

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406024

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| ELNORA WHEATON-McGLOTHLIN, EMPLOYEE | CLAIMANT |
| SW ARKANSAS DEVELOPMENT COUNCIL, INC., EMPLOYER | RESPONDENT |
| RISK MANAGEMENT RESOURCES, CARRIER | RESPONDENT |

OPINION FILED FEBRUARY 22, 2005

Hearing conducted before the Honorable Dale Douthit, Administrative Law Judge, in Hope, Hempstead County, Arkansas.

Claimant was represented by Mr. Garnet E. Norwood, Attorney at Law, Texarkana, Arkansas.

Respondents were represented by Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hope, Arkansas on December 10, 2004. A prehearing conference was held on September 29, 2004, and a prehearing order was filed that same day. At the hearing the parties announced that the stipulations, issues and their respective contentions were properly set out in the prehearing order, subject to additional stipulations, contentions and issues agreed to at the hearing. A copy of the prehearing order was introduced into evidence as Commission Exhibit "1", and made a part of the record without objection.

The parties agreed at the hearing to the following stipulations:

- 1) That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) That the employer/employee/carrier relationship existed on June 3, 2004.
- 3) That the compensation rates would be based on claimant's average weekly wage of \$190.55.

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The claimant contended she sustained a compensable injury on June 3, 2004, as a result of a specific incident; and that she is entitled to temporary total disability benefits from June 4, 2004, to a date to be determined and associated medical benefits and attorney fees.

The respondents contend the claimant did not sustain a compensable injury in the course and scope of her employment, and that there are no objective findings to support the claimant's contention that she sustained a compensable back injury. Respondents also contend they believe the claimant's hand injury to be a gradual onset injury, and the claimant cannot meet her burden of rapid repetitive motion. Further, respondents asserted that any complaints or problems the claimant is having at this time and has had since July 29, 2004, would be as a result of a pre-existing condition and not causally related to any employment activities.

At the time of the prehearing order the issues to be litigated were compensability, and if overcome, claimant's entitlement to associated medical and temporary total disability benefits, and attorney fees. No other issues were requested to be litigated at the Full Hearing.

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 claimant and to observe her demeanor, the following Findings of Fact and Conclusions of Law are made in accordance with A.C.A. §11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of 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 compensable injuries to her back or hands as a result of a specific

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incident identifiable by time and place of occurrence at the work place on June 3, 2004. Specifically, the claimant has failed to produce medical evidence supported by objective findings establishing her alleged compensable injuries.

DISCUSSION

This claim turns on the medical evidence submitted by both parties and the credibility of the witness.

The claimant alleged compensable injuries as the result of a specific incident while at work on June 3, 2004. Claimant testified that on June 3, 2004, while attempting to bathe a patient, she sustained injuries to her back and both hands.

I will first address the alleged compensable injuries to the claimant's hands. The claimant's attorney was specifically asked at the hearing if the claimant's contention regarding her injuries was compensability based on a specific incident. (T. Pg. 5, Ln 12-17 & Pg. 6, Ln 2-4) The claimant never argued or contended a gradual onset injury concerning her hands; however, Dr. Thompson seemed to allege such in his July 19, 2004 letter. (RX 1, Pg. 88) "This is certainly causal by aggravation of her work related problems where she is having to use her thumbs quite a bit..." Additionally, prior to Dr. Thompson's July 19, 2004 letter, his clinic notes indicate a request from the claimant for a "letter stating hand pain is due to repetitive work injury." (RX 1, Pg. 87). Dr. Thompson seemed to oblige the claimant with a letter indicating a gradual onset injury to her hands; however, as stated above, the claimant contended and argued for a specific incident compensable injury and for this examiner to imply an argument for gradual onset would be speculation and outside the scope of the hearing as outlined in the prehearing order and on the record on December 10, 2004.

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In order for the claimant to prove a compensable injury to her hands as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A.C.A. §11-9-102(4)(A)(i), must be established:

- 1) Proof by a preponderance of the evidence of an injury arising out of and in the course of 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 both.
- 3) Medical evidence supported by objective medical findings, as defined in A.C.A. §11-9-102(16).
- 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.

If the claimant fails to establish by a preponderance of the evidence any of the requirement for establishing compensability of the injury, she fails to establish compensability of the claim, and compensation must be denied. *M. Mikel v. Engineered Specialty Plastics* 56 Ark. App. 176, 938 S.W. 2nd 876 (1997).

In the present case, the claimant has failed to supply medical evidence supported by objective medical findings as defined in A.C.A. §11-9-102(16), establishing the injury. Objective findings are those findings which cannot come under the voluntary control of the claimant. Complaints of pain may not be considered by the ALJ, Commission or the Courts. A.C.A §11-9-102(16)(a)(ii). Dr. David McKay examined the claimant's hand and back on June 17, 2004. (RX 1, Pg. 74). After a lengthy exam and discussion with the claimant, Dr. McKay stated the following, "It is unclear to me at this point why she is continuing to have numbness in her hand and muscle cramping." Dr. McKay then ordered nerve conduction studies of both median ulnar

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nerves in both arms. In addition, Dr. Allen Havener prepared a radiology report covering both of the claimant's hands. Dr. Havener noted on his report the claimant's history concerning the hands was "pain." With regard to the claimant's left hand, Dr. Havener found no fracture or subluxation and bony mineralization and the joint spaces were well preserved. He stated "there is more deformity of the distal aspect of the middle phalanx of the 3rd digit medially likely related to remote trauma or of degenerative origin." Dr. Havener's impression of the left hand was "no significant bony or joint abnormality seen radiographically." (RX 1, Pg. 72) Dr. Havener's radiology report of the right hand stated "no fracture or subluxation is noted. Bony mineralization and the joint spaces are well preserved." His impression of the right hand indicated "no" radiographic bony or joint abnormality seen. (RX 1, Pg. 72) Due to Dr. McKay being perplexed as to claimant's complaints of numbness in her hands, nerve conduction velocity studies were performed on both upper extremities. Dr. Michael Clevenger conducted the nerve conduction studies and found both upper extremities "normal." (RX 1, Pg. 79) After the normal nerve conduction studies, Dr. McKay examined the claimant's hand again on July 6, 2004, and made the following note: "Hand exam is unremarkable, except for tenderness over thumbs bilaterally. Negative Tinel's. Negative Phalen's bilaterally." (RX 1, Pg. 84)

As stated above, the claimant exhibited "numbness" and "tenderness" to Dr. McKay on 7/8/04 and 7/6/04, respectively. The radiology report form dated 7/4/04 indicated "Pain." The case of Duke v. Regis Hairstylist, 55 Ark. App. 327, 935 S.W. 2d 600 (1996), states that complaints of pain and numbness are "subjective and cannot be relied upon for compensability." Applying the Duke v. Regis Hairstylist case with the nerve conduction statute and the radiology

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report done by Drs Clevenger and Havener, respectively, indicates to this examiner that the claimant has failed to provide medical evidence supported by objective findings. It is also worth noting carpal tunnel syndrome was not alleged by the claimant. (T. pg. 20, Ln 8)

The court does not totally disregard the conclusions reached by Dr. Thompson. However, it appears Dr. Thompson totally relied on the claimant's subjective complaints of "pain." "Again she does have painful triggering of both thumbs today." (RX 1, Pg. 89) Dr. Thompson could not supply any objective findings; and certainly never reconciled the complaints of pain with the nerve conduction studies or radiology report.

The claimant also contended she sustained a compensable back injury as a result of the same specific incident on June 3, 2004. There was very little medical documentation introduced regarding the claimant's alleged back injury. The first report concerning her back was from Dr. McKay on June 3, 2004. (RX 1, Pg. 68) At that time Dr. McKay examined x-rays of both hands and the lumbar spine and found "no acute bony abnormalities." Dr. McKay stated the claimant complained of "low back pain." Dr. McKay's report went on to say:

"HEENT; unremarkable. Neck is supple without any adenopathy or meningismus. Full range of motion of both shoulders, elbows, wrist and all five fingers on both hands. Negative Tinel's. Negative Phalen's bilaterally at the wrists. Radial pulses are 2+ and symmetrical. Deep tendon reflexes are 2+ and symmetrical in the upper and lower extremities. She does have a tenderness over the lower LS-Spine. She can flex down to the knees. Abdomen is benign. Negative straight leg raising test bilaterally. Good motor strength in both legs and arms. No atrophy. No edema. She can toe and heel walk. Negative Homan's bilaterally. No calf tenderness. X-rays of both hands and LS-Spine show no acute bony abnormalities. (Emphasis added.)

The plan is to put her on light duty with limited use of her hands. No lifting, pushing or pulling over 5 lbs. No bending or twisting at the waist. Put her on Vicodin. Warned about drowsiness and Tylenol. Put her on Celebrex. Warned a bout GI upset. Put her on Skelaxin. Warned about drowsiness. Recheck her in ten days. (RX 1, Pg. 68)

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On June 4, 2004, Dr. Havener prepared a radiology report of her lumbar spine that contained the following findings and impressions:

“No fracture or malalignment is noted. The intervertebral disc spaces are well preserved. Bony mineralization is intact.

“Negative Lumbosacral spine series.” (RX 1, Pg. 71)

Dr. McKay saw the claimant again on 6/17/04 with the claimant complaining of low back “pain.” Dr. McKay stated the following concerning his physical exam of the claimant.

“PHYSICAL EXAM: HEENT: Unremarkable. Neck is supple without any adenopathy or meningismus. Full range of motion of both shoulders and elbows and wrists and all five fingers on both hands. No visible edema. Good motor strength. Negative Tinel’s and negative Phalen’s bilaterally at the wrist. Radial pulses are 2+ and symmetrical. Dorsalis pedis pulses are 2+ and symmetrical. No CVA tenderness. Lungs are clear. Abdomen is benign. Negative straight leg raising test bilaterally. Deep tendon reflexes are 1+ and symmetrical in the upper and lower extremities. No evidence of atrophy. Good motor strength in the upper and lower extremities. No edema. Negatived (sic) Homan’s.

We had a lengthy discussion. It is unclear to me at this point why she is continuing to have numbness in her hands and muscle cramping. We will get nerve conduction studies of both median and ulnar nerves in both arms. We will go ahead and get an orthopedic consult. Keep her on her same restrictions at work. I refilled her Skelaxin. Keep her on the Celebrex. I have recommended that she not stay on the Vicoden.

Dr. McKay saw her again 7/27/04 and again she stated tenderness across the LS-spine, but no objective findings from Dr. Mckay. (RX 1, Pg. 91)

There were no other medical documents introduced concerning any problems with the claimant’s back. As outlined above, the only evidence of a back injury was the claimant’s alleged “pain”. As shown in the Duke case, pain is subjective and cannot be relied on for compensability. Further, the medical reports and radiology report from Drs. Havener and McKay

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indicate no objective medical finding of a back injury. As such, this examiner finds the claimant has failed to prove a specific incident compensable back injury.

ORDER

After careful consideration of all the evidence in this matter and viewing such impartially, and without giving the benefit of the doubt to either party, I find the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury with medical evidence supported by objective medical findings. Therefore, respectfully, the above captioned claim is hereby denied and dismissed.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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