smoke about a pack every other day and drinks about a

pint of alcohol every other day. She also uses marijuana almost daily.” Dr. Wyatt referred claimant to Dr. Vestal Smith for her back problem.

On September 8, 2003, claimant saw Dr. Smith. Dr. Smith’s report indicates no work-related injury but states as follows:

She actually states that she injured her back about ten years ago and has had some minor *problems off and on since that time*. She does not describe any history of surgery or specific intervention to her low back in the past. *She has continued to work and really has not had any significant interruptions in this regard over the last ten years*. She recently describes an increase in her back pain following some activity in June in which she was *picking peas*. *She did not have any specific incident* but after this activity when she returned home, she developed increased low back pain and over the next few days it got quite a bit worse.

[Emphasis added.] Incidentally, inconsistent with Dr. Wyatt’s notes regarding claimant’s general health and habits, Dr. Smith notes: “She smokes a pack of cigarettes every 1 ½ days. Occasional alcohol use.”

Dr. Smith ordered an MRI and began treating claimant, ordering physical therapy, epidural steroid injections, and recommending back surgery. Claimant elected not to have the back surgery. Claimant eventually saw Dr. Hart, as well, who reported on November 19, 2003, that “[i]maging studies show some osteophytic changes of the facets at L2-3 through S1 as well as some degenerative disc disease at L5-S1 as well as foraminal narrowing.” Dr. Hart’s notes indicate no work-related injuries or conditions that may have caused claimant’s present problems.

Claimant testified that she first started seeing Dr. Gilliam in December of 2003 for her shoulder. She testified and medical records indicate that she had shoulder surgery in February of 2004.

Claimant testified that the Monday after her August 22, 2003, alleged injury, she called in sick to work. She testified that after that day, she tried to go into work each day but after a couple of hours, she could not tolerate the pain and would have to leave. She testified that she tried to work for about two weeks following the August 22, 2003, alleged injury, but her supervisor, Ms. St. John, advised her to stay off work until her back problems got better.

Claimant testified that Ms. St. John told her to file for short-term disability on claimant's health insurance. Claimant did so and received short-term disability until it ran out. She filed all her medical bills on her group health insurance and applied for long-term disability. She contends that her long-term disability was denied when the insurance company found out that she had begun taking muscle relaxers in April of 2003.

Claimant's employment with respondent-employer was terminated sometime after February of 2004. Claimant testified that after her employment was terminated, and she no longer had group health insurance, her doctors advised her to file for workers' compensation. She then filed the instant claim on February 19, 2004.

FINDING OF FACT

Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury or that any injury she alleges is the major cause of her disability or need for treatment.

DISCUSSION

In order to prove compensability of a claim, a claimant must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his/her employment; (2) the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) the injury was a major cause of the disability or need for treatment; and (4) the injury must be established by medical evidence supported by objective findings. *See* Ark Code Ann. § 11-9-102(4)(A)(ii)(a) and 11-9-102(4)(E)(ii); *West v. Arkansas Electric Cooperative Corp.*, CA 03-1450 (September 15, 2004); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). In addition to satisfying the “major cause” requirement, a claimant must also prove a causal connection between his or her employment and the injury. *Id.* Causation remains an essential element to be proven by a claimant in order to establish a claim of compensability.

Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(I). Medical opinions addressing

compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, 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 Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998).

The record is devoid of any objective findings in this case. Medical records reflect absolutely no mention of a work-related injury having occurred on August 22, 2003, or at *any* time. The only mention in the records of claimant noticing the onset of specific pain was a non-work-related pea-picking outing in June of 2003, noted in Dr. Vestal Smith's report of September 8, 2003.

Claimant testified that she experienced pain over the nineteen years she was employed with respondent-employer, while lifting grocery boxes and slicing meat, and she may well have. However, she never reported any work-related pain, injuries, or even the necessity of treating with a doctor as a result of her work duties to her employer. To find that claimant's work was the major cause of her problems would require speculation on the part of this examiner.

Claimant has failed to causally relate her condition to her employment. The medical records reflect, and claimant admits, that she had pre-existing shoulder and back problems as a result of previous injuries unrelated to the August 22, 2003, alleged work-related injury. Records also reflect the claimant had continued over the years to experience problems as a result of those previous injuries.

While the law is clear that the employer takes the employee as he finds him or her, *see Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003), the claimant still must prove that a work-related injury occurred in order to aggravate or worsen any pre-existing condition she may have had. It is this examiner's opinion that the claimant herein has simply failed to prove by a preponderance of the credible evidence that she sustained compensable injuries to her back and shoulder as a result of her employment or that any injury she may have sustained was the major cause of her disability or need for treatment. As such, claimant is not entitled to the relief she is requesting.

For all of the above-stated reasons, the claim herein is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge