

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F406448

TARA SMITH, Employee	CLAIMANT
SIMMONS FOODS, Employer	RESPONDENT
S.B. HOWARD & COMPANY, Carrier	RESPONDENT

OPINION FILED OCTOBER 24, 2005

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

Claimant represented by LAURA MCKINNON, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On September 28, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 20, 2005, 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 employee-employer relationship existed between the parties on February 20, 2004.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$238.44 which would entitle her to compensation at the rate of \$159.00 for temporary total disability benefits.

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

1. Compensability of injury to claimant's left wrist on February 20, 2004.
2. Claimant's entitlement to benefits pursuant to A.C.A. §11-9-505(a).

3. Alternatively, claimant's entitlement to temporary total disability benefits.
4. Medical expenses, to include an MRI recommended by Dr. Moore.
5. Attorney fee.

Prior to the hearing the claimant agreed to withdraw and reserve the issues relating to A.C.A. §11-9-505(a) benefits, temporary total disability benefits, and a controverted attorney fee.

The parties' contentions are set out in their pre-hearing questionnaires which are attached to the pre-hearing order as Exhibits 1 and 2.

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 July 20, 2005 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 \$238.44 which would entitle her to compensation at the rate of \$159.00 per week for temporary total 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 left wrist while employed by respondent on February 20, 2004.

#### FACTUAL BACKGROUND

The claimant is a 24-year-old woman with an eleventh grade education who began

working for the respondent on December 2, 2003. Claimant's primary job for the respondent required her to put plastic bags in the top of box lids which were placed over frozen chicken.

Claimant testified that on February 20, 2004, she was sent by her supervisor into the ice room to make sure that ice was being placed on the chickens correctly. Claimant testified that she was on a mountain of ice when she slipped and fell causing her to land on both wrists. Claimant testified that she did not feel anything when she fell onto her hands other than they felt "kind of numb." Claimant testified that she reported this incident to her supervisor, Garrett Miller, who referred her to the plant nurse. Claimant testified that the nurse wrapped her left wrist and she returned to work.

At some point in time after this incident the claimant was terminated by the respondent for excessive absences. Claimant testified that her left wrist continued to hurt but she did not seek medical treatment until approximately three weeks later when she went to the emergency room at the Siloam Springs Hospital. X-rays were taken of the claimant's left wrist at the Siloam Springs Hospital and were interpreted as negative. Claimant was diagnosed as suffering from left wrist pain and was referred to Dr. Allard for follow-up treatment. The medical reports indicate that on March 18, 2004 claimant did not see Dr. Allard, but instead saw Dr. James Moore who diagnosed claimant's condition as a ligament sprain with a possible tear. He provided claimant with a splint and indicated that she should receive follow-up treatment in approximately three weeks. The next medical report is an emergency room record from the Siloam Springs Hospital dated June 21, 2004. Subsequent to that emergency room visit claimant again returned to Dr. Moore who opined that claimant had a ligament tear in her left wrist and ordered an MRI scan.

Claimant has filed this claim contending that she suffered a compensable injury to her left wrist while employed by respondent on February 20, 2004. She seeks payment of medical treatment; including, the MRI scan which Dr. Moore has recommended.

### ADJUDICATION

Claimant contends that she suffered a compensable injury to her left wrist as a result of falling on ice while working for respondent on February 20, 2004. Therefore, her 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 identifiable 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. Specifically, I find that claimant has failed to offer objective findings establishing an injury.

As previously noted, claimant did not seek any medical treatment for her injury until three weeks after she fell when she went to the emergency room at the Siloam Springs Hospital on March 14, 2004. Although claimant was complaining of bruising and swelling of her left wrist, the emergency room notes indicate that edema was absent and that claimant's wrist color was normal. The emergency room records made no notation of any objective findings at the time of claimant's treatment. Furthermore, x-rays taken of the

claimant's left wrist at that time were interpreted as normal. Claimant's next medical treatment occurred on March 18, 2004 when she saw Dr. James Moore. Dr. Moore indicated that claimant had suffered a ligament strain of her left wrist with a possible tear. Dr. Moore's medical reports reflect no objective findings. Claimant again returned to Dr. Moore several months later on July 16, 2004, at which time he diagnosed claimant as suffering from a possible ligament tear of her left wrist and ordered an MRI scan. In response to an inquiry by the claimant, Dr. Moore in a letter dated June 13, 2005 acknowledged that all findings with respect to claimant's left wrist were subjective with no objective findings supporting his diagnosis.

After consideration of Dr. Moore's statement that all findings relating to claimant's left wrist are subjective, as well as the remaining medical evidence, I find that she has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury.

In making this finding, I am aware that the emergency room record of March 14, 2004 indicates that claimant was prescribed Ibuprofen for "pain/swelling." While it might be argued that this medication would not have been prescribed had claimant not had swelling, I note that a review of the emergency room record specifically indicates that although claimant gave a history of swelling and bruising, swelling was not present during the physical examination. In addition, the report indicates that claimant's color was normal with no evidence of bruising. Thus, while claimant was prescribed Ibuprofen, there is no indication that any swelling was observed by the medical personnel. Instead, it appears that claimant was prescribed the Ibuprofen for her complaints of pain and based upon her statements that swelling had been present, not observations of the medical personnel.

Finally, I also note that the emergency room record from the Siloam Springs Hospital on June 21, 2004 notes some swelling present in the claimant's left wrist. However, it should be noted that this emergency room visit did not occur until some four

months after February 20, 2004. Furthermore, the emergency room record indicates that claimant had re-injured her left wrist after she attempted to lift her child. Thus, to the extent that swelling was present at the time of claimant's visit to the emergency room on June 21, 2004, I note that this swelling had not previously been observed by any medical personnel in the emergency room or by Dr. Moore. It was not observed until more than four months after February 20, 2004, and after claimant had injured her wrist while attempting to lift a child. Therefore, I do not find that this objective finding establishes an injury to claimant's left wrist on February 20, 2004.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left wrist while employed by respondent on February 20, 2004. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE