

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F300844/F512874

BRENDA BRYSON, Employee	CLAIMANT
BENTON COUNTY HEALTH UNIT, Employer	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, Carrier	RESPONDENT

OPINION FILED MAY 3, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by RICHARD SMITH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 12, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 5, 2006, and a pre-hearing order was filed on that same date. 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 employer-employee relationship existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to her back on January 3, 2003.
4. The claimant was earning an average weekly wage of \$324.63 which would entitle her to compensation at the weekly rates of \$216.00 for temporary total disability benefits and \$162.00 for permanent partial disability benefits.

At the time of the hearing the parties agreed to stipulate that claimant filed her claim for compensation benefits on November 7, 2005.

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

1. Whether claimant is entitled to additional medical as a result of her January 3, 2003 injury.
2. Whether claimant's claim for the January 3, 2003 injury is barred by the statute of limitations.
3. Alternatively, whether claimant suffered a compensable injury on March 21, 2005; if so, her entitlement to medical.
4. Attorney fee.

Prior to the hearing the claimant also raised as an issue her entitlement to temporary total disability benefits.

The claimant contends she is entitled to additional medical as a result of her January 3, 2003 injury. Alternatively, claimant contends she suffered a new injury on March 21, 2005. In addition, claimant contends she is entitled to temporary total disability benefits and an attorney fee.

The respondents contend that the first claim is barred by limitations as of not later than January 3, 2005, two years after the injury date and more than a year after the last payment of benefits. Respondents contend the second claim is not supported by medical evidence and that respondents have not received any medical evidence in support of the second claim.

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 January 5, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant filed her claim for compensation benefits on November 7, 2005 is also hereby accepted as fact.

3. Claimant's claim for additional benefits relating to her January 3, 2003 is barred by the statute of limitations.

4. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back while working for respondent on March 21, 2005.

5. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable low back injury of March 21, 2005.

6. Claimant is entitled to temporary partial disability benefits beginning December 20, 2005 and continuing through January 29, 2006. In addition, claimant is entitled to temporary total disability benefits beginning January 30, 2006 and continuing through a date yet to be determined.

7. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant is a 46-year-old woman who began working for the respondent in March 2001 performing clerical work. Claimant suffered a compensable injury to her low back on January 13, 2003 while in the process of moving filing cabinets. As a result of that compensable injury the claimant was evaluated and treated by Dr. Gibson, a chiropractic physician. The majority of Dr. Gibson's medical treatment occurred in January and February of 2003.

The respondent accepted the injury to claimant's low back as compensable and paid some compensation benefits including medical treatment from Dr. Gibson through his treatment in April 2003.

In January 2004, the claimant developed additional back pain while bending over a table at her mother's house. Respondent did not accept liability for additional medical treatment and claimant sought medical treatment on her own.

Most recently, on March 21, 2005, claimant testified that she was sitting in a chair at her desk when the height adjustment mechanism on the chair gave way causing the chair to fall to the floor. Claimant also fell to the floor and had immediate pain in her low back area. Claimant reported the injury and completed injury forms. Claimant sought medical treatment from Dr. Bailey, a chiropractic physician, who treated claimant for several months before releasing her from his care in July 2005. Claimant testified that she continued to suffer from symptoms with her low back and based upon the recommendation of a friend sought medical treatment from Dr. Raben in December 2005. Dr. Raben ordered an MRI scan which revealed degeneration and annular tears at the L4-5 and L5-1 levels. Dr. Raben's recommendation for steroid injections has been postponed pending claimant's completion of physical therapy.

Claimant has filed this claim contending that she is entitled to additional medical treatment as a result of her January 3, 2003 injury or alternatively, that she suffered a new injury to her low back on March 21, 2005.

ADJUDICATION

Claimant initially contends that she is entitled to additional medical treatment as a result of her January 3, 2003 injury. The respondent contends that claimant's claim for additional benefits associated with the January 3, 2003 injury is barred by the statute of limitations. The time period for filing a claim for additional compensation is codified at

A.C.A. §11-9-702(b)(1) which states that claims for additional compensation are barred unless they are filed with the Commission within one year from the date of last payment of compensation or two years from the date of the injury, whichever is greater. Here, the claimant filed her claim for additional compensation benefits associated with the January 3, 2003 injury on November 7, 2005. Clearly, this claim was filed more than two years after the claimant's date of injury. In addition, I also find that the claim of November 7, 2005 was filed more than one year after the date of last payment of compensation. The respondents introduced into evidence payment records indicating that the last benefits paid to claimant on account of the January 3, 2003 injury was for medical treatment which claimant received from Dr. Gibson in April 2003. Given that respondent last paid compensation for medical treatment received in April of 2003, the filing of the claim for additional compensation benefits in November 2005 was in excess of one year.

Based upon the foregoing evidence, I find that claimant's claim for additional compensation benefits relating to the January 3, 2003 injury is barred by the statute of limitations. Claimant's filing of her claim for additional compensation benefits on November 7, 2005 occurred more than two years after her date of injury and more than one year after the last payment of compensation benefits.

The next issue for consideration involves claimant's alternative argument that she suffered a new compensable injury to her low back on March 21, 2005. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury on that date.

Claimant contends that she suffered a compensable injury to her back when the chair in which she was sitting malfunctioned on March 21, 2005. Claimant's claim is for an injury caused by a specific incident and 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.

Initially, I find that claimant has met her burden of proving by a preponderance of the evidence that the injury arose out of and in the course of her employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence. Claimant testified that the chair in which she was sitting on March 21, 2005 had a history of the height adjustment giving way. On this particular date, the height adjustment mechanism gave way completely causing the chair to drop to the floor and claimant with it. As a result of this accident the claimant developed pain in her low back area.

Corroborating claimant's testimony with regard to the problems with the chair was Kirsten Rosa. Rosa is presently a substitute teacher for Benton County Head Start. In March of 2005 Rosa was the family records health clerk for the respondent and was a co-employee of the claimant's. Rosa testified that she was familiar with the chair at claimant's desk. According to Rosa she and other employees shared duties that required them to sit at the claimant's desk on occasion. Rosa testified that this same chair had collapsed on her once before in 2004. Rosa was also present on March 21, 2005 working

at her desk. Rosa testified that as she was working she heard a “big commotion” and rushed to see what had happened. When she got to the claimant’s desk she saw that claimant’s chair had collapsed and claimant had fallen with one leg under the chair.

Based upon the foregoing testimony which I find to be credible and entitled to great weight, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back which arose out of and in the course of her employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal physical harm to her body which required medical services and resulted in disability and that she has offered medical evidence supported by objective findings establishing an injury. After claimant’s chair failed on March 21, 2005 she sought medical treatment from Dr. Bailey, a chiropractic physician. Dr. Bailey proceeded to treat the claimant over the course of the next three and a half months before releasing her in July 2005. Dr. Bailey’s office notes contain forms notating various findings during his examinations. These findings include spasms which were graded by Dr. Bailey at each examination. The presence of spasms are considered an objective finding.

Furthermore, even after claimant was released by Dr. Bailey she continued to have complaints of low back pain. As a result, she sought medical treatment from Dr. Raben, neurosurgeon, who ordered an MRI scan. The MRI scan not only showed degeneration at L4-5 and L5-S1, but also revealed annular tears at those levels. Those annular tears constitute objective findings as well.

Accordingly, based upon the foregoing, I find that claimant has satisfied the remaining elements of compensability.

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a new compensable injury to her low back while working for respondent on

March 21, 2005. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable low back injury. This includes medical treatment from Dr. Bailey and medical treatment from Dr. Raben.

The final issue for consideration involves claimant's request for temporary total disability benefits. While claimant was receiving medical treatment from Dr. Bailey, she continued to work for the respondent. However, when claimant sought medical treatment from Dr. Raben, he limited claimant to four hours of week per day as of December 20, 2005. When claimant's condition did not improve, Dr. Raben took claimant off work completely as of January 30, 2006.

In order to be entitled to temporary total or temporary partial disability benefits for a non-scheduled injury claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a total or partial incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981). Here, I find that claimant has remained within her healing period. Dr. Raben has recommended steroid injections pending claimant's completion of physical therapy. In addition, Dr. Raben limited claimant to four hours of work per day as of December 20 and on January 30 took claimant off work completely.

Based upon the foregoing evidence, I find that claimant has remained within her healing period and that she is entitled to temporary partial disability benefits beginning December 20, 2005 and continuing through January 29, 2006. In addition, claimant is entitled to temporary total disability benefits beginning January 30, 2006 and continuing through a date yet to be determined.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney

fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

AWARD

Claimant's claim for additional compensation benefits associated with her January 3, 2003 compensable injury is barred by the statute of limitations. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a new compensable injury to her low back on March 21, 2005. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant is entitled to temporary partial disability benefits from December 20, 2005 through January 29, 2006, and temporary total disability benefits from January 30, 2006 through a date yet to be determined.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE