

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIMS NOS. F009896 & F312841

MELANIE RUHL

CLAIMANT

UAMS

RESPONDENT EMPLOYER

PUBLIC EMPLOYEE CLAIMS

RESPONDENT CARRIER

ORDER AND OPINION FILED FEBRUARY 2, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on December 7, 2004. A prehearing conference was held on October 6, 2004 and a prehearing order was filed on October 7, 2004. The prehearing order was introduced 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 October 23, 2003.

2. The compensation rates are \$440/330.

The claimant contends she suffered either the aggravation of a pre-existing condition or a recurrence of an admittedly compensable July 19, 2000, injury on October 23, 2003. The claimant contends she is entitled to medical benefits and

temporary total disability beginning November 10, 2003, and continuing to a date to be determined and attorney's fees. All other issues are reserved.

Respondents contend there are no objective findings to substantiate an acute injury and have controverted the claim. Respondents have waived its statute of limitations affirmative defense by not complying with the October 7, 2004, prehearing order. The claim has been controverted in its entirety.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. 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 October 23, 2003.
2. The compensation rates are \$440/330.
3. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of her employment on October 23, 2003.

4. Respondents are responsible for medical benefits the claimant has incurred that are related to her compensable cervical injury.

5. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from November 10, 2003, to a date to be determined.

DISCUSSION

The claimant, 46 years old, works as a registered nurse and sustained a compensable back and neck injury on July 19, 2000, when she was moving a bed out of a room. The claimant had immediate sharp pain and ultimately had surgery performed on August 18, 2000. The claimant returned to work in late 2000, after having received a 9% permanent impairment. The claimant returned to work in the same department, working with mothers and babies and continued in that area until October 23, 2003. The claimant performed the same job duties in July 2000 that she performed in October 2003, a job that required bending, lifting, stooping, pushing and pulling. The job requires you to be on your feet and sometimes heavy lifting.

According to the claimant, on October 23, 2003, a patient fainted in the shower and she was holding the patient's weight to keep the patient's head from hitting the tile. The claimant testified that she felt a pulling down her neck and back like a ripping followed by muscle spasms. The pulling sensation was in the same general location as the July 2000 injury. According to the claimant, the July 2000 incident involved her right arm and the October 2003 incident involved her left arm with pulling and numbness in her left fingers. The claimant reported her injury and received some medical treatment.

On November 10, 2003, Dr. Timothy Hodges gave the claimant an off work slip and she has not returned to work.

According to the claimant, about August 9, 2004, she was talking to Ms. Patterson, her supervisor, and a job in labor and delivery was discussed; however, this job was not within the restrictions from Dr. Richard McCarthy. Since December 2003, the claimant has had steroid injections in her neck and has gone to physical therapy. The claimant saw Dr. Thomas Frazier in April 2004, because of numbness in her hand. The claimant had a MRI on November 19, 2004 and was diagnosed with multiple sclerosis. The claimant testified to continuing to have muscle spasms in her neck.

The claimant verified under cross examination that she had a fusion surgery following her July 2000 injury and remained off work until November 2000.

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 proven by a preponderance of the evidence that she sustained a compensable specific incident injury arising out of her employment on October 23, 2003. The claimant was a credible witness who described a falling incident of a patient and her actions to keep the patient from falling and immediately having pain in the shoulder and neck region following the incident. The claimant reported the incident and sought medical treatment. The claimant had a pre-existing cervical condition from a compensable July 2000 injury.

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Minor v. Poinsett Lumber & Mfg. Co.*, 235 Ark. 195, 357 S.W.2d 504 (1962); *Conway Convalescent Ctr. v. Murphree*, 266 Ark. App. 985, 588 S.W.2d 462 (1979); *St. Vincent Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). As is commonly stated, the employer takes the employee as he finds him. *Murphree, supra*. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury unless the injury contributes to the condition by accelerating or coming with the pre-existing condition. See, *Ark. Power & Light Co. v. Scroggins*, 230 Ark. 936, 328 S.W.2d 97 (1959).

The claimant must establish a compensable injury by medical evidence, supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury; it is not essential to establish the causal relationship between the injury and a work-related accident. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999); *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The claimant’s first visit was with Dr. Timothy Hodges who diagnosed her with cervical neuralgia and prescribed Flexeril. While the initial report did not specifically state “muscle spasms,” the Arkansas Supreme Court in *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000), found that the Flexeril prescription constitutes an objective finding. The Court held that a doctor would not prescribe medication to be taken as needed for muscle spasm, if he did not believe muscle spasms were present. *Id.*, at 281, 33 S.W.3d at 171. In the present case, an addendum note dated January 19, 2004, pertaining to the December 3, 2003, examination, Dr. McCarthy’s nurse clarified that the claimant was having palpable muscle spasms through her neck and rhomboids and indicated the claimant was unable to take muscle relaxants since she was breast feeding. Dr. G. Thomas Frazier’s April 16, 2004, report further identifies the claimant’s symptoms at that time to include

muscle spasms. Respondents are liable for all reasonable and necessary medical treatment the claimant has pursued for her compensable cervical/shoulder injury.

The claimant next contends she is entitled to temporary total disability benefits from November 10, 2003, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

The medical evidence indicates that Dr. Hodges took the claimant off work November 10, 2003 and suggested she was able to return on November 17, 2003. Subsequent off work notations were made in the file and finally Dr. McCarthy indicated on December 16, 2003, that the claimant should not return to work for an indeterminate time. On February 11, 2004, Dr. McCarthy stated that because the respondents would not allow steroid injections, the claimant was still unable to return to work. Dr. McCarthy's August 11, 2004, report indicates that the claimant was experiencing some other problems and was being referred to Dr. Alonzo Burba for some MRIs and assessment. The long term disability form completed and then signed by Dr. McCarthy on September 14, 2004, indicated the claimant had not been released to return to work and that the claimant's disability was work related. He further gave significant restrictions. After considering all the medical evidence and the claimant's credible testimony, I find the claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from November 10, 2003, to a date to be determined.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury arising out of her employment on October 23, 2003.

Respondents are responsible for medical benefits the claimant has incurred that are related to her compensable cervical injury. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from November 10, 2003, to a date to be determined.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE