

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F409824

LA DAWNA RICHARDSON, Employee	CLAIMANT
NEWTON COUNTY NURSING HOME, Employer	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED MARCH 8, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On February 16, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 8, 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 relationship of employee-employer existed between the parties on June 28, 2004.
3. The claimant sustained a compensable injury to her tooth on June 28, 2004.

At the time of the hearing the parties also agreed to stipulate that claimant earned an average weekly wage of \$330.00 which would entitle her to compensation at the rate of \$220.00 for temporary total disability benefits and \$165.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's neck on June 28, 2004.
2. Related medical.
3. Temporary total disability benefits.
4. Attorney fee.

At the time of the hearing the claimant withdrew as an issue her entitlement to temporary total disability benefits.

The claimant's contentions as set forth in her pre-hearing questionnaire are as follows: "Claimant was injured on June 28, 2004 when she was helping a confused resident to the bathroom and was punched in the face by the resident. Her teeth and neck were injured by the blow to her face."

The respondents' contentions as set forth in their pre-hearing questionnaire are as follows: "The respondents will contend that the claimant did not sustain a compensable neck injury in the incident of June 28, 2004, and that she has received all compensation benefits to which she is entitled."

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 December 8, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$330.00 which would entitle her to compensation at the rate of \$220.00 for temporary total disability benefits and \$165.00 for permanent partial disability benefits is also hereby accepted as

fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her neck on June 28, 2004.

FACTUAL BACKGROUND

The claimant is a 27-year-old woman who has obtained her GED. Claimant was hired as a certified nurse's assistant by the respondent for a second term of employment beginning in April 2004.

On June 28, 2004, the claimant was in the process of helping a resident walk to the bathroom. As claimant reached for the resident's hand he struck her under the chin with a closed fist. This caused the claimant's head to go back and resulted in pain in her neck and her teeth jarring together. Following this incident the claimant was sent by the respondent to Dr. Jimmy Justice where she reported neck pain and a loose temporary crown. Claimant was given Ibuprofen and instructed to see her dentist for a permanent crown.

Claimant returned to work for the respondent following medical treatment on June 28 and continued to work for respondent until she was terminated in August 2004 because of attendance problems.

On August 1, 2004, the claimant was involved in a four-wheeler accident which resulted in pain throughout her body, including her neck. As a result of this four-wheeler accident claimant saw Dr. Merwin on August 2, 2004 who provided claimant with medication and placed him on light duty. Claimant was next evaluated by Dr. Merwin on August 9, 2004, and his notes of that date indicate that claimant's discomfort and soreness is improved. Dr. Merwin released the claimant to return to full-duty work as of August 10, 2004. It was shortly after this release that claimant was terminated by the respondent for attendance problems.

Claimant did not seek any additional medical treatment until January 24, 2004, when she saw Dr. Murphy. The claimant complained of neck pain and headaches which she attributed to the injury at work in June. X-rays of the cervical spine were ordered which revealed a mild reversal of the normal cervical lordosis which the radiologist attributed to muscle spasm.

Following her injury the claimant did seek medical treatment from her family dentist for her loose crown. Respondent has accepted and paid compensation benefits associated with the injury to claimant's tooth. However, respondent has not accepted liability for an injury to claimant's neck as a result of the incident on June 28, 2004. As a result, claimant has filed this claim requesting compensation benefits.

ADJUDICATION

The claimant contends that she suffered a compensable injury to her neck as a result of the incident which occurred when she was struck under the chin by a patient on June 28, 2004. 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 identi-

fiable 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 neck on June 28, 2004.

While claimant admittedly did make complaints of neck pain at the time of her initial medical evaluation in Dr. Justice's office on June 28, 2004, no objective findings were noted at that time. No x-rays were taken and the progress notes from that date indicate that no swelling was present.

Following this evaluation, claimant continued to work for the respondent and did not seek any additional medical treatment for her neck. According to claimant's testimony, she continued to have neck pain and reported her condition to the nurse and administrators. However, claimant admitted that she did not ask the respondent to send her back to the doctor. Also testifying at the hearing was Debby Henson. Henson is currently the office manager for the respondent and in the summer of 2004 was the receptionist for the respondent. Henson testified that her job duties at that time included workers' compensation paperwork. Henson testified that after claimant's injury and before the four-wheeler accident she had two or three conversations with the claimant regarding her dentist bills. Henson testified that claimant never mentioned her neck hurting during this period of time.

As previously noted, the claimant had an accident with a four-wheeler on August 1, 2004, where she was thrown from a four-wheeler, landing on her back. As a result of that accident the claimant was complaining of pain throughout her body, including her neck. Claimant was given medication and placed on light duty for approximately one week before she was released to full duty as of August 10, 2004.

Shortly after her release by Dr. Merwin on August 10, 2004, the claimant was

terminated by the respondent for attendance problems. Claimant did not seek any additional medical treatment relating to her neck until January 24, 2004. At that time Dr. Murphy ordered an x-ray which revealed a mild reversal of the normal cervical lordosis. According to the radiologist's report, this was probably related to muscle spasm. This is the first potential objective evidence of an injury to the claimant's cervical spine. However, the testing was not performed until more than seven months after the incident, and more importantly, after the claimant's four-wheeler accident on August 1, 2004.

In summary, I simply 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 neck as a result of the incident on June 28, 2004. While claimant did make complaints of neck pain on that date, no objective testing was performed establishing an injury. The claimant continued to work at her regular duties for the respondent until she was terminated for attendance problems in August 2004. Claimant did not seek any additional medical treatment for her neck during this period of time until she suffered a four-wheeler accident on August 1, 2004, which resulted in generalized body pain including claimant's cervical spine. Even after receiving that medical treatment the claimant was released to full duty with her condition improved as of August 10, 2004. The medical reports from August 2004 do not mention any complaints of neck pain attributable to the incident in June 2004. Finally, claimant did not seek any additional medical treatment for her neck until January 24, 2004. Although an x-ray revealed a mild reversal of the normal cervical lordosis, this x-ray was not taken until seven months after the claimant's accident and more importantly, it was not taken until after claimant had been thrown from a four-wheeler in August 2004.

Accordingly, for the foregoing reasons, 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 neck on June 28, 2004.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her neck on June 28, 2004, while employed by the respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE