

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F412002**

**AUNDREA L. RUDOLPH**

**CLAIMANT**

**TRANS TECH MERCHANT GROUP**

**RESPONDENT EMPLOYER**

**COMMERCE & INDUSTRY INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JULY 27, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE RACHAEL R. ADLAND, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The claim came on for a hearing on June 10, 2005, in Hot Springs, Arkansas. A prehearing conference was held on March 15, 2005 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on September 7, 2004.
2. The compensation rates are \$364/273.

The claimant contends she sustained a compensable specific incident injury and is entitled to medical benefits and temporary total disability benefits from September 16, 2004, to a date to be determined and attorney's fees.

The respondents contend the claimant did not suffer a compensable injury on or about September 7, 2004. Respondents contend there was no specific incident nor gradual onset injury but contend the claimant's problems are associated with a pre-existing or underlying condition. Alternatively, if compensability is found, respondents contend the claimant failed to provide notice until November 10, 2004, when she filed the Form AR-C.

### **ISSUES TO BE LITIGATED**

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Notice.
5. Attorney's fees.

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 Ark. Code Ann. §11-9-704:

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

1. There was an employer-employee relationship on September 7, 2004.
2. The compensation rates are \$364/273.

3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable specific incident injury in the course of and arising out of her employment.

### **DISCUSSION**

The claimant, 37 years of age, was working as a sales associate for the respondent employer. The claimant testified that on September 7, 2004, she bent over to pick up her briefcase and felt pain and heard a pop in her low back. The claimant sought emergency room treatment and stayed overnight in the hospital. The claimant has since seen Dr. Kevin Hale, Dr. Jeff Bearden, Dr. Foxx and Dr. Terry Hutson, chiropractor. The claimant testified that she attempted to make cold calls following her injury until October 2004. The claimant also testified that she spoke with her supervisor, Andrew, either the day after the incident or the following day and advised him of her back problem and her initial belief that it was a kidney stone. The claimant later advised Andrew that a kidney stone had been ruled out. According to the claimant, she communicated with Andrew on a daily basis by telephone or by e-mail of her condition and doctors' visits. The claimant testified that she spoke with Andrew regarding the results of her September 16, 2004, MRI.

Under cross examination, the claimant verified that in 1997, she stepped in a hole and sought chiropractic treatments for a while. The medical records indicate the claimant treated with her family doctor for some back pain a couple weeks before the September 7, 2004, incident. The claimant verified that she fell at home after having back spasms on November 5, 2004. The first mention in the medical records of the briefcase incident was the notes from a November 10, 2004, office visit with Dr. Hutson.

Laura Rice, Human Resources Director for the employer, testified that she first learned of the claimant's illness in late October 2004. According to Ms. Rice, at the end of a telephone conversation, the claimant uttered, "I should have filed this as a workers' comp claim." Resp. Exh. No. 3, p. 6, lines 24-25. Ms. Rice stated that she first learned the claimant was contending her injury was work related was through the November 10, 2004, e-mail from the claimant. Ms. Rice testified that the heaviest thing the claimant might lift on her job would be less than five pounds.

Thomas Andrew Smith, senior team leader for the respondent employer, testified that the claimant had advised him before the incident that she had recently had a hysterectomy and that her back was sore. Mr. Smith confirmed that the claimant called him sometime after September 7, 2004 and told him her back was hurting and she was not going to be able to run appointments and had to see a doctor. There was no real explanation at that time; however, sometime shortly thereafter the claimant mentioned she may have hurt her back picking up a briefcase. See, Resp. No. 4, pp. 28-29, lines 21-1.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (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 harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl.

2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable specific incident injury. The claimant presented an account of picking up her briefcase and feeling a pop and back pain on September 7, 2004. The medical records of the emergency room visit do not reflect a briefcase incident but indicate the claimant presented with left flank pain and testing was done to determine if a kidney stone was present. The claimant had been treated on September 2, 2004, for right flank pain at National Park Medical Center. On September 13, 2004, there is a note from the Hamilton West Family Medicine Clinic that reflects back pain with a diagnosis of lumbar sprain but again no mention of a work incident. Another November 5, 2004, emergency room assessment mentions sharp low back pain but again no mention of a work incident. The claimant was involved in a motor vehicle accident and an August 25, 2003, medical report provided a diagnosis of acute cervical/lumbar strain.

I was not persuaded by the claimant's testimony of the back injury by picking up the briefcase. The contemporaneous medical evidence does not support the claimant's account of a work injury and the medical introduced into evidence indicates the claimant did have a prior history of back problems. The claimant's treating chiropractor, Dr. Terry Hutson, provided a March 29, 2005, report indicating he saw the claimant on November 20, 2004, and treated her for low back pain which he related to the

September 7, 2004, briefcase incident. I did not give Dr. Hutson's report as much weight as I gave the contemporaneous medical reports immediately following the September 7, 2004, incident. I did not find the claimant to be a credible witness and I found that Dr. Hutson's March 29, 2005, report was primarily based on information the claimant provided him rather than independent diagnostic testing.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable specific incident injury in the course of and arising out of her employment. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**