

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506464

PATSIE SWEANEY, EMPLOYEE	CLAIMANT
SOUTHERN PARAMEDIC SERVICE, INC., EMPLOYER	RESPONDENT
AIG CLAIMS SERVICE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 15, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on November 18, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. M. Scott Willhite, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Ms. Melissa Ross, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted November 18, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this case on October 26, 2005, and a Prehearing Order was filed on October 27, 2005. At the hearing, the parties announced that the stipulations, issues, together with their respective contentions, were properly set out in the Prehearing Order. In addition, at the hearing, the parties stipulated to the applicable compensation rates in the event compensability was overcome. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1."

It was stipulated that the employment relationship existed between the parties at all relevant times through on or about May 14, 2005; that the claimant earned sufficient wages to entitle her to the maximum compensation rates of \$466.00 per week for temporary total disability and \$350.00 per week for permanent partial disability in the event the claim was found compensable; and that the respondents had controverted the claim in its entirety.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that she sustained a gradual onset, low back injury which arose out of and during the course of her employment; that respondents should be held responsible for all outstanding medical and related expenses, including, but not limited to back surgery performed by Dr. Morris Ray of the Semmes-Murphy Clinic, together with continued, reasonably necessary medical treatment; that she was entitled to temporary total disability benefits beginning May 14, 2005, and continuing through August 9, 2005, at which time she reached maximum medical improvement; that respondents were responsible for a thirteen percent (13%) impairment rating assessed by Dr. Ray, together with wage-loss disability in an amount to be determined by this Commission; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that the claimant did not sustain a compensable,

gradual onset injury. Alternatively, respondents maintained that, if compensability was overcome, that the claimant was not entitled to any benefits before the filing of a notice of alleged injury on June 3, 2005.

The claimant testified on her own behalf. Jerry Duncan, Karen Little, and Mike Cromwell were called as witnesses for the respondents. The record is composed solely of the transcript of the November 18, 2005, hearing containing numerous exhibits, together with the evidentiary deposition of Dr. Craig Mc Daniel, introduced as "Claimant's Exhibit C" and retained in the Commission file in bound form.

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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that she sustained a back injury arising out of and in the course of her employment, and which gradually occurred over time within the meaning of

Ark. Code. Ann. §11-9-102(4)(A)(ii)(b)(Supp. 2005)

4. The claimant has failed to prove, by a preponderance of the credible evidence, that her need for medical treatment and disability was causally related to an injury sustained while employed by Southern Paramedic Service.

DISCUSSION

In the present claim, the claimant does not contend that her injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, she contends that she sustained a gradual onset, low back injury which arose out of and during the course of her employment. When a claimant requests benefits for an injury characterized by gradual onset, Ark. Code Ann. §11-9-102(4)(A)(ii)(Supp. 2005) controls, defining “compensable injury” as follows:

(4)(A)(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence....

A claimant seeking benefits for a gradual, onset injury must prove, by a preponderance of the evidence, that: (1) the injury arose out of and in the course of his or her employment; (2) the injury cause internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(E)(ii). Furthermore, objective medical evidence is necessary to establish

the existence and the extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. *Wal-Mart Stores, Inc., vs. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

The relevant facts in this claim are basically undisputed. I found the claimant to be an extremely candid and credible witness. As will be set out further below, the record reflects that the claimant experienced back problems of unknown cause requiring chiropractic treatment beginning as early as March, 1995. Whatever prior back problems the claimant experienced were not disabling and did not prevent her from working. The record reflects that the claimant performed physically demanding work, including work for the employer herein, without complaints and without affecting her ability to fully perform her job until on or about May 14, 2005, at which time she got up off a couch at home and experienced hip pain and leg numbness which she had apparently not experienced prior to the incident at home. Thereafter, the claimant's symptoms grew progressively worse until she could not longer continue working on June 4, 2005. Initially, the claimant conceded that she did not know the cause of her back problems. It was only after the claimant learned the nature of her injury, specifically, that she had sustained a herniated disc requiring surgery, that she filed a workers' compensation claim. The claim turns almost entirely upon the claimant's belief that her herniated disc arose out of and during the course of her employment. No matter how sincere a claimant's belief that a medical problem is related to a compensable injury, such belief is not sufficient to meet the

claimant's burden of proof. *Killingberger vs. Big D Liquor*, E408248 and E408249, Full Commission Opinion filed August 29, 1999. It would require sheer speculation and conjecture to find the claimant's injury was related to her employment. Speculation and conjecture, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

The claimant, Patsie Joann Sweaney, testified in her own behalf. The claimant is forty-seven (47) years old. She has a high school education, together with two (2) years of college. Most of the claimant's early adult life was spent as a homemaker. She did perform various odd jobs, including working in fast food restaurants, housekeeping, and factory work before obtaining her certification as an Emergency Medical Technician in 2000. Prior to going to work for the respondent, Southern Paramedic Service, the claimant worked as an EMT in Walnut Ridge and Crittenden County. She eventually became licensed as a paramedic. The claimant first worked as a paramedic for PTS in Jonesboro before going to work for the employer herein. The claimant acknowledged sustaining a prior work-related injury as the result of a specific incident in 2002 while working as an EMT at Crittenden in West Memphis, Arkansas. She maintained she only missed two (2) to three (3) weeks following the 2002 incident. The claimant then worked for both PTS in Jonesboro and Southern Paramedic for more than three (3) years without further

problems, and without missing any work. The claimant worked for the respondent/employer approximately one year and one-half (1-1/2). She described her duties as physically demanding stating she was required to frequently lift patients. Again, the claimant does not maintain that her injury was caused by any specific incident identifiable in time and place of occurrence. The claimant did recount an incident at work on April 29, 2005, when she was required to lift an abnormally large patient which she described as weighing approximately six hundred (600) pounds. However, the claimant did not experience any symptoms whatsoever after lifting said patient, and, in fact, continued her full work duties. The claimant stated that she first experienced back and/or hip pain on May 14, 2005. The incident was described as follows:

Q All right. Tell me what happened on May the 14th, 2005?

A I was at home. I was sitting on my couch talking with my brother. I stood up and I walked into my kitchen, and my left hip started hurting.

Q And describe the pain that you felt.

A It was – it just hurt. It felt deep into the hip. I never had anything like that before. This was unusual. I couldn't figure out why it was hurting.

Q Okay. Had you done anything that day that was a strenuous activity?

A No.

Q Had you done anything that day that required a lot of bending or stooping or lifting?

A No. Actually, me and my brother had sat around and talked quite a bit that day.

Q Okay. Now, was this a Monday?

A No, this was on that Saturday.

Q A Saturday. And were you – your brother was there with you at that time?

A Yes.

Q Okay. And did you immediately seek any medical attention?

A No, because this was unusual. It wasn't extremely bad, it was just an unusual pain. I took some Ibuprofen and it went away. Sunday, the next day, it came back, but I took some more Ibuprofen. I went in to work that following Monday and it continued to worsen, so that whenever I got off work for that Wednesday and Thursday, I tried that Wednesday to get into my regular doctor. I couldn't get in, so on Thursday I went to the Urgent Care where my physician is at.

Q And from the records it appears that you may have seen Dr. McDaniel. Is that at Urgent Care where you go?

A Uh-huh.

Q Is that who you saw?

A No, it was either Dr. Carlton or Dr. Vines one.

Q And was there any attempt – was that the only complaints you had?

A Yes.

Q Okay. And did you continue to see either someone at Urgent Care or someone that Urgent Care referred you to for this back condition until you were surgically treated?

A Yes, I did.

Q Did someone at Urgent Care refer you to a neurosurgeon?

A No.

Q Did you ultimately see a neurosurgeon?

A Yes, I did.

Q And did you see Dr. Morris Ray in Memphis?

A Yes, I did.

Q Okay. Did he surgically repair, to your understanding, your back condition?

A Yes, he did. (Tr.22-24)

As previously point out, and confirmed by the claimant, she has received periodic chiropractic treatment for back pain beginning as early as March, 1995, by Dr. Michael Ungerank. Dr. Ungerank's records reflect an initial onset of back pain on March 13, 1995, without known cause. Dr. Ungerank's subsequent medical records do reflect a work-related accident on May 11, 2003, which pre-dated the claimant's employment with the respondent. The claimant also began a course of treatment with Dr. Ungerank on November 2, 2004, during which time she worked for the respondent/employer which was apparently the first adjustment that she had received in more than one (1) year. However, the claimant's case history update reflected that her low back pain of two (2) week duration was unrelated to an injury and unrelated to her work. (Resp. Ex. A, pp.1, 8, 9)

The claimant was first seen at the NEA Medical Clinic in Jonesboro, Arkansas, on May 19, 2005, with complaints of left hip and leg pain for approximately five (5) days with no known injury. The clinic notes reflect that the claimant had been to the chiropractor for three (3) visits. The notes also point out that the first chiropractic visit had helped some but none since. (Resp. Ex. A, p.10)

The claimant was eventually seen by her primary care physician at the NEA

Clinic, Dr. Craig McDaniel, who diagnosed a herniated nucleus pulposus and referred the claimant to a neurosurgeon. His report stated that the claimant was thinking about claiming the injury as workman's comp because she did not know of any injury she had sustained at home, but that she performed a lot of lifting in her work. Dr. McDaniel did note that the claimant's symptoms first started at home. (Resp. Ex. A, p.12)

The claimant was next evaluated by Dr. Jeffrey Kornblum, a neurosurgeon in Jonesboro, Arkansas, whose history is set out below:

HPI: Mrs. Sweaney is a 46-year-old, right-handed lady seen in consultation on June 17, 2005 at the request of Dr. Craig McDaniel, she is accompanied with her sister. She notes severe pain radiating down her left leg, she notes the onset on May 14, 2005, she was not doing anything specific, she had gotten up off of the couch. She does not have complaints prior to that. She notes a severe Charley Horse describing it as a "Charley Horse from Hell". The pain extends from her buttock down her posterior leg to her foot. She does not note any electric like pain though she does note that she has stopped all activities at home and at work because of the pain. Straining or Valsalva like maneuvers exacerbate the leg pain, she has had poor sleep, she notes a little improvement that his [sic] when she sits, waling is not tolerated well. She has been unable to stand straight since this started. She notes that she has not had any incontinence, though she has had significant constipation, particularly the last three days. She has used narcotics, muscle relaxers, anti-inflammatories, she had an IM shot of steroids, she has been to the chiropractor on several visits, she has used heat and ice, none of which are bringing her relief. (Resp. Ex. A, p.14) (Emphasis supplied)

As previously pointed out, the claimant subsequently came under the care and treatment of Dr. Morris W. Ray, a neurosurgeon at the Semmes-Murphy Clinic in Memphis, Tennessee. The claimant underwent surgery on June 29, 2005. She was released by Dr. Ray with a thirteen percent (13%) impairment rating on August 9, 2005, which was subsequently modified as ten percent (10%) to the body as a

whole. (Resp. Ex. A, pp.16-21)

In a workers' compensation claim, the claimant has the burden of proving, by a preponderance of the evidence, that her claim is compensable, i.e., that her injury was the result of an accident that arose in the course of her employment and that it grew out of or resulted from the employment. *Ringier American vs. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993); *Carman vs. Haworth, Inc.*, 74 Ark. App. 55, 455 S.W.3d 408 (2001). Further, the claimant must cause a causal connection exists between her condition and her employment. *Harris Cattle Co., vs. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974).

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark.

App. 196, 737 S.W.2d 663 (1987).

I recognize that the claimant's general practitioner opined that the major cause of the claimant's injury was her work activities. I did not find Dr. McDaniel's testimony to be persuasive. Further, it is apparent that he did not have a complete medical history, including chiropractic adjustments for back complaints which predated the claimant's work history. Both Dr. McDaniel and the claimant are required to speculate as to the cause of the claimant's injury.

The claimant did not attribute her physical problems and need for medical treatment to any work-related activities until after she learned that she had a herniated disc which would require surgical correction. The claimant's symptoms did not manifest themselves until following an uneventful incident at home while getting off a couch. The claimant's belief that her problems were related to lifting at the workplace is merely a conclusion that is not supported by a preponderance of the credible evidence. The claimant had been receiving chiropractic adjustments for back pain for more than ten (10) years prior to her alleged injury. It would require sheer speculation and conjecture to attribute the claimant's physical problems, need for treatment, and surgery to her employment. Herniated discs can occur as the result of minor incidents such as picking up a pencil. The claimant first experienced problems at home after getting up off the couch. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that she sustained a compensable injury within the

meaning of the Arkansas Workers' Compensation Laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge