

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400497

LINDA WALSTON

CLAIMANT

MENA MEDICAL CENTER

RESPONDENT

RISK MANAGEMENT SERVICES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 17, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by RICHARD MUSE, Attorney, Hot Springs, Arkansas.

Respondents represented by GUY WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 5, 2005, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on May 20, 2004. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On January 8, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates would be \$406.00 for total disability and \$305.00 for permanent partial disability.
3. The claim is controverted in its entirety.

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

1. Whether the claimant sustained a compensable injury to her back on January 8, 2004.

2. The claimant's entitlement to the payment of medical expenses, temporary total disability from January 9, 2004 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant contends on January 8, 2004, in the course and scope of her employment as a respiratory therapist, she bent over to pick up a nebulizer kit and injured her low back. Claimant was treated at the emergency room, given a shot for pain and has been off work since that date."

In regard to these issues, the respondents contend:

"Respondents contend that claimant's complaints are the result of an idiopathic injury and are not caused by her work. In addition, claimant's complaints do not meet the definition of a compensable injury."

DISCUSSION

The central issue in this case is the question of whether the claimant sustained a "compensable injury" to her back or lumbar spine, on or about January 8, 2004. The burden rests upon the claimant to prove all of the essential elements for a "compensable injury," as set out in the Act.

Ark. Code Ann. §11-9-102(4)(D) requires that the claimant first "establish," by medical evidence, the actual existence of the physical injury alleged to be compensable. She must further show that the actual existence of this physical injury is supported by "objective findings," as that term is defined in Ark. Code Ann. §11-9-102(16)(A)(i).

The medical evidence presented is sufficient to "establish" the actual existence of physical injury or damage to the claimant's lumbar spine. Purely "objective" diagnostic studies support the presence of this physical damage or defect. These objectively documented defects are in the form of dessication or dehydration of the L4-5 and L5-S1 discs, with disc bulging at the L4-5 level and some spinal canal

narrowing, but no evidence of any focal disc protrusion or actual herniation and no evidence of any nerve root compression. These defects were noted on an MRI performed on March 21, 2004, a myelogram performed on August 17, 2004, and an enhanced CAT scan performed on the same date.

The claimant must next prove that these medically established and objectively documented physical injuries or defects satisfy all of the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). Should these physical injuries or defects fail to meet even one of these definitional requirements, then they would not constitute a "compensable injury" as that term is defined in the Act. These definitional elements or requirements are:

- (1) The physical injury or defect must arise out of or occur in the course of the employment;
- (2) The physical injury or defect must be caused by a "specific incident";
- (3) The physical injury or condition must be identifiable by time and place of occurrence;
- (4) The physical injury or condition must result in internal or external physical harm to the claimant's body;
- (5) The physical injury or condition must require medical services or result in disability.

In order for a physical injury to "arise out of and occur in the course of the employment," the claimant must prove the existence of a causal relationship between the injury or defect and the employment. To meet the second requirement of Ark. Code Ann. §11-9-102(4)(A)(i), this employment related cause must be a "specific incident." However, it is not necessary that the claimant prove this causal relationship to a mathematical or absolute certainty. She need only prove that the existence of this causal relationship is probable or likely.

In the present case, the only evidence presented by the claimant to prove the

existence of this causal relationship is her own testimony. At the hearing, the claimant testified that, while at work, on January 8, 2004, she was seated in a chair and reached down to the floor to pick up a small plastic nebulizer, which she had apparently dropped. She stated that she felt a sudden and immediate sharp pain ("a gun shot to her back") and all of her muscles pulled up and tightened from her back to her neck. She stated that she had never experienced such a widespread similar pain before and subsequently lost control of her bowels and bladder, which had also not happened before. Later that same night, she reported the incident and complaints to her supervisor and was provided with medical treatment at the emergency room of the Mena Medical Center. She stated that since that time her difficulties have not improved, but have actually worsened. She describes episodes of pain from the base of her skull down into both legs, and occasionally down her left leg into her toes. She also describes pain and numbness in her toes. It is her opinion that these symptoms have been sufficiently severe that she has been unable to work and some days can't even "get out of bed by herself."

Although the testimony of a party is never considered "uncontradicted," this does not mean that it can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, alone and in itself, to prove any fact it is legally competent to address. Clearly, the claimant's testimony would be legally competent to address prove the occurrence of a specific employment related incident and to show the existence of a reasonably close temporal relationship between this incident and the onset of symptoms that would be indicative of the occurrence of an actual physical injury to her back or lumbar spine. In assessing the credibility of the claimant's testimony, the testimony must be considered in light of all the evidence presented.

The medical evidence confirms that the claimant was treated at the emergency room of the Mena Medical Center at approximately 1:00 a.m. on the early morning of

January 9, 2004. These emergency room records further contain a history of the onset of the claimant's difficulties that is similar to that described in her testimony. However, the emergency room records also show a history of chronic back pain for many years. This portion of the history is contrary to the claimant's testimony that although she had experienced prior back injuries, these prior difficulties had completely resolved. These initial emergency room records also record that the claimant had normal motor function and ability in both lower extremities and no sensory deficits. Reflexes were also noted to be within normal limits and bilaterally equal.

The claimant's previous medical records (contained in the Respondent's Exhibit No. 1) show that on or about July 13, 1979, the claimant sustained a reported employment related injury to her low back when she "bent over her desk" at work. These records indicate that the claimant received extensive evaluations and tests by numerous physicians for this 1979 injury. These physicians included a number of specialists in the area of medicine associated with injuries to the lumbar spine, such as Dr. John Wilson, Dr. Jay Lipke, Dr. Thomas Fletcher, Dr. John Christian, and Dr. Warren Boop. During her course of treatment for this reported employment related injury, she was also seen and evaluated by Dr. Patrick Caffey, a clinical psychologist. With the exception of the loss of bowel or bladder control, the claimant's symptoms from the reported employment related injury in 1979, appear essentially identical with those she now attributes to the alleged injury of January 8, 2004. During the course of her evaluation and treatment for the 1979 injury, various radiographic studies were performed on the claimant, which included a myelogram. These prior studies were interpreted as showing a disc protrusion or bulging, at the L4-5 level which would appear strikingly similar, if not identical, with the defect noted on the most recent testing.

The prior medical records for the reported 1979 injury show that the claimant's defect was not deemed to merit surgical intervention. However, the claimant was provided with extensive conservative medical treatment. This treatment appears to have continued through at least June of 1981. It would appear from the medical records that the claimant reported no significant benefit from this extensive period of conservative care. These records also indicate that a number of the claimant's physicians, at that time, questioned the physical basis for the claimant's continuing extensive complaints, and were of the opinion that these complaints far outweighed those that would be expected from her relatively minor objective findings. In his report of August 2, 1980, Dr. Caffey notes that an MMPI test showed the presence of a conversion reaction and possibly secondary gain considerations. It is impossible to determine from the medical evidence when the claimant's treatment actually ended for her 1979 injury and when or even if her extensive subjective complaints lessened or resolved. According to the claimant's testimony this case was ultimately settled after she was off work for over two years.

The medical reports next show that the claimant had another reported employment related injury to her back on or about February 25, 1988. This reported employment related injury also involved the claimant's cervical spine. Although the mechanics of this reported injury are somewhat different from those described as occurring in 1979 and January 8, 2004, the claimant's lower back symptoms and complaints are again essentially the same (with the exception of the loss of bowels and bladder control reported following the most recent incident). Various diagnostic tests, including an MRI study on March 29, 1988 and a myelogram and enhanced CT scan that was performed on April 21, 1988, revealed findings strikingly similar, if not identical, with the defects noted in the studies performed following the 1979 reported injury and the January 8, 2004 reported injury. These findings were disc

desiccation or dehydration at the L4-5 level and L5-S1 level and mild to moderate bulging of the L4-5 disc.

Again, these lumbar defects were determined to be non surgical and the claimant received an extensive period of conservative treatment and was off work through at least September of 1989. This course of treatment and evaluation was provided to the claimant by a new set of physicians. This new set of physicians also included a number of specialists in the area of medicine associated with back injuries, such as Dr. Ronald Williams and Dr. Allan Gocio. Again, the claimant reported no benefit from this extensive conservative care and again some of her physicians began to question the validity of her continuing extensive subjective symptoms and complaints in light of her relatively minor objective findings. This claim also appears to have been settled.

Finally, the medical records contained in Respondent's Exhibit No. 1, show that the claimant was involved in a motor vehicle accident in October of 1994. At the time, the claimant again voiced exhibited complaints involving her lumbar and cervical spines. Again, the claimant's lumbar complaints coincided with those she voiced following the reported employment related incidents in 1979 and 1988. The claimant was apparently under medical care and off work for this episode of complaints through at least July of 1995. On March 12, 1996, the claimant was seen again for complaints involving pain in her lower back and down both legs to her feet (as well as her neck) following a change in the "line of work" she was performing.

After consideration of the evidence presented, it is my opinion that I cannot give the claimant's testimony sufficient credibility to prove the occurrence of a specific employment related incident on January 8, 2004 and the existence of a causal relationship between such an employment related incident and the medically established and objectively documented defects involving her lumbar spine. The

evidence shows that the described incident, on January 8, 2004, is uncannily similar to the claimant's initial reported job related lumbar injury in July of 1979. The medical evidence shows that the objectively documented lumbar defects, following the reported incident of January 8, 2004, have actually been present since 1979. There is no evidence of any particular change or increase between the defects, noted in 1979, and those noted following the most recent series of testing. With the exception of the claimant's reported loss of bowel and bladder control (which has no objective substantiation), the claimant's current symptoms appear to be identical in type and magnitude with those she voiced after the employment related incident in 1979, after the reported employment related incident in 1988, and after the motor vehicle accident in 1994. As was the case, in the episodes and difficulties in 1979, 1988, and 1994, the claimant's symptoms have been unimproved with time or treatment and the extent and magnitude of these subjective symptoms would appear to far exceed her objective findings.

In summary, I find that the claimant has failed to prove by the greater weight of the credible evidence that on January 8, 2004, she sustained a physical injury to her lumbar spine that arose out of and occurred in the course of her employment with this respondent, that was caused by a specific incident, that is identifiable by time and place of occurrence, that caused internal or external physical harm to her body and that required medical services or resulted in disability. Thus, she has failed to prove the occurrence of a "compensable injury" to her low back or lumbar spine as that term is defined by the Act. Her claim for benefits attributable to such an injury must be denied and dismissed in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On January 8, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On January 8, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$406.00 for total disability and \$305.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a "compensable injury" to her back or lumbar spine on January 8, 2004. Specifically, she has failed to prove the occurrence of a physical injury to this portion of her body on that date, that arose out of and occurred in the course of her employment, that was caused by a specific incident, that is identifiable by time and place of occurrence, that resulted in internal or external physical harm to her body, and that required medical services or resulted in disability.
5. The respondents have denied the occurrence of any compensable injury to the claimant's back or lumbar spine and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

