

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F308905

JUDY WRIGHT, Employee	CLAIMANT
HIRAM WALKER ALLIED DOMECCQ, Employer	RESPONDENT
FEDERAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JANUARY 4, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by E. DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On December 6, 2004, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 7, 2004, and a pre-hearing order was filed on April 8, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties on November 20, 2002.
3. The respondent accepted as compensable an injury to claimant's left arm and left chest wall (contusion) after a fall at work on November 20, 2002.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injuries to claimant's lumbar and cervical spine.
2. Related medical.
3. Attorney fee.

The claimant contends that as a result of the job related incident on November 20, 2002, she sustained an injury to her cervical and lumbar spine. Claimant contends she is entitled to reasonable and necessary medical treatment.

The respondents deny that claimant's cervical and lumbar condition are causally related to her November 20, 2002 injury.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 7, 2004, and contained in a pre-hearing order filed April 8, 2004, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her lumbar and cervical spine while employed by respondent on November 20, 2002.

FACTUAL BACKGROUND

The claimant has worked for the respondent for approximately fourteen years. Claimant initially worked as a case packer, but for the two years prior to November 20, 2002 she had primarily worked in quality control.

On November 20, 2002 the claimant slipped and fell while carrying bottles filled with product. After her fall the claimant was initially treated by Dr. Terry Clark who diagnosed claimant as suffering from a fall with a contusion of her left arm and left chest wall. Dr. Clark prescribed medication and returned claimant to work with restrictions. Claimant was

next evaluated by Dr. Clark on December 3, 2002. At that time the claimant was complaining of a little residual soreness in her left chest wall and left arm. Dr. Clark released the claimant to return to work without restrictions and indicated that claimant should return for a follow-up appointment as needed.

Claimant did not seek any additional medical treatment again until May 16, 2003, when she was evaluated by her family physician, Dr. Hays. At that time the claimant was complaining of lower back pain radiating down her thigh which she attributed to the fall at work. Claimant continued to be evaluated by Dr. Hays over a period of time and eventually underwent an MRI scan of both her cervical and lumbar spine. Those MRI scans have been interpreted as revealing herniated discs at the C5-6 and L4-5 levels. As a result, claimant was eventually referred to Dr. Johnson, neurosurgeon, who has recommended surgery to claimant's lumbar spine.

Respondent accepted as compensable injuries to claimant's left arm and left chest wall in the form of a contusion as a result of the fall on November 20, 2002. Claimant has filed this claim contending that she also suffered a compensable injury to her lumbar and cervical spine as a result of the fall on November 20, 2002.

ADJUDICATION

The claimant contends that she injured her lumbar and cervical spine as a result of a fall which occurred while working for respondent on November 20, 2002. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 death;

(3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;

(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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her cervical and lumbar spine as a result of the fall on November 20, 2002.

The most significant evidence in claimant's favor is an accident report which was completed by the respondent on November 20, 2002. That accident report indicates that claimant reported injuries to her left elbow, left knee, and "possible pulled back".

While the accident report of November 20 did mention a possible pulled back, Dr. Clark's medical report of November 21, 2002 fails to mention any complaints of neck or low back pain. Instead, Dr. Clark's medical report indicates that claimant was complaining of pain in her left elbow, left shoulder, and left chest wall. As a result, Dr. Clark diagnosed claimant as suffering from a contusion of the left arm and left chest wall. Claimant returned to Dr. Clark on December 3, 2002, and his medical report of that date notes that claimant has some residual soreness in the left chest wall and left arm. He also notes that claimant was able to perform her regular job the day before without restrictions and without any problems. As a result, Dr. Clark released claimant to return to work without restrictions.

It is claimant's contention that she made complaints of pain in her neck and back to Dr. Clark but that he ignored those complaints. Dr. Clark testified at his deposition that

if the claimant had complained of either neck or back pain he would have examined those areas and recorded his examination results.

Q. Now, if she didn't complain of her neck or her back on either of the visits that you had with her in 2002, then I take it there would be no reason for you to examine those body parts that aren't being complained of, would there?

A. No, ma'am.

Q. And if she had complained of either her neck or her back on either of these visits of 2002, you would have examined those areas and recorded your examination results, would you not?

A. Absolutely.

While claimant relies upon the accident report noting a possible pulled back as support for her back complaints which were ignored by Dr. Clark, I do not believe this case is that simple. First, to make such a finding I would have to believe that Dr. Clark simply ignored complaints made to him by the claimant. Further, there are several discrepancies in that accident report and claimant's complaints to Dr. Clark. The accident report names the left elbow, left knee, and "possible pulled back." Dr. Clark's medical report does mention an injury to claimant's left elbow but fails to mention claimant's alleged back complaints or any complaints of left knee pain. On the other hand, Dr. Clark's medical report notes that claimant complained of left shoulder and left chest wall pain. These are parts of the body which claimant did not include in the accident report. I also note that neck complaints are not listed in either the accident report or Dr. Clark's records of November 21 or December 3.

In summary, although claimant listed a possible pulled back on the accident report of November 20, 2002, she did not make back complaints to Dr. Clark on November 21, 2002 or on December 3, 2002. Dr. Clark testified that had claimant made those complaints he would have examined those areas of claimant's body and noted the results

of those examinations in his report.

I also find it significant to note that claimant did not seek any medical treatment for her alleged neck or back condition until May 16, 2003, when she sought medical treatment from Dr. Hays, her family physician. This was six months after the fall on November 20.

Finally, I believe it is important to note that claimant has a history of neck and low back complaints. During her testimony, claimant described her prior back and neck complaints as "minor". The documentary evidence contains medical reports from Dr. Baker dated March 26, 1996, indicating that claimant is complaining of headaches and a burning in the back of her neck. On April 10, 1996 Dr. Baker's medical report notes that claimant was complaining of pain and stiffness on the right side of her neck which radiated into the trapezius and down the middle of her back. Dr. Baker also noted cervical spasm and diagnosed claimant's condition as cervical and thoracic somatic dysfunction.

On July 10, 2000 Dr. Muylaert evaluated the claimant for complaints of low back pain which radiated into her lower quadrant. Dr. Muylaert indicated that if claimant's low back pain persisted she should consider x-rays and check with her family physician.

On February 7, 2001, claimant was again evaluated by Dr. Baker with complaints of lower abdominal pain and low back pain. On February 26, 2001, claimant complained to Dr. Baker of chest pain which radiated to her back. Finally, on January 22, 2002, some ten months prior to claimant's fall, claimant was seen by Dr. Baker complaining of low and middle back pain which had persisted for several months. Claimant also complained of burning in her legs and foot. Dr. Baker's medical report of that date indicates that claimant has been taking a lot of aspirin for her back pain.

In short, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical or lumbar spine as a result of the fall which occurred on November 20, 2002. While claimant did complete an accident report indicating a possible pulled back on that date, she was

seen by Dr. Clark the next day and did not make any complaints of neck or back pain. Claimant was again seen by Dr. Clark on December 3, 2002, and his report reveals no complaints of neck or back pain. To the contrary, his examination revealed that claimant's condition was resolving with some residual pain in her left elbow and left chest wall as a result of contusions. According to Dr. Clark's testimony, if claimant had made complaints of neck or low back pain, he would have examined those areas of her body and noted the results of his examination in his medical report. Following her release by Dr. Clark on December 3, claimant did not seek any additional medical treatment until May 16, 2003, six months after the fall. Finally, it should be noted that claimant has a history of cervical and low back complaints with claimant having complained of low and middle back pain for several months with burning in her legs and foot as recently as January 22, 2002. Based upon the foregoing evidence, I find that claimant has failed to meet her burden of proof.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her cervical or lumbar spine as a result of the fall on November 20, 2002. Therefore, her claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE