

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408946

RITA DILLARD	CLAIMANT
AREA AGENCY ON AGING	RESPONDENT
RISK MANAGEMENT RESOURCES INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 10, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JOE BYARS, Attorney, Fort Smith, Arkansas.

Respondents represented by CONSTANCE CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 9, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on December 19, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 26, 2004, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her left shoulder on January 26, 2004.
4. The claimant is entitled to a weekly compensation rate of \$204.00 for temporary total disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injury to her neck on January 26, 2004.
2. Related medical.

In regard to the foregoing issues the claimant contends that she suffered a compensable injury arising out of and in the course of her employment with the respondent. The claimant was performing employment services for her employer on January 26, 2004, injuring her shoulder, back and neck, which constituted an accidental injury and the major cause of Rita Dillard's temporary total disability and the need for additional medical treatment. Rita Dillard's compensable injury is the major cause of her temporary and/or permanent disability and need for treatment. The claimant, Rita Dillard, suffered an accidental injury arising out of and in the course of her employment with the respondent, Area Agency on Aging Home Health & Hospice, when her injuries occurred, as described in Ms. Dillard's medical records.

In regard to the foregoing issues the respondents contend that the claimant sustained a compensable accidental injury on January 26, 2004. They timely accepted the injury as compensable and they have paid all of the claimant's related medical expenses, as well as all appropriate temporary total disability benefits. The respondents controvert the claimant's entitlement to additional medical treatment for her neck on the ground that there is no causal connection between the compensable injury and the claimant's present neck complaints. The respondents contend that any neck

problems the claimant experienced as a result of this injury had resolved by March of 2004. The respondents reserve the right to amend these contentions after the completion of investigation and discovery.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The parties submitted a joint medical exhibit marked Joint Exhibit No. 1. The respondents submitted wage records marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified and the respondents have agreed that she sustained a compensable injury to her left shoulder on January 26, 2004. The claimant testified that she was working for the respondent as a certified nurse's assistant and her accident occurred in the home of a client. The claimant testified that she tripped and fell causing injury to her neck, shoulder and left knee. The claimant testified that she reported this accident to Deanna Rice, the aid coordinator. The claimant testified that she filled out paperwork and she was sent to see Dr. Craft. The claimant testified that when she was first seen by Dr. Craft she reported that she had injured her neck, shoulder and left knee. The claimant agreed that she followed up with Dr. Craft in February 2004 and reported to him at that time that her leg complaints had resolved but she still continued to have significant shoulder and neck problems. The claimant further agreed that in March 2004 when she saw Dr. Craft she was doing physical therapy three times a week

for her left shoulder and neck pain which the respondents were paying for. The claimant testified that she continued to be seen by Dr. Craft for the pain in her neck and left shoulder. The claimant testified that she had surgery on her left shoulder on August 19, 2004, to repair a tear to her left rotator cuff. The claimant testified that Dr. Jeff Evans performed her surgery upon a referral from Dr. Craft. The claimant testified that prior to her surgery, however, she was seen by Dr. Wolf and was given a series of shots which did not help. The claimant testified that she complained of neck pain to Dr. Evans in July 2004 before her surgery in August. The claimant testified that following her surgery she continued to have tingling and numbness from her neck and then the pain would go down to her left arm all the way to her fingertips. The claimant agreed that these symptoms remain with her today.

The claimant testified that currently she has pain in the back of her neck that goes down through her shoulders down to her fingertips. The claimant stated she also has numbing and tingling, noting that she cannot sit still very long at a time. The claimant stated that she will begin to do her work and after a while she has to get up and move around and then get back and finish what she started. The claimant testified that her daily routine consists of getting to work around 8:00 and she leaves around 2:00 in the afternoon because she cannot take the pain any longer. The claimant testified again that the pain she is experiencing is in her neck, down her shoulder and into her arm as well as under her elbow. The claimant agreed that this discomfort has been with her

since her January 26, 2004, accident. The claimant testified that she has continued to see Dr. Evans for her symptoms for pain in her neck that radiates down into her arm and that she sees him approximately every six weeks. The claimant agreed that Dr. Evans' medical notes set forth that she has a diagnosis of left C7 radiculopathy and further agreed that Dr. Evans' notes in the fall of 2005 set forth that the workers' compensation carrier has continued to deny work up of her left C7 radiculopathy, noting further that it is her neck and radicular pain which seem to be giving her the most problems.

The claimant testified that in 1998 she was involved in a motor vehicle accident while she was working for the respondent. The claimant testified that in this automobile accident she hurt her neck and back and was treated by Dr. Craft. The claimant agreed that a medical report from Dr. Craft dated February 2000 sets forth that an EMG nerve conduction study of her right upper extremity was without any evidence of radiculopathy or neuropathy. The claimant further agreed that in this record of February 2000 there is no indication of her having complaints of her left arm, left shoulder or neck pain.

On cross examination, the claimant agreed that following her 1998 automobile accident she underwent an MRI of her cervical spine. The claimant further agreed that this test indicated that she had a small central disc herniation at C4-C5. The claimant testified that she then was sent to see Dr. Queeney, a neurosurgeon, for evaluation. The claimant testified that she also had an MRI of her cervical spine done in October 1998 at the

request of Dr. Keith Holder. The claimant testified that Dr. Holder gave her injections in her back and in the back of her neck. The claimant testified that she would not disagree with Dr. Janice Keating's medical report where it sets forth that the claimant reports that she is continuing to have neck and back problems from time to time. The claimant testified that following her January 2004 accident Dr. Craft had her undergo physical therapy in Greenwood. The claimant testified that she had surgery on her shoulder in August 2004 and was off approximately four weeks and two days. The claimant testified that she returned to work for the respondent and has continued to work there to date. The claimant was shown several medical documents and then stated that regardless of what the document might or might not set forth, she was still having pain in her neck and she was reporting this discomfort to her treating physicians. The claimant testified that her neck has always hurt and that she did tell Dr. Craft, Dr. Wolfe and Dr. Evans. The claimant testified that when she leaves work at 2:00 she goes home, gets an ice pack, takes a pain pill and lays down.

On redirect examination, the claimant testified that it was her understanding that Dr. Evans has recommended further work up for her neck problems.

The respondents called Deanna Rice to testify. Ms. Rice stated that she worked for the respondent and is the aid coordinator. Ms. Rice testified that the claimant reported a work related injury in January 2004 and filled out paperwork concerning this event. Ms. Rice stated that between the claimant's accident

in January 2004 and her surgery in August 2004 she continued to work as a CNA for the respondent. This witness testified that since the claimant has returned to work following her surgery she has worked in the office on light duty. Ms. Rice testified that the claimant files, answers the telephone, shreds paper, does reports, does light cleaning, vacuums, dusts, washes the dishes and cleans the bathrooms. Ms. Rice testified that not all of these duties are part of her job description but that the claimant just takes on these various tasks. Ms. Rice testified that the claimant has not complained to her about her neck nor does she give any appearance to having any kind of neck pain or limitations.

On cross examination, Ms. Rice agreed that there are people that even though they may be hurting they will not complain. This witness testified that over time she has asked the claimant how she is doing but has not been specific about her request.

On redirect examination, Ms. Rice testified that the respondent has a step stool available in order to avoid having to reach overhead. Ms. Rice testified that the claimant uses the steps continuously to do her work.

The medical records set forth that the claimant underwent an MRI of her cervical and thoracic spine on April 2, 1998. Dr. Joseph Queeney reviewed the claimant's MRI results and writes that he sees no evidence of any herniated disc and no evidence of any nerve root compression. The medical records set forth that these tests were run following a motor vehicle accident which the claimant experienced while working for the respondent. Dr. Queeney continues to write that the claimant's symptoms sound more

consistent with myofacial injury and he did not recommend any type of surgery. Dr. Charles Kraft writes on May 14, 1998, that the claimant's symptoms remain consistent with pain especially in her left shoulder and neck with some involvement of her back and right leg. On June 24, 1998, Dr. Craft writes that the claimant's overall mobility and strength have improved although she does have some tenderness in the left para cervical and trapezius region and some occasional left leg pain. Dr. Craft notes that the claimant has improved and he returned her to full duty work effective that date, noting that she should taper off her medications. Dr. Craft writes on January 27, 2004, that the claimant was seen following a fall the day before. Dr. Craft writes that in the fall the claimant injured her left shoulder, arm and neck as well as her left leg. After examination, Dr. Craft returned the claimant to full duty work and recommended the use of Ibuprofen if needed for pain. On February 16, 2004, Dr. Craft writes that the claimant's leg complaints have resolved but she continues to have significant shoulder and neck concerns, noting that she now describes discomfort involving both shoulders as well as the neck itself. X-rays of the claimant's shoulders were unremarkable. After examination, Dr. Craft diagnosed the claimant with having persistent bilateral shoulder and neck pain with mild spasm for which he recommended physical therapy as well as medications. The claimant continued to be treated by Dr. Craft through March 2004 and on March 29, 2004, the doctor writes that since the date of her accident she has had anti-inflammatory medication as well as six weeks of physical therapy for her complaints of bilateral shoulder

and neck problems. Dr. Craft writes that her neck problems have resolved to a point where she only has persistent complaints to the left shoulder, noting that she has finished her physical therapy and is still on pain medication. Dr. Craft notes that the more activity the claimant is involved with her left shoulder the more symptoms she exhibits. On April 12, 2004, Dr. Craft writes that an MRI of the claimant's left shoulder showed a small focal area of increased signal intensity within the distal supra spinous tendon which could potentially represent a small partial tear versus tendinitis. Dr. Craft notes that the remainder of the claimant's complaints appear to have resolved. The doctor continued her pain medications as well as her home exercises. Dr. Michael Wolfe writes on April 22, 2004, that he has seen the claimant for her complaints of left shoulder problems. Dr. Wolfe, after examination and review of the claimant's x-rays and MRI, opines that she could indeed be having impingement syndrome with some mild rotator cuff problems but most of her problem does appear to be in her AC joint and he suspects that she had a first degree separation. Dr. Wolfe injected the claimant's shoulder, placed her on Bextra and recommended that she continue her exercises as well as full duty work as tolerated. The claimant was seen by Dr. Jeffery Evans on July 19, 2004, and after review of her fall on January 26, 2004, and examination as well as review of her various tests, Dr. Evans assessed the claimant with having left shoulder impingement syndrome and recommended arthroscopic surgery. At a pre-surgery examination by Dr. Craft on August 13, 2004, it is noted that the claimant's neck is subtle and that she was cleared for left

shoulder surgery pending final lab results. The claimant underwent left shoulder surgery on August 18, 2004, performed by Dr. Jeffery Evans. At a follow up appointment on September 2, 2004, Dr. Evans continued the claimant off work but recommended that she return to light duty office work with no lifting greater than ten pounds on September 21, 2004. On November 2, 2004, Dr. Evans writes that overall she is doing better but since her physical therapy stopped a few weeks ago she has noted increased pain. Dr. Evans resumed the claimant's physical therapy and continued her light duty work as well as prescribed pain medications. Dr. Evans continued the claimant on physical therapy, light duty and pain medications through December and up through January 25, 2005. On March 8, 2005, Dr. Evans writes that the claimant is noting less pain but she is having difficulty filing repetitively at and above shoulder level noting that she has a small step stool to help her with her work. The doctor notes that he has written her a note to be able to modify her work space by getting a taller step ladder. Upon examination, it is noted that the claimant has a non tender neck with full range of motion. It is also noted that the claimant has full range of motion in both shoulder with slight pain noted with greater than 90 degrees abduction and forward flexion particularly at the end points. Dr. Evans continued the claimant's Bextra as well as physical therapy and gave her a note for work. On May 10, 2005, Dr. Evans notes that the claimant is now diagnosed with left shoulder impingement syndrome as well as C7 radiculopathy and recommended a cervical spine MRI. On June 30, 2005, it is noted that his request for an MRI of the claimant's cervical spine was

denied and after examination he continued her medications and home physical therapy. On August 29, 2005, Dr. Evans writes that the claimant's neck and radicular pain seem to be giving her the most trouble and that she is having some anterior left shoulder pain particularly with overhead movements noting that primarily her pain is now located in the area of the left scapula and down radiating to the dorsum of the left hand. Upon examination, Dr. Evans writes that the claimant has tenderness at the base of the neck with full range of motion and after full examination, she was diagnosed with left shoulder impingement syndrome and left C7 radiculopathy. Dr. Evans recommended that she continue home physical therapy as well as he refilled her Darvocet and continued her work restrictions. On October 24, 2005, Dr. Evans notes that the claimant has had previous neck problems and was seen by Dr. Queeney in the past. The doctor writes that the claimant's pain now is in the left posterior shoulder and inter scapula area radiating down into the left arm. The doctor writes that after working for the respondent the claimant goes home each night and puts a heating pad at the base of her neck and takes a hot soaking bath to relieve the discomfort. Upon examination, Dr. Evans notes that the claimant has tenderness at the base of the neck with full range of motion and that a Spurling's test is positive to the left for dysesthesias in the C7 dermatome. Dr. Evans continued the claimant's work restrictions as well as home physical therapy. Dr. Evans writes on December 20, 2005, that the claimant essentially has no pain in the anterior aspect of her left shoulder but she continues to have pain at the base of her neck in the inter scapular area beneath the left

scapula and down the left arm. Upon examination, the doctor's findings were similar to those as the month before and he recommended that she switch to Ultram rather than use her Darvocet and to continue her work restrictions.

After a complete review of this entire matter, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable neck injury while working for the respondent on January 27, 2004. It is not questioned that this claimant reported and complained about neck pain initially after her January 2004 fall but there are long periods of time where the claimant continued to be treated for her shoulder where the medical reports indicate that her neck is not tender and there is no mention of muscle spasm. On a February 16, 2004, medical report Dr. Craft does write that the claimant has muscle spasms but it is unclear as to whether it is in the neck area or in her shoulder area or in both of these areas. Arkansas law requires objective medical findings in order to establish a compensable injury and I find no such objective medical evidence as to a neck injury resulting from the claimant's January 27, 2004, fall on which to find compensability.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On January 26, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her left shoulder on January 26, 2004.

4. The claimant is entitled to a weekly compensation rate of \$204.00 for temporary total disability.

5. The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that she has sustained a compensable injury to her neck on January 27, 2004, while working for the respondent. See discussion above. Also see Ark. Code Ann. §11-9-102(4)(D). Also see Ark. Code Ann. §11-9-102(16).

ORDER

The claimant has failed to prove by a preponderance of the evidence, in light of Arkansas law, that she sustained a compensable injury to her neck while working for the respondent on January 27, 2004. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE