

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407675

JENA TERRY, EMPLOYEE (DECEASED)	CLAIMANT
CENTRAL ARK AREA AGENCY ON AGING, SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED JULY 15, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE BYRON FREELAND, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on April 26, 2005 in Little Rock, Arkansas. A prehearing order was entered in this case on January 20, 2005. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The parties stipulate to the employee/employer relationship existing on July 14, 2004.
2. Additionally, the parties stipulate that the claimant earned an average weekly wage of \$241.87

which yields a temporary total disability rate of \$161.00, if the claim is found to be compensable.

3. Jena Terry died on January 20, 2005, and Ms. Terry's death was not causally related to her alleged work related injury.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

Claimant:

1. Whether claimant's injury occurred during the course and scope of employment.
2. Whether claimant is entitled to workers' compensation coverage for payment of her medical bills and lost wages.

Respondent:

1. Compensability.

ALJ:

1. Did the claimant fall on July 14, 2004?
2. Is the claimant's hip fracture causally related to the alleged fall?

The record consists of the two volume April 26, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION**1. Compensability**

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, Ms. Terry's deposition testimony establishes by a preponderance of the evidence that she slipped and fell going up a ramp at the home of her employer's client on July 9, 2004. She worked that day in the home of two clients. She continued to work until the morning of July 15, 2004, when she presented to the Conway Regional Medical Center. The history taken at the hospital that morning establishes by a preponderance of the evidence

that Ms. Terry had experienced pain in her right groin from the time of her fall until she presented to the hospital a week later. At the time Ms. Terry presented to the hospital, she had been unable to bear weight for approximately 24 hours. X-rays at the hospital indicated an impacted right hip fracture for which Dr. Richard McCarron performed surgery that day.

Dr. McCarron's expert testimony also establishes by a preponderance of the evidence that the impacted right hip fracture diagnosed on July 15, 2004 was caused by the fall on a client's ramp on July 9, 2004. Dr. McCarron concluded that Ms. Terry's fracture is in fact consistent with the history presented in this case. In this regard, Dr. McCarron explained that a fall to the knees can cause a hip fracture. In addition, he explained that it is not unusual for a person with this type of fracture to have fallen on July 9 and not present to the emergency room until 15 because, with an impacted fracture, people often continue to work and have discomfort and then present several days to several weeks later due to a sudden increase in pain. In fact, Dr. McCarron explained that at least 50% of impacted hip fracture patients present more than one day after the fracture occurs. Finally, Dr. McCarron explained that the

abrasions on Ms. Terry's knees were consistent with a fall a few days before he saw her, and that the vast majority of impact fractures are from falls.

Therefore, the preponderance of the evidence establishes that the slip and fall on July 9, 2004 arose out and in the course of Ms. Terry's employment since she was on the premises of a client attempting to enter her home. The preponderance of the evidence establishes that the slip and fall caused an impacted right hip fracture injury which required medical services and caused disability. There is no dispute that the slip and fall which caused the fracture was a specific incident within the meaning of Act 796 of 1993, and there is no dispute that the impacted right hip fracture at issue is established by medical evidence supported by objective findings, including x-rays and surgical observations. The preponderance of the evidence therefore establishes each of the requirements necessary to establish a compensable impacted right hip fracture injury.

2. Temporary Disability

Temporary total disability for unscheduled injuries is that period within the healing period in which the claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244,

613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In the present case, I find that a preponderance of the evidence establishes that Ms. Terry remained within her post-surgical healing period and totally incapacitated from earning wages beginning on July 9, 2005 and continuing until her death on January 20, 2005. In reaching that conclusion, I recognize that Dr. McCarron last saw Ms. Terry in an office visit on December 9, 2004, and released her to return as needed on that date. In addition, Dr. McCarron noted that Ms. Terry was at that time experiencing eye problems somewhat affecting her ability to walk. Under these circumstances, the respondents assert that the claimant's temporary disability benefits should stop no later than December 9, 2004.

However, Dr. McCarron's testimony and December 9, 2004 office note persuade me that Ms. Terry remained within her healing period and totally incapacitated from her impacted right hip fracture and surgery between December 9, 2004 and January 20, 2005. In this regard, I note that Ms. Terry was

65 years old when the injury occurred. On December 9, 2004, Dr. Terry documented a wide-based gait which he attributed to gluteal weakness and for which he instructed gluteal strengthening exercises. Dr. McCarron testified that Ms. Terry could have improved further if she got strength in her legs, and he did not yet have an opinion on December 9, 2004 as to when she would reach her optimum healing point. Therefore, I find that a preponderance of the evidence establishes that Ms. Terry remained with the healing period for her hip fracture on January 20, 2005.

Dr. McCarron's deposition testimony and Ms. Terry's deposition testimony also establish by a preponderance of the evidence that Ms. Terry was completely incapacitated from returning to work on January 20, 2005. Dr. McCarron explained that with her weakness and walking difficulties, Ms. Terry was not yet independent enough to return to work assisting other people on December 9, 2004, and the claimant's testimony indicated that she was still not able to return to work in January when her deposition was taken. Therefore, a preponderance of the evidence established that Ms. Terry was temporarily totally disabled from July 15, 2004 and continuing to her death on January 20, 2005.

Finally, because I find that the claimant has established by a preponderance of the evidence that she sustained a compensable impacted right hip fracture injury, I find that the respondents are liable for the reasonably necessary medical treatment which she has received for that injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties stipulate to the employee/employer relationship existing on July 14, 2004.
2. Additionally, the parties stipulate that the claimant earned an average weekly wage of \$241.87 which yields a temporary total disability rate of \$161.00, if the claim is found to be compensable.
3. Jena Terry died on January 20, 2005, and Ms. Terry's death was not causally related to her alleged work related injury.
4. The preponderance of the evidence establishes that Ms. Terry experienced a compensable impacted right hip fracture as the result of a slip and fall which arose out of and in the course of her employment on July 9, 2004.
5. A preponderance of the evidence establishes that

Ms. Terry was temporarily totally disabled for the period beginning on July 15, 2004 and continuing until her death on January 20, 2005.

6. The respondents are liable for the reasonably necessary medical treatment associated with Ms. Terry's compensable impacted right hip fracture injury.

AWARD

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

The claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge