

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402621

MARY STEWART	CLAIMANT
FIANNA HILLS NURSING REHAB CTR	RESPONDENT
FIRSTCOMP INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 18, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAMES FILYAW, Attorney, Fort Smith, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 30, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on August 2, 2004. 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 March 14, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to her hip, back and neck on March 14, 2004.

4. The claimant is entitled to a weekly compensation rate of \$201.00 for temporary total disability and \$154.00 for permanent partial disability.

5. Some medical has been paid.

6. Some temporary total disability has been paid.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional temporary total disability from June 4, 2004, to a date to be determined.

2. Additional medical from June 4, 2004.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that as a result of her hip, back and neck injuries, she has suffered and is suffering temporary total disability. At the end of her healing period, the claimant anticipates that she will have suffered either partial or total permanent disability.

In regard to the foregoing issues the respondents contend that the claimant did have an accident in which she tripped and fell on March 14, 2004. The respondents sent the claimant to the doctor, namely, Dr. Sprinkle. The claimant was being treated for a cervical and lumbar sprain/strain. It is the respondents' position that the claimant's problems are not related to her incident at work, but are instead related to her long-standing problems and a recent motor vehicle accident which occurred in February 2004. The medical records indicate the claimant had a motor vehicle accident in 1992 and was continuing to have hip problems. The medical

records indicate that the claimant may have had back and shoulder surgery. The claimant also apparently had a motor vehicle accident in June 2002 that resulted in low back and neck problems as well. The claimant also, in 2003, went to the emergency room after being thrown into a wall by a boyfriend with complaints of neck, shoulder, back and hip pain. In February 2004, the claimant was involved in a motor vehicle accident and suffered a lumbar injury. The claimant was treated by Dr. Bullington. The claimant also went to the emergency room describing back pain as a 10 due to the motor vehicle accident. The claimant has also had an MRI that showed degenerative disc disease, but no evidence of nerve root compression.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The parties submitted a medical index marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified and the parties have stipulated that she sustained a compensable injury to her hip, back and neck on March 14, 2004. The claimant testified that she has received medical treatment as well as some temporary total disability as a result of this compensable injury. The claimant admitted that she did have a history of back problems but was not suffering any symptoms at the time of her compensable injury. The claimant testified that she was a hydrationist for the respondent. The claimant explained that her job involved taking the patients their

breakfast order, charting their meal percentages and then going down the hall and passing out supplements, juice and ice. This witness testified that she then would take the patients their lunch orders and again go back and chart their meal percentages. The claimant testified that her work was not really heavy but there was a lot of walking, bending and pushing the ice cart which was fairly heavy.

The claimant testified that as a result of her compensable fall she was first seen by Dr. Carson who then referred her to Dr. Sprinkle. The claimant testified that after her fall her back started hurting and she was not able to walk up stairs, walk up hills or inclines and that she also had problems with her hip and that her neck would get stiff and lock up on her. The claimant testified that these symptoms have not gotten better with time. The claimant testified that Dr. Sprinkle released her in June to return to work with a lifting restriction of no more than fifty pounds.

The claimant testified that about two weeks after her compensable fall, Dr. Carson prescribed a cane for her which she has continued to use. The claimant testified that since she was released by Dr. Sprinkle in June 2004, she has not seen any medical providers. The claimant explained that she was waiting to see the company doctor noting that she had seen her family physician for her arthritis but no one else for her compensable injuries. The claimant testified that, in her opinion, she was not able to return

to work, noting that she can hardly walk, that she is not stable, that her leg is weak and gives out on her and that her back hurts.

The claimant testified that in 1994 she was involved in a motor vehicle accident which injured her back. The claimant testified that someone backed into her at the post office in February 2004 and even though she went to the doctor approximately a week after this event, she has had no lingering problems as a result of that accident. The claimant testified that over a year ago her boyfriend threw her and she went to the emergency room. The claimant testified that she was treated and released and that she did not have the type problems which she is currently experiencing. The claimant testified that in her opinion she has problems walking, walking up stairs and that she can lift maybe ten pounds noting that she does not even carry her purse because it is too heavy. The claimant testified that she does not want to return to Dr. Sprinkle because she does not feel that he was helpful to her.

On cross examination, the claimant testified that she has pain when she performs personal care such as washing and dressing as well as all other activities such as lifting, sitting, standing, sleeping, walking and bending. The claimant explained that she has pain that is like radiant pain that runs down when she tries to do things and that sometimes she has pain when she is just sitting. The claimant agreed that as a result of her 1993 motor vehicle accident she underwent surgery for a torn rotator cuff as well as carpal tunnel. The claimant agreed that Dr. Douglas Parker

performed surgery on her low back as well as gave her some injections. The claimant agreed that she was off work as a result of this motor vehicle accident from 1993 until around 1997. The claimant stated that the symptoms which she is currently experiencing are similar to the symptoms which she experienced as a result of her altercation with her boyfriend on June 11, 2003, where it is noted that she reported pain in her neck, hip, shoulder and back. The claimant agreed that she was involved in a motor vehicle accident in 2002 for which she received treatment for her low back and neck. The claimant agreed that she had a motor vehicle accident on February 7, 2004, and received treatment by Dr. Bullington who is a chiropractor. The claimant was asked about a emergency room visit dated February 21, 2004, where it is noted that she reports sharp severe pain in her low back and the claimant indicated that she did not recall this visit. The claimant agreed that she returned to have treatments with Dr. Bullington through March 1 when she underwent an MRI. The claimant testified that after her fall she continued to be treated by Dr. Billingsley and that he continued to do the same thing each treatment. The claimant testified that after her fall on March 14 she also began treatment with the River Valley Rehabilitation where she received treatment for her neck but not her low back. The claimant testified that she thinks that when she was seen at the emergency room on March 21, 2004, it was for her neck but her back and hip were also bothering her. The claimant agreed that following her

accident she continued to work, perhaps missing a few days but was able to do her work as a hydrationist up until she was terminated.

The claimant testified that she was referred to Dr. Sprinkle for what she understood to be for her back and leg pain. The claimant agreed that during this period of time she continued to be treated by Dr. Billingsley and that his treatment plan was not improving her symptoms. The claimant agreed that when she first was seen by Dr. Sprinkle she complained of sharp, achy, burning pain, constant numbness and tingling and that these symptoms were caused by standing, walking and lifting. The claimant agreed that these were the exact same symptoms which she had given Dr. Billingsley. The claimant testified that she had an MRI before she was seen by Dr. Sprinkle and that he sent her for a second MRI. The claimant agreed that as of April 21 Dr. Sprinkle returned her to work with no lifting over fifty pounds. The claimant also testified that Dr. Sprinkle recommended that she undergo physical therapy for her neck and back. The claimant agreed that for one of her physical therapy sessions, her grandson who is under two and her children came with her. The claimant agreed that Dr. Sprinkle released her to return to full duty work on June 4, 2004. The claimant testified that Dr. Sprinkle had her undergo several different tests and the only one that might explain her symptoms was the test that showed she had rheumatoid arthritis. For clarification, the claimant agreed that in actuality Dr. Billingsley ordered her arthritis test because they would not accept Dr. Sprinkle's recommendation for this test because he was

in Little Rock. The claimant testified that her condition today is worse, in her opinion, than it was when she was seen by Dr. Carson in March 2004. The claimant testified that since August 2004 she has not had any treatment by any doctor for any problem other than her arthritis. The claimant indicated that following the August emergency room visit she did not get an off work slip stating that she did not have a job to get an off work slip for.

The claimant agreed that the previous incidents which were discussed during cross examination, none of them have caused her problems like what she has been experiencing since her fall in March 2004. The claimant agreed that she has had two MRIs in the year of 2004, one before her fall and one after her fall. The claimant stated again that she is way worse now than she was before her fall of March 2004.

The medical records set forth that the claimant underwent a radio frequency facet denervation at eight levels performed by Dr. Douglas Parker on November 18, 1994. On June 11, 2003, the claimant was seen at the Sparks Regional Medical Center after being thrown by her boyfriend injuring her left shoulder, cervical spine, lumbar spine and pelvis. X-rays of the claimant's left shoulder on June 12, 2003, were normal as were the x-rays of the claimant's lumbar spine, cervical spine and pelvis. The claimant began receiving chiropractic treatment by Dr. Billingsley on February 13, 2004, for symptoms of stabbing, stiff, achy and weakness rating her pain as a ten indicating that her pain was throughout her low back and down both legs. The medical records set forth that the

claimant received daily chiropractic treatment up through February 20, 2004, with her symptoms showing unchanged. On February 21, 2004, the claimant underwent a medical imaging consultation which revealed that she had no acute osseous abnormality of her lumbar spine. The claimant was seen at the Sparks Emergency Room on February 21, 2004, for complaints of pain in her low back indicating that this pain was sharp and severe. The claimant reports at that time that she has been in a motor vehicle accident on February 9 and has been going to a chiropractor but is no better. An MRI of the claimant's lumbar spine done on February 26, 2004, reveal that she had mild desiccation of the L5 disc with no focal lumbar disc herniations noted. The claimant continued to be seen by Dr. Billingsley throughout February and up to March 12 with her symptoms and treatment program the same.

The claimant was seen at the Sparks Medical Center on March 15 for complaints of pain in her hips, hands and neck after a fall the night before at work. X-rays taken indicate that there is no evidence of fracture or dislocation in her right hip and she was assessed with having a cervical strain, hip contusion as well as contusion of her knee. The claimant was released to return to work that day with a lifting limitation of ten pounds with no heavy pushing or pulling and to be able to sit or stand at will. The claimant was seen by Dr. Billingsley that same day, indicating that her problems were exacerbated due to a fall because of her abnormal gait. The claimant was then seen by Dr. Billingsley twice on March 16 as well as being seen on March 17 and 18 with her condition and

symptoms as well as treatment unchanged except for the deletion of cryotherapy. The claimant began physical therapy at River Valley Rehabilitation on March 19, 2004, and was also seen by Dr. Billingsley that same day for physical therapy. The claimant was seen at the Sparks Emergency Room on March 21, 2004, with complaints of neck, back and right shoulder pain reporting a fall at work the previous Sunday. Imaging film of the claimant's cervical spine was unremarkable with no fractures noted, this test being made on March 21, 2004. The claimant continued with her physical therapy with both the chiropractor and River Valley through the month of March. On March 26, 2004, there is a letter from Linda Campbell, a registered nurse for Sparks Occupational Services, indicating that the respondent was contacted regarding the claimant's allegations that they were not following her work restrictions. This notation indicates that the claimant has been on suspension from work since March 21, 2004, and will be at this status for an undetermined period of time. The notation indicates that the claimant was informed that the respondent would provide her a sitting job when and if she returned to work. The claimant continued with her physical therapy with Dr. Billingsley up until the middle of April and his notations indicate that her symptoms are unchanged. The claimant underwent an MRI of her lumbar spine on April 14, 2004, which set forth that at L5-S1 there is a displaced disc dissection with a small posterior bulge/protrusion present contacting but not deviating the descending right S1 nerve

root sleeve. This test set forth that there is a small posterior annular tear evident, otherwise her MRI is normal.

Dr. Brent Sprinkle writes on April 14, 2004, that he has reviewed the claimant's MRI as well as had her undergo an examination that her MRI shows some mild disc dissection at L5-S1 and that there is very minimal posterior bulge. Dr. Sprinkle writes that it is unlikely that this is really causing any specific symptoms, noting that this MRI minimal bulge would not appear to produce any leg weakness that the claimant complains of. Dr. Sprinkle notes that the claimant is able to stand without assistance, she is able to step up with her left lower extremity onto the examining table without assistance and is in control of her lower extremities. Dr. Sprinkle notes that the radiologist mentioned some signal present within the annulus at L5-S1 suggestive of mild posterior annular tear but he has difficulty appreciating this on her MRI but it is possible that it is present. Dr. Sprinkle notes that this certainly would not cause bilateral leg weakness, further noting that he has reviewed cervical and hip films of the claimant that are within normal limits. Dr. Sprinkle assessed the claimant with having cervical and lumbar strain and recommended that she get an EMG, prescribed medications and, if her EMG is normal, he will start her on physical therapy. On April 21, 2004, Dr. Sprinkle released the claimant to return to work with no lifting over fifty pounds. The claimant began physical therapy with Performance Physical Therapy on April 26, 2004, as recommended by Dr. Sprinkle for pain reduction, lumbar stabilization,

strengthening, range of motion and functional activities. Dr. Sprinkle returned the claimant to work on May 13, 2004, with no lifting over forty pounds. Dr. Sprinkle writes on June 4, 2004, that he has seen the claimant for follow up for her neck and back pain, noting that she is describing a new type of shoulder pain which he opines is related to a previous shoulder abnormality that required arthroscopic surgery several years ago and was not reported with her initial work injury. Dr. Sprinkle notes that the claimant reports that overall her neck is a little better but does have a little bit more bilateral low back pain today. Dr. Sprinkle writes that the claimant is at maximum medical improvement noting that if she gets benefit from the trigger point injection which he gave her that day she might consider one or two more such injections in the next six to twelve months simply for maintenance. Dr. Sprinkle notes that he would not recommend narcotic medications to manage this type of myofascial pain and prescribed Bextra and or Flexoril. On June 14, 2004, Dr. Sprinkle returned the claimant to work with no impairment and no restrictions. The claimant was seen at the Sparks ER on June 22, 2004, with complaints of low back pain for which she was given medications. The claimant was lastly seen for medical treatment on August 7, 2004, at the Sparks ER with complaints of pain to her lower back and again medications were prescribed and she was released to go home.

After a review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that she is in need of additional medical treatment subsequent to June 4, 2004,

for her March 14, 2004, injuries. The claimant's authorized treating physician, Dr. Sprinkle, released the claimant setting forth that she had reached maximum medical improvement for her compensable injury and returned her to work with no restrictions. It is my opinion, based in this entire record, that any problems which this claimant is currently experiencing with her back, shoulder or hips are resulting from her long history of back problems which preexisted her compensable fall. I likewise find that the claimant has failed to prove that she is entitled to additional temporary total disability from June 4, 2004, to a date to be determined. Again, the claimant's doctor found that she had reached MMI and returned her to work with no restrictions. Subsequent to that date, the two times the claimant has been seen at the ER there is no indication that she should be off work and in fact each time she was released to return home.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On March 14, 2004, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained compensable injuries to her hip, back and neck on March 14, 2004.
4. The claimant is entitled to a weekly compensation rate of \$201.00 for temporary total disability and \$154.00 for permanent partial disability.
5. Some medical has been paid.

6. Some temporary total disability has been paid.

7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries subsequent to June 4, 2004. See discussion above.

8. The claimant has failed to prove by a preponderance of the evidence that she is entitled additional temporary total disability from June 4, 2004, to a date to be determined. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or temporary total disability subsequent to June 4, 2004. Therefore, this claim for additional benefits is denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE