

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F406104**

**GENEVA RICKERT, EMPLOYEE**

**CLAIMANT**

**ARKANSAS DEPARTMENT OF HEALTH, EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS, CARRIER**

**RESPONDENT**

**OPINION FILED MAY 31, 2005**

A hearing in this case was conducted on March 8, 2005, before ADMINISTRATIVE LAW JUDGE DALE DOUTHIT, at El Dorado, Union County, Arkansas.

Claimant was represented by Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents were represented by Richard S. Smith, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for hearing in El Dorado, Arkansas on March 8, 2005. A prehearing conference was conducted on December 29, 2004, and a Prehearing Order was filed on January 4, 2005. The Prehearing Order was marked as Commission Exhibit #1 and made a part of the record without objection.

At the full hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee-employer-carrier relationship existed at all relevant times, including May 7, 2004.
3. The Claimant's average weekly wage was \$125.41 entitling her to a temporary total disability and permanent partial disability rate of \$84.00 per week.

By agreement of the parties, the primary issue for determination concerned compensability, and if overcome whether Claimant is entitled to associated indemnity and medical benefits.

The Claimant contended that she sustained a compensable injury on May 7, 2004, arising out of and in the course of her employment, and is entitled to temporary total disability and temporary partial disability benefits from May 21, 2004 through December 1, 2004. Claimant further contends that she is entitled to medical benefits associated with her compensable injury and attorney's fee.

Respondents contended that this claim is not compensable because the preponderance of the evidence does not establish Claimant sustained a work injury on May 7, 2004, and that the medical evidence has not established the existence of the injury as alleged.

The only witnesses called to testify by Claimant's attorney was the Claimant herself, Geneva Rickert. Donna Tribble, Betty Murphy, and Becky Nowlin were called as witnesses by Respondents. The record is composed of the transcript of the March 8, 2005 hearing containing Commission Exhibits, medical records, and business records.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

From 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 hereby made in accordance with Ark. Code Ann. § 11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction over this

claim.

2. The stipulations agreed to by the parties are hereby accepted as fact.

3. The Claimant has failed to prove by a preponderance of the credible evidence that she sustained an injury arising out of and during the course of her employment with the Arkansas Department of Health as a result of a specific incident at the work place on May 7, 2004.

4. Respondents have controverted this claim in its entirety.

### **DISCUSSION**

This claim turns entirely upon the credibility of the Claimant and the three witnesses called by the Respondents. The record contains far too many inconsistencies and contradictions for this examiner to find in favor of the Claimant. The Claimant's testimony is never considered uncontroverted. Testimony of an interested party is always considered to be controverted. Continental Express v. Harris, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

The Claimant had been employed by the Columbia County Department of Health for about four months prior to the alleged injury of May 7, 2004. She worked as a CNA in home health as a personal contractor. Part of her job entailed caring for an elderly lady who was a double amputee at the ladies home. Due to her client's condition, the Claimant testified she had to lift the client from her bed to her wheelchair periodically. During one of these lifting episodes, on May 7, 2004, the Claimant testified she sustained a compensable injury. The Claimant testified as follows regarding the incident:

A. I was working at Ms. Nellie Mack's house. I was lifting her from the

bed to the wheelchair when I felt like a stabbing, burning pain that hit me right here in my neck. It went up my neck and down my back and down my shoulder, through my arm, and it just worsened. (T-13)

The first strange occurrence regarding the Claimant's credibility came on May 7, 2004. The Claimant acknowledged she saw her supervisor after the incident later in the day on May 7, 2004, but never mentioned the alleged injury. Donna Tribble, Claimant's supervisor, credibly testified to the same encounter with the Claimant on May 7, 2004. Ms. Tribble stated that Claimant never mentioned an injury. Ms. Tribble testified all the Claimant did was tell her she wanted to rescind a letter of resignation the Claimant had submitted to her prior to the alleged compensable injury. Claimant testified she didn't tell anyone about her injury on May 7, 2004, and also continued to work at the home of a different client later that day. Claimant testified that May 7, 2004 was a Friday and, that she was in a lot of pain over the following weekend.

A. I was in a lot of pain all weekend. In fact, I took a lot of Tylenol and I used a heating pad. I mainly just chilled, you know, laid on the couch, used the heating pad with the Tylenol. My Sunday School teacher - Sunday I didn't go to church because I was in so much pain that I just didn't go because I was in pain. Very uncomfortable. (T-18)

The Monday following the injury, the Claimant testified she called to talk to her supervisor, Donna Tribble, but wasn't able to get through to her. This is where the second inconsistency comes into play. Claimant testified on May 10, 2004, the Monday following the alleged incident, she told Ms. Becky Nolin that she needed to speak with Donna because she had hurt her arm. Ms. Becky Nolin credibly testified at the full hearing that the Claimant never told her she had hurt her arm. Ms. Nolin testified she didn't hear of any alleged injury until some time in 2005.

The third major inconsistency came when the Claimant testified she went back to

the client's home where the alleged injury took place. Ms. Betty Murphy was a home health aide who helped the husband of the Claimant's client. Ms. Murphy's time in the home would sometimes overlap with the Claimant's time in the same home. Claimant testified that on May 10, 2004, she requested Ms. Murphy to help her move her client, and told her the reason she needed the help was because she had hurt herself and had been hurting all weekend. (T-11 thru 22, P. 20) Ms. Betty Murphy credibly testified at the full hearing that the Claimant had never told her that she was hurt or been injured. Further, the Claimant's time sheets and personal notes regarding her work for the period May 1, 2004 through May 14, 2004 show that she continued to work for the same client the whole week of May 10, 2004 through May 14, 2004. In addition, her personal notes are void of any mention of an alleged injury or request for needing help from Ms. Murphy. (Cx-1, P. 19)

Another inconsistency came where the Claimant finally went to the doctor on May 18, 2004. She went to Dr. Cathy Gonzales, her family doctor, on May 18, 2004. Dr. Gonzales' report from that visit states as follows:

Geneva Rickert reports that she has had some trouble with neck pain and symptoms with her left arm on and off for the past two years... (Cx-1, P. 18)

The Claimant testified that she had never had problems with her neck or arm before and that it was just a mis-communication between her and Dr. Gonzales. She affirmatively stated she never told Dr. Gonzales she had neck and arm pain on and off for the last two years.

The Claimant testified that on May 18, 2004 Dr. Gonzales gave her an off-work note she took to her employer and put it in a basket. Ms. Nolin and Ms. Tribble both

testified that one of them go through this basket and that at no time did they find the off-work note from Dr. Gonzales.

On May 24, 2004, Claimant testified that she finally caught up with her supervisor, Donna Tribble. Claimant testified that she told Ms. Tribble at that time she could no longer care for the client in whose home she alleged she got hurt. Claimant testified that Donna told her at that time that that was the first she had heard of an injury. (T-10 through 16, P. 26) Donna Tribble testified that the Claimant never told her about an alleged injury on May 24, 2004. Ms. Tribble credibly testified that the first she knew about an alleged injury was in June, 2004, after the Claimant filed a claim. Donna Tribble credibly testified that her conversation with the Claimant on May 24, 2004 was about the Claimant having bronchitis, and nothing about an alleged injury from three weeks before.

The Claimant has the burden of proving the job relatedness of an injury, without the aid of any kind of presumption. Pearson v. Faulkner Radio Service, 220 Arkansas 368 247 S.W.2d 964 (1952). The Claimant's burden of proof is the preponderance of the evidence. Voss v. Ward's Pulpwood of Arkansas, 248 Arkansas 465, 425 S.W.2d 629 (1970).

For Claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. § 11-9-102(4)(a)(i) (Repl. 2002) must be established:

- 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 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 an injury; and,

4) proof by a preponderance of the evidence that the injury was caused by a specific incident as it is identifiable by time and place of occurrence.

If the Claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126 938 S.W.2d 876 (1977).

Due to the inconsistencies noted and the lack of credibility of the Claimant as outlined, I find the Claimant has failed to prove elements one and four stated above by a preponderance of the evidence. Therefore, after review of the evidence in this case, and impartially, without giving benefit of a doubt to either party, I find the Claimant has failed to prove she sustained a compensable injury within the meaning of the Arkansas Workers' Compensation laws. Accordingly, this claim is hereby respectfully denied and dismissed.

**IT IS SO ORDERED.**

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DALE DOUTHIT  
Administrative Law Judge

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