

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F508812

GLORIA BYRD, Employee	CLAIMANT
SILOAM SPRINGS MEMORIAL HOSPITAL, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED APRIL 7, 2006

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

Claimant represented by ADRIENNE KINCAID MURPHY, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On March 8, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 4, 2006, and a pre-hearing order was filed on the 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 relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her hip on April 2, 2005.

At the time of the hearing the parties agreed to stipulate that claimant earned sufficient wages to entitle her to the maximum compensation rates of \$466.00 for temporary total disability benefits and \$350.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's back on April 2, 2005.

2. Temporary total disability benefits from May 17, 2005 through a date yet to be determined.

3. Medical treatment.

4. Attorney fee.

At the time of the hearing the claimant modified her request for temporary total disability benefits. Claimant acknowledged that she returned to work part time in November; therefore, she requests temporary partial disability benefits beginning at that time.

The claimant contends that she suffered a compensable injury to her back while moving a patient on April 2, 2005. Claimant contends that this eventually resulted in a diagnosis of herniated disc as found by Dr. Knox. Claimant requests payment of temporary total disability benefits, temporary partial disability benefits, related medical treatment, and a controverted attorney fee.

The respondents have stipulated the claimant suffered a compensable injury to her hip on April 2, 2005, but deny that claimant suffered a compensable injury to her back at that time. Respondents also contend that in any event claimant's subsequent medical treatment in June 2005 is not causally related to the incident on April 2, 2005.

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 4, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned sufficient wages to entitle her to compensation at the rate of \$466.00 for temporary total disability benefits and \$350.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her back while working for the respondent on April 2, 2005.

4. Claimant has failed to prove by a preponderance of the evidence that her low back problems beginning on June 29, 2005 are causally related to the April 2, 2005 compensable injury.

#### FACTUAL BACKGROUND

The claimant is a 53-year-old woman with a bachelor's degree in nursing who has worked as an RN for approximately fourteen years. Claimant was hired by the respondent in November 2003 and has worked as an RN and as a charge nurse.

Claimant testified that on April 2, 2005 she was working as a floor nurse and had a patient that had slid about halfway off of their bed. The patient weighed approximately 300 pounds and claimant testified that as she attempted to move the patient back into the bed she felt a sharp pain in her back. Claimant testified that she reported the incident, completed workers' compensation paperwork, and was sent to the emergency room by her night shift supervisor, Dean Shaffer.

Claimant's condition at the emergency room was diagnosed as a back strain and she was given medication and instructed to follow up if her problems persisted or if her pain increased. X-rays taken at that time revealed only minimal degenerative changes.

Several days later claimant indicated to Mary Jo West, the respondent's employee health nurse, that she was still having problems. As a result, West scheduled claimant an appointment at the Work Well Clinic where claimant was evaluated by Vicki Moore, a nurse

practitioner. Moore diagnosed claimant's condition as a low back strain and she prescribed medication as well as limited duty. Moore indicated that the duration of claimant's treatment was expected to be two weeks.

After April 2, 2005 the claimant continued to work for the respondent and continued to perform her job activities as a nurse. Claimant was terminated after having multiple positive drug screen tests.

After her termination the claimant did not seek any additional medical treatment for her back until she sought medical treatment from the emergency room on June 29, 2005. At that time claimant underwent a CT scan of her lumbar spine and was diagnosed as suffering from a herniated disc. Claimant was instructed to receive follow up care from Dr. Knox. Claimant was evaluated by Dr. Knox on August 24, 2005, and he confirmed that claimant suffered from several herniated discs. Dr. Knox recommended that claimant continue her exercise, use a TENS unit, and continue medication. Claimant has not been evaluated by Dr. Knox since that date, but did have an appointment scheduled subsequent to the hearing.

The respondent accepted as compensable an injury to the claimant's hip on April 2, 2005, and paid for treatment she received from the emergency room on that date as well as medical treatment she received from the Work Well Clinic. Respondent has not paid for any medical treatment or provided any compensation benefits since that time. As a result, claimant has filed this claim contending that she suffered a compensable injury to her back on April 2, 2005.

#### ADJUDICATION

Claimant contends that she suffered a compensable injury to her back on April 2, 2005. Respondent has stipulated that claimant suffered a compensable injury to her hip on that date, but denies that claimant suffered a compensable injury to her back at that

time. 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 to her back on April 2, 2005.

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.

While the respondent has stipulated that claimant suffered a compensable injury to her hip on April 2 but not to her back, I find that the evidence supports a compensable injury to claimant's back on that date. First, claimant testified that when she was attempting to move the patient she felt a sharp pain in her back. She reported the incident to her supervisors, completed workers' compensation paperwork, and was sent to the respondent's emergency room by a supervisor. A review of the medical reports from the emergency room on that date indicates that claimant was complaining of an injury to her lumbar spine and she was diagnosed as suffering from a back strain. When claimant subsequently indicated to Mary Jo West that she was continuing to have back pain, West

referred her to the Work Well Clinic where claimant was evaluated by Vicki Moore, a nurse practitioner. Moore's office notes indicate that claimant was complaining of low back pain and she diagnosed claimant's condition as a low back strain infringing on the nerve tract.

Even though the parties have stipulated that claimant suffered a compensable injury to her hip on April 2, I also find that claimant suffered a compensable injury to her back on that date as evidenced by her testimony, the history contained in the emergency room reports, and the diagnosis of the emergency room personnel as well as nurse practitioner Moore at the Work Well Clinic. Based upon this evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered an injury to her low back which arose out of and in the course of her employment with the respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence. I also find based upon the medical evidence that the injury caused internal physical harm to claimant's body which required medical services. Finally, I note that claimant has offered medical evidence supported by objective findings establishing an injury. When claimant was evaluated by nurse practitioner Moore on April 8, 2005, Moore noted during her examination of the claimant's low back that she felt something "like some knotting of muscle in that [L3-4] area." I find that this knotting of muscle which was felt by Moore constitutes an objective finding establishing an injury.

In summary, 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 while working for respondent on April 2, 2005. Because respondent accepted as compensable an injury to claimant's hip on that date, respondent has already paid for medical treatment claimant received from the emergency room as well as medical treatment she received from the Work Well Clinic.

The primary issue in this case is whether claimant's low back problems for which she sought medical treatment from the emergency room on June 29, 2005 are causally

related to her compensable April 4, 2005 injury. After my review of the evidence, I find that claimant has failed to meet her burden of proving a causal connection.

As previously noted, claimant sought medical treatment from the Work Well Clinic on April 8, 2005, at which time she was given medication and instructed to receive help from other employees with regard to lifting, pushing, pulling, and squatting. Nurse practitioner Moore indicated that the duration of claimant's treatment was expected to be approximately two weeks. The claimant never returned to the Work Well for any additional medical treatment subsequent to that date. Apparently, the claimant at one time did have a follow-up appointment scheduled but she testified that she missed that scheduled appointment because she overslept.

The claimant continued to work for the respondent performing her job activities as a nurse until she was terminated on May 17, 2005, for failing multiple drug tests. According to claimant's testimony had she not failed those drug tests and been terminated she would have continued working for the respondent.

Claimant did not seek any additional medical treatment for her low back until June 29, 2005, when she went to the emergency room. Despite claimant's testimony that she related to the emergency room personnel her history of injury on April 2, 2005, the emergency room records do not reflect a history of a work-related injury. To the contrary, the emergency room records indicate that claimant had a sudden onset of left lower back pain and that claimant "denies injury." Furthermore, the CT scan report dated June 29, 2005 indicates "Clinical history given is 52-year-old with back pain, no history of trauma."

Medical records from Dr. Knox's office do contain a history of a work-related injury, but this history was more than three months after claimant had last sought medical treatment and after she had indicated to emergency room personnel that she had a sudden onset of low back pain without injury.

In summary, claimant has the burden of proving by a preponderance of the evidence

that her low back pain problems beginning on June 29, 2005 are causally related to her compensable low back injury of April 2, 2005. I find that claimant has failed to meet her burden of proof. After claimant's visit to the Work Well Clinic on April 8, 2005 the claimant continued to work for the respondent performing her normal duties until she was terminated on May 17 for a positive drug test. Claimant did not seek any additional medical treatment for her back until June 29, 2005, more than two and a half months after her last medical treatment and more than one and a half months after her termination. Furthermore, and more importantly, the history contained in the emergency room records indicate that claimant had a sudden onset of low back pain with no specific injury. The emergency room records do not contain a history of a work-related injury as testified to by the claimant. Accordingly, I find that claimant has failed to meet her burden of proving a causal connection by a preponderance of the evidence.

#### ORDER

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 April 2, 2005. Claimant has failed to prove by a preponderance of the evidence that her low back problems beginning on June 29, 2005 are causally related to the April 2, 2005 compensable injury. Respondent has previously paid for all medical treatment associated with the April 2, 2005 compensable injury. Claimant's claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE