

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508010

PAM COOK, EMPLOYEE CLAIMANT

CRAIGHEAD COUNTY JUDGE, EMPLOYER RESPONDENT

ASSOCIATION OF ARKANSAS COUNTIES –
WORKERS' COMPENSATION TRUST;
AAC RISK MANAGEMENT SERVICES,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED JANUARY 4 , 2006

Hearing before Chief Administrative Law Judge David Greenbaum on December 9, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. John C. Barttelt, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Gail O. Matthews, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted December 9, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on November 2, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. In addition, rather than take the evidentiary deposition of Dr. Robert Abraham, the parties agreed to stipulate to the meaning of Dr. Abraham's November 18, 2005, medical opinion addressing

compensability, as will be set out further below. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record.

It was stipulated that the employment relationship existed between the parties at all relevant times, including January 14, 2005; that the claimant's average weekly wage was sufficient to entitle her to compensation rates of \$295.00 per week for temporary total disability and \$221.00 per week for permanent partial disability in the event the claim was found compensable; that the claimant reported an incident on January 14, 2005, for which respondents paid various, related medical prior to controverting the claim in its entirety. As noted above, respondents initially challenged a medical opinion submitted by Dr. Robert Abraham subsequent to the November 2, 2005, prehearing conference, relating the claimant's injury to the admitted incident, "based upon history and medical findings." Prior to the hearing, the parties agreed to stipulate that Dr. Abraham's note dated November 18, 2005, could be interpreted to mean:

"It is my opinion, to a reasonable degree of medical certainty that the L5/S1 injury to Pam Cook, based upon the history, is the result of her job related accident as described to me on January 14, 2005. The objective medical findings in the MRI are consistent with the history given by the patient." (Comm. Ex. 2)

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that she sustained a compensable injury as the result of a specific incident identifiable in time and place of occurrence on

January 14, 2005; that respondents should be held responsible for all outstanding medical treatment, together with continued, reasonably necessary medical treatment; that she was entitled to temporary total disability benefits beginning on or about July 1, 2005, and continuing through a date yet to be determined, maintaining that her healing period had not yet ended; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that the claimant's physical problems were unrelated to a work-related injury; that although an incident was reported, for which respondents initially paid medicals, that the claimant's physical problems, need for treatment, and disability, if any, were unrelated to the incident, but, rather, to the claimant's pre-existing condition.

In addition to the claimant, Jeanne Taylor was called as a corroborating witness. The record is composed solely of the transcript of the December 9, 2005, hearing containing numerous exhibits.

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this

claim.

2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that she sustained an injury arising out of and in the course of her employment with Craighead County which caused internal, physical harm to her back requiring medical services, and resulting in disability as reflected by medical evidence supported by objective findings and which was caused by a specific incident identifiable by time and place of occurrence on January 14, 2005, entitling her to appropriate workers' compensation benefits.
4. The claimant is entitled to temporary total disability benefits beginning July 1, 2005, when she was taken off work by her treating physician, and continuing through a date yet to be determined.
5. The claimant's healing period had not ended as of the date of the within hearing.
6. Respondents are responsible for all outstanding medical and related treatment as the result of claimant's compensable injury, and respondents remain responsible for continued, reasonably necessary medical treatment.
7. Issues not addressed herein are specifically reserved for future determination.

DISCUSSION

The facts in this claim are essentially undisputed. The record reflects that

the claimant timely reported a work-related injury to her employer immediately following a work-related incident on January 14, 2005. It is further undisputed that the claimant did not exhibit any back problems prior to January 14, 2005; that she made complaints of physical problems related to her back following the reported incident which grew progressively worse, ultimately requiring medical treatment; and that no independent intervening accident caused the claimant's current disability and need for treatment. The respondents exercised good faith in meeting its obligations under our workers' compensation laws by accepting and paying for the claimant's initial diagnostic testing and medical treatment. As will be set out further below, the claimant's medical treatment was terminated without reasonable justification on July 21, 2005, based upon an erroneous interpretation of the medical evidence by the claims manager reviewing the claim and the medical evidence.

Jeanne Taylor was called as a witness by the claimant. Ms. Taylor is the executive secretary for the Craighead County Judge. The claimant worked in the maintenance department at the county courthouse which operates under the direction of the county judge. Ms. Taylor confirmed that the claimant reported injuring her back at work while lifting trash bags during the early part of 2005. Although Ms. Taylor could not recall the specific date that the injury was reported, she recalled that following the report of the incident, the claimant's physical problems grew progressively worse. Ms. Taylor advised the claimant to report the injury to the county clerk's office which the claimant did. Respondents acknowledge

that the claimant promptly reported the injury on January 14, 2005, but did not seek medical attention at that time. (Tr.13) (Jt. Ex. A, p.1)

The claimant, Pamela Jean Cook, testified in her own behalf. Claimant is forty (40) years old. She began working for Craighead County on January 3, 2003, in the maintenance department. Her duties included cleaning, mopping, buffing, sweeping, and maintaining the courthouse. The claimant denied having any back problems before January 14, 2005. She stated that on that date, she picked up and threw a large sack of trash into the dumpster, at which time she experienced immediate pain in her lower back. The claimant promptly reported the injury to her immediate supervisor, Terry Langston. Mr. Langston advised the claimant to report the injury under workers' comp to the county clerk's office. As previously pointed out, a statement was taken and signed. However, apparently no Employer's First Report of Injury was filled out at that time. The employer did not urge the claimant to seek medical treatment and the claimant did not go to the doctor. Rather, the claimant took over-the-counter medications and continued working. The claimant stated that her condition grew progressively worse. The claimant did not seek medical attention until June 20, 2005, when she was examined by her family physician, Dr. Arnold Gilliam. Initially, the claimant sought medical treatment under her health insurance policy. However, the employer advised her to make her claim under workers' compensation, at which time it filled out a First Report of Injury because the claimant's problems allegedly related to the admitted incident. (Jt. Ex.

A, pp.3-4)

Diagnostic studies, specifically, a CT scan revealed a herniated nucleus pulposus at L5-S1 at which time the claimant was referred by Dr. Gilliam to Dr. Robert Abraham, a neurosurgeon in Jonesboro, Arkansas. The claimant has not worked since July 1, 2005. Dr. Abraham recommended a course of physical therapy. The claimant's initial treatment was paid through July 21, 2005, at which time all medical treatment was terminated as reflected by the following letter issued by Chris Hunter, claims manager for the third-party administrator:

"Dear Ms. Cook:

I have had a chance to review your claim and medical from Dr. Abraham. Your [sic] are claiming that 7 months ago you were moving heavy bags of trash but did not seek treatment until now. In Dr. Abraham [sic] report he stated that Lumbar Spinal Stenosis at the L5-S1 was your diagnosis. Please be advised that Spinal Stenosis is not a work related injury, this is a progression of back disease, therefore your claim for Workers' Compensation is being denied as work related.

Your medical will be paid up to this date by Workers' Compensation. I will be notifying the providers of our decision in this matter.

If you wish to discuss this please call me at the above number." (Jt. Ex. A, p.16)

A review of the medical evidence clearly reflects that the claimant's physical problems and need for treatment was related to the bulging disc rather than her pre-existing spinal stenosis. Again, this was reflected by the lumbar CT scan which revealed the bulging disc with mild to moderate spinal stenosis. (Jt. Ex. A, pp.9-10)

Following the diagnosis, Dr. Abraham prescribed physical therapy for the

bulging disc. (Jt. Ex. A, p.12) Further, Dr. Abraham pointed out that the carrier erred in relying upon the diagnosis of spinal stenosis as being its reason for terminating treatment, pointing out that the spinal stenosis was secondary to the bulging disc which was the basis for the claimant's need for treatment. (Jt. Ex. A, p.18) Finally, in an off-work slip issued September 12, 2005, Dr. Abraham took the claimant off-work until completion of physical therapy, together with further diagnostics, specifically, a lumbar myelogram which the claimant has been unable to follow through due to the termination of all medical treatment. (Jt. Ex. A, p.22)

It should be noted that after respondents terminated claimant's medical treatment, she attempted to obtain treatment under her health insurance which was denied because the health carrier took the position that the claimant's problems were work-related. (Tr.25)

For the claimant to establish a compensable injury 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)(Repl. 2002), 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 death;
3. medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
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 requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim, and compensation must be denied. *Mikel vs. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The record reflects that the claimant has established, by a preponderance of the evidence, all elements necessary to establish compensability of the injury alleged. The January 14, 2005, incident is undisputed. The claimant promptly reported the injury. The injury arose out of and in the course of employment. The symptoms of a back injury manifested themselves immediately. Although it can be argued that the claimant should have gone to the doctor earlier, she continued working while her condition grew progressively worse. The claimant's continued problems were corroborated by a representative for the employer. Once the claimant eventually sought medical treatment, diagnostic studies confirmed an injury supported by objective medical findings, specifically, a herniated disc at L5-S1. Respondents initially paid for the medical treatment. After six (6) weeks, respondents terminated the treatment based upon the erroneous conclusion that the claimant's continued symptoms were the result of spinal stenosis. The medical record clearly reflects the diagnosis of spinal stenosis was secondary to the bulging disc, and that the claimant's disability and need for treatment was the herniated disc and not the pre-existing spinal stenosis. Respondents were not justified in terminating medical treatment. It can be argued that the claimant has failed to

establish a causal connection between the admitted incident and the injury because she waited a considerable time before seeking medical treatment. This argument, likewise fails because it is undisputed that the claimant reported her injury on January 14, 2005.

I found the claimant to be a most credible witness. She should not be penalized because she continued working while taking over-the-counter medications rather than seek medical treatment. When a claimant's disability arises soon after the accident, and is logically attributable to it, with nothing to suggest any other explanation, the Commission may find the existence of the causal connection. *Hall vs. Pittman Construction Co.*, 235 Ark. 104, 357 S.W.2d 263 (1962); *Harris Cattle Company vs. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974). The claimant's credible testimony, together with the opinion of the treating physician, establishes the causal connection. *Kearby vs. Yarbrough Brothers Gin Co.*, 248 Ark. 1096, 455 S.W.2d 912 (1970); *Exxon Corporation vs. Flemming*, 253 Ark. 798, 489 S.W.2d 766 (1973).

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the

duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has proven that she sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, I hereby make the following:

AWARD

Respondent, AAC Risk Management Services, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$295.00 per week beginning July 1, 2005, and continuing through the present and until a date yet to be determined.

All benefits having accrued, respondents are to pay same in lump sum and without discount.

Respondents are further directed and ordered to pay outstanding medical and related expenses, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. John C. Bartelt, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge