

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503628

MARIA RODRIGUEZ	CLAIMANT
J. MCDANIEL CO., INC.	RESPONDENT
LIBERTY MUTUAL INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 28, 2005

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

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

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

STATEMENT OF THE CASE

A hearing was held on August 16, 2005, 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 June 24, 2005. 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 all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

4. The claimant is entitled to a weekly compensation rate of \$173.00 for temporary total disability and \$154.00 for permanent partial disability.

5. The claimant is entitled to a weekly compensation rate of \$103.00 for both temporary total disability and 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 and neck injuries of March 22, 2005.

2. Related medical.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that her back, hip and neck were injured on March 22, 2005, when she fell off of the pallets she was standing on. Claimant would like to receive a change of physician from Dr. Yawn to Dr. Tony Raben.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury which arose out of and in the course of her employment with the respondent employer on March 22, 2005. Without waiving other compensability defenses, the respondents state that there are no objective findings to support the claimant's claim of a compensable injury.

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

1. The claimant submitted documentary evidence marked Claimant's Exhibit NO. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1, non medical records marked Respondents' Exhibit No. 2, documentation from the respondents marked Respondents' Exhibit No. 3 and the deposition of Dr. Yawn marked

Respondents' Exhibit No. 4. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified through an interpreter that the respondent had her working at a plant doing a job of packing "little towels in boxes." The claimant testified that the boxes were moving down a line and she had to reach behind her to get the towels, turn around and place the towels in the boxes. The claimant testified that on March 22, 2005, she was performing this task and when she turned around to grab the towels she slipped and fell. The claimant testified that she was standing on a pallet and it was open or broken and that is why she slipped. The claimant testified that her right hip hit against the line and she ended up on the ground. The claimant testified that she was taken to the office and her injury was reported. The claimant testified that then her supervisor, Melinda, took her to the doctor.

The claimant testified that at the doctor's office she was x-rayed all over her body. The claimant was asked if she hit her neck when she fell and the claimant responded, "Yeah. I hit my---I hit it somewhere." The claimant testified that at the time she was in a lot of pain and that her right hip was swollen as well as her neck. The claimant testified that she was prescribed medication. The claimant testified that she did not return to work the next day because she was not able to get up out of bed and walk around. The claimant testified that she again returned to the doctor in three weeks and again she was prescribed medication for her complaints of

pain. The claimant again indicated that her pain was from her neck all the way down to her legs. The claimant testified that her symptoms were getting worse and that she continued to have swelling in her neck and right hip area. The claimant testified that she did not return to work during the three weeks between her first appointment with the doctor and her second appointment because she was in pain. The claimant testified that she did not return to the doctor after this second visit because she did not have the money.

The claimant testified that she tried to return to work for the respondent approximately one month after her accident but she was told that they were not going to put her back to work. The claimant testified that she called in on a daily basis asking for work but the respondent said they did not have any. The claimant testified that she has not been able to see a specialist for her back or neck and that she had not had an MRI. The claimant testified that she still hurts a lot in the same places she injured in her accident. The claimant testified that she had never had any trouble with her neck or hip before this injury.

On cross examination, the claimant agreed that she had testified that at the time of her injury she had fallen all the way to the ground and had hit her neck on something. The claimant testified that at the time of her injury she told Melinda that she had hurt her right hip and neck and that these areas were swollen. The claimant agreed that she had swelling in her right hip and her neck when she first saw the doctor and she also had this same swelling when she saw Dr. Yawn several days after her accident.

Rosalio Rivero testified through a Spanish interpreter that he worked for the Stribling Company and had been so working for three years. Mr. Rivero testified that he is the person in charge of the line and the supervisor over the workers on the line. Mr. Rivero testified that in March 2005 the claimant was working in his department for a couple of days as a temporary employee. This witness testified that he actually saw the claimant's accident, testifying that the line that the boxes come down is a little high so there is a pallet to stand on so that workers can reach the line. Mr. Rivero testified that while the claimant was working she slid and then she fell and she hit her hip against the table behind her. Mr. Rivero testified that the claimant did not go all the way to the ground but that when she slipped she hit her right hip against the table. This witness testified that he was standing in the front part of the line and saw when the accident happened. Mr. Rivero was asked if the claimant hit her neck or head or any other part of her body and he responded "no." Mr. Rivero testified that he approached the claimant and asked if she was hurt. Once the claimant reported to him that she was hurt he took her to report the accident to his supervisor and this supervisor called Melinda.

On cross examination, Mr. Rivero testified that the table the claimant hit is a metal table which is attached to the flooring. Mr. Rivero testified that he was sure that the claimant hit the table because if she had hit the line perhaps it would have dragged her along because it is a belt or a band and keeps moving. Mr. Rivero testified that he saw when the claimant lost her balance or

her footing and she hit herself against the table. This witness testified that he came over and said something to her like, "Did you hit yourself against something?" This witness was pressed to remember what the claimant was wearing on the day of her accident and initially he responded, "He guessed just wearing her daily work clothes." Mr. Rivero was asked if the claimant's hair was up or down and he responded that the workers are provided with safety equipment and they were wearing safety glasses and also something to cover up and keep their hair up in a bun. When asked again what the claimant was wearing, Mr. Rivero testified, "I do remember very well that she was wearing pants, black pants and a blouse---I don't remember the blouse."

On redirect examination, the claimant estimated that the distance he was standing from the claimant was approximately five meters. On recross examination, the witness was shown an accident report filed by his company concerning the claimant's accident. This witness testified that he was asked pretty much the same questions as he was being asked today concerning the incident. A portion of the report was read to Mr. Rivero indicating that the claimant was standing on a six inch riser and fell between, twisting her back and complained of pain in back, hit the belt conveyor and then falling backwards. Mr. Rivero stated that, "It was against the table." On redirect examination, Mr. Rivero was asked if regardless of whether she hit the line or the table with her hip, did the claimant fall all the way to the floor or strike her neck on anything. This witness testified, "No." Again, on

recross examination, this witness was asked again if the claimant had complaints of neck pain and Mr. Rivero responded, "She, the claimant, did not tell me that her neck was hurting. All she told me was that she hit herself against something."

Melinda McDaniel testified that she was the operations manager for the respondent. Ms. McDaniel testified that Stribling Packing is one of the respondent's clients that they provide this company temporary employees. Ms. McDaniel testified that she usually goes to Stribling Packing at least once a day in order to check on their personnel. Ms. McDaniel indicated that the claimant was a temporary assignment for the Stribling Company. This witness testified that on March 22, 2005, she had just pulled away from the Stribling Company when she received a call that the claimant had had an accident so she immediately returned. Ms. McDaniel testified that she spoke with the claimant and asked her if she needed to be taken to a physician as well as asked her where she was hurting and the claimant indicated that she was hurting on her right hip so she took the claimant to her office and made a doctor's appointment. Ms. McDaniel testified that she speaks Spanish well enough to communicate with the claimant. Ms. McDaniel testified that when they got to her office, her assistant Angie came in and they asked the claimant to show them where it was hurting. This witness testified that the claimant pulled her blouse up and just above her pant line she pointed to her hip. This witness testified that she did not observe any markings or sign of injury of any kind. Again, Ms. McDaniel was asked if the

claimant complained about her neck and Ms. McDaniel testified that she had asked the claimant to show her exactly where all she was hurting and then if there was any place else that she was hurting and the claimant told her no that she just showed her her hip. Ms. McDaniel testified that then she took the claimant to the Northwest Medical Center to the emergency room.

Ms. McDaniel testified that when they got to the ER they first checked in with the triage nurse. This witness testified that they then waited for approximately five hours. Ms. McDaniel testified that during this long wait the claimant would sit by her some but normally she would just walk around all through the different waiting areas. During this period of time Ms. McDaniel testified that the claimant did not complain of having any pain or physical distress. Ms. McDaniel testified that after approximately five hours she was notified of a family commitment and so she contacted the claimant's home and the claimant's son came to the hospital. Ms. McDaniel testified that the next day she went to the Stribling Company to investigate the accident site. This witness testified that the space between the conveyor belt and the table which is bolted down is approximately two and a half feet. Ms. McDaniel was asked if the claimant indicated to her initially that she had fallen to the floor and Ms. McDaniel responded, "She didn't at all tell me that." Ms. McDaniel testified that the doctor at the ER released the claimant to return to work the next day so she contacted the claimant and was told that the claimant was very sick. Ms. McDaniel testified that she contacted the claimant a

couple of other times and was told that the claimant was unable to work due to fever, chills and feeling nauseous. Ms. McDaniel testified that the claimant did begin to call in inquiring about work approximately a month after her accident but she would call in in the middle of the afternoon after job assignments had already been made.

On cross examination, Ms. McDaniel testified that she does not know the Spanish word for neck but she did ask the claimant to show her on her body where she was hurt.

On rebuttal, the claimant testified that while in the waiting room at the emergency room she was in pain and she would walk around some and then she would sit. The claimant was asked how many times she got to see Dr. Yawn and she testified that the first time she saw Dr. Yawn that Melinda took her and the second time she went to the appointment with Dr. Yawn. The claimant testified that when she was going to have a third appointment with Dr. Yawn she did not make it. The claimant was asked if she fell against the line or the table and the claimant responded the line indicating that she did not speak English and she could not explain to Melinda what had happened. The claimant testified that she did show Ms. McDaniel where she hurt herself on the right hip when she got hurt.

The medical records set forth that the claimant was seen at the Northwest Medical Center on March 22, 2005, with complaints of right posterior hip pain. The assessment note set forth that the claimant fell on right hip at work hitting edge of conveyor belt. On the physical examination, there are marked on the example of the

human body an area in the neck area, low back and hip area all on the right side. On the clinical impression is noted hip contusion on the right side and there is written in lumbar sacral strain. It is further noted that other injuries include neck on the right side. Dr. Timothy Yawn writes on April 11, 2005, that he has seen the claimant for her complaints of low back and right hip pain as well as cervical pain. There is noted that the onset of this trauma was three weeks ago and it is work related. Dr. Yawn's notes indicate that the claimant was working on a line when she fell on a pallet hitting her low back, right hip and now complains of neck pain. After examination by Dr. Yawn, the claimant was assessed with lumbar back strain and left trapezius thoracic posterior neck strain. It was recommended that the claimant apply moist heat to the affected areas and to exercise twice a day with no lifting greater than twenty pounds and no repetitive bending or twisting at the waist. Medications were prescribed. There is a note in the respondents' exhibits from the Rogers Family Practice indicating that the claimant did not show for her appointment on April 25, 2005, as directed by her doctor.

Dr. Yawn, in his deposition taken on August 23, 2005, stated that when he initially examined the claimant he did not observe any abnormalities when taking all of her vital signs. Dr. Yawn was asked if during the examination if he palpated any muscle spasms in the claimant's neck area and Dr. Yawn responded, "No Sir, I did not and did not make mention of any spasms at that time." Dr. Yawn agreed that there were no abnormalities with the claimant's range

of motion with her neck. Dr. Yawn was then asked about the claimant's lumbar area and again Dr. Yawn indicated that he was not able to palpate any muscle spasms in the lumbar area. Dr. Yawn testified that the claimant was put through a series of range of motion as well as leg lifting tests in connection with her low back and during some of these tests she did report tenderness or discomfort. Dr. Yawn testified that the claimant's neurological examination was within normal limits. The doctor also agreed that if he had observe bruising or discoloration or any other sort of visual defect or disturbance he would have noted it in his notes. The doctor further agreed that his notes do not indicate any such notation. Dr. Yawn agreed that he might reach a diagnosis of a contusion even though he may not have viewed the disturbance of the skin or the tissue but based on a claimant's statement that an area is tender. The doctor again agreed that if he had physically observed something himself he would have made a notation on his records concerning the observation such as a bruise. Dr. Yawn testified that it was his understanding that the x-rays taken at the emergency room where normal in that they did not reveal any objective findings. Dr. Yawn was asked about the emergency room report that the claimant had a hip contusion on the right and Dr. Yawn explained that a contusion can actually be a tenderness and not actually have a darkened or pigmentation or bruising that can be seen. Dr. Yawn continued explaining that a bruise typically may take some hours to actually show up and may not initially be visible. Dr. Yawn was questioned closer concerning the circling of

hip contusion on the ER report and he stated that it would mean to him that there was tenderness on the right hip but not necessarily discoloration according to the physical examination. Dr. Yawn further testified that if discoloration had been present when the claimant was admitted to the ER, he would have expected it to have shown up as bruising or stated as discoloration in some of the note areas.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on March 22, 2005. It is not doubted that the claimant fell while working for the respondent on March 22, 2005. Arkansas law requires that there be objective medical findings of injury before a compensable injury can be found. The medical reports dealing with this claimant's fall do not indicate bruising, swelling, redness, muscle spasm or any kind of objective information indicating an injury. Therefore, this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

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

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

4. The claimant is entitled to a weekly compensation rate of \$173.00 for temporary total disability and \$154.00 for permanent partial disability.

5. The claimant is entitled to a weekly compensation rate of \$103.00 for both temporary total disability and permanent partial disability.

6. The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that she sustained a compensable injury while working for the respondent on March 22, 2005. Arkansas law requires objective medical evidence of injury before a compensable injury can be found and this claimant has failed to provide any objective medical evidence of injury. Also see discussion above.

7. This claim should be denied in its entirety.

ORDER

The claimant has failed to prove by a preponderance of the evidence she sustained a compensable injury as defined by Arkansas law while working for the respondent on March 22, 2005. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE