

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600156

MARCHELLA DORRIS	CLAIMANT
GLAD MANUFACTURING, INC.	RESPONDENT
INSURANCE COMPANY STATE OF PENNSYLVANIA, INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 12, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Springdale, Washington County, Arkansas.

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL MAYTON, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 26, 2006, in Springdale, Arkansas. A pre-hearing order was entered in this case on April 25, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the parties announced their agreement on the appropriate weekly compensation rates. The claimant further stated that the period for which she is seeking temporary total disability benefits began August 19, 2005, and continued through November 30, 2005. Finally, the claimant withdrew her request to litigate her entitlement to permanent partial disability benefits, at the present time. The pre-hearing order was considered amended to reflect these various changes. A copy of the pre-hearing order, with these amendments noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On November 14, 2004, the relationship of employee-employer-carrier-TPA existed between the parties.
2. The appropriate weekly compensation benefits are \$453.00 for total disability and \$340.00 for permanent partial disability.
3. On November 14, 2004, the claimant sustained a compensable injury to her right hand and left ulnar nerve.
4. There is no dispute over the payment of medical expenses for the admitted compensable injuries.
5. No temporary total disability benefits have been paid and any such benefits accruing to date are controverted.
6. The respondents deny that the claimant sustained a compensable injury to her neck or cervical spine in the employment related accident of November 14, 2004, and controvert her entitlement to any and all benefits for her neck or cervical complaints.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant also sustained a compensable injury to her neck or cervical spine on November 14, 2004.
2. The claimant's entitlement to medical services for her neck or cervical difficulties.
3. The claimant's entitlement to temporary total disability

benefits from August 19, 2005 through November 30, 2005.

4. Appropriate attorney's fee.

In regard to these issues, the claimant contends:

- a) The claimant contends she sustained a compensable low back injury on October (sic) 14, 2004.
- b) The claimant has incurred reasonable and related medical expenses and was temporarily totally disabled following her cervical fusion from August 15, 2005 through November 31(sic) 2005.
- c) The claimant is entitled to permanent impairment.
- d) The claimant's attorney is entitled to a controverted attorney's fee on all benefits found due.

In regard to these issues, the respondents contend:

- 1) The claimant did not sustain a compensable cervical injury while employed by the respondent employer on or about November 14, 2004.
- 2) The claimant is not entitled to any benefits as a result of the alleged cervical injury.
- 3) The respondents are not responsible for any indemnity benefits or medical expenses as a result of the alleged cervical injury.
- 4) In the alternative, if it is determined the claimant sustained a compensable cervical injury, the respondents hereby request a setoff for all benefits paid by the claimant's group health carrier, all short term disability benefits received by the claimant and any

unemployment benefits received by the claimant.

- 5) The respondents have paid all benefits to which the claimant is entitled as a result of the compensable left ulnar nerve and right hand injuries.
- 6) The claimant did not miss any time from work as a result of the left ulnar nerve and right hand injuries and is not entitled to any indemnity benefits as a result of those compensable injuries.

DISCUSSION

The central issue in this case is the question of whether the claimant sustained a “compensable injury” to her neck or cervical spine in the admitted employment related accidental fall on November 14, 2004 (the respondents concede that this employment related accidental fall resulted in compensable injuries to the claimant’s right hand and left arm, including the left ulnar nerve). The burden rests upon the claimant to prove all of the factors necessary to establish that this employment related accident also produced “compensable” cervical injury.

First, she must show that her alleged cervical injury satisfies the requirements contained in Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the claimant prove by medical evidence, the actual existence of a physical injury to her cervical spine. Further, the claimant must show that the actual existence of this injury is supported by “objective findings,” as that term is defined in §11-9-102(16)(A)(i).

In the present case, the medical evidence presented is sufficient to “establish” the actual existence of a physical injury or damage involving the claimant’s cervical spine. This injury or damage is in the form of bulging discs at the C4-5 and C5-6 levels, with resulting cervical stenosis. The existence of this injury or damage has been diagnosed by Dr. Bassam A.R. Hadi and Dr. Anjum Qureshi. Corrective surgery was ultimately performed on the claimant’s cervical spine by Dr. Hadi.

The diagnosis made by these two physicians is further supported by “objective findings.” These “objective findings” take the form of defects that were observed on a cervical MRI on April 6, 2005, and by Dr. Hadi’s visual observations, which were made during the corrective surgery.

Therefore, I find that, in regard to this physical injury or damage, the claimant has satisfied the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). However, the claimant must next prove that this medically established and objectively documented physical injury or damage also satisfies the definitional requirements for a “compensable injury,” which are contained in Ark. Code Ann. §11-9-102(4)(A)(i).

These definitional requirements are as follows:

- 1) The physical injury or damage must arise out of and occur in the course of the employment.
- 2) The physical injury or damage must be caused by a specific incident.

- 3) The physical injury or damage must be identifiable by time and place of occurrence.
- 4) The physical injury or damage must result in internal or external physical harm to the claimant's body.
- 5) The physical injury or damage must require medical services or result in disability.

In order to prove the first three of these definitional requirements, the claimant must show the existence of a causal relationship between her employment related accidental fall on November 14, 2004, and the medically established and objectively documented physical injury or damage to her cervical spine. It is not necessary that she prove the existence of this causal relationship to an absolute or mathematical certainty. It is also not necessary that she show that the employment related accidental fall was the sole or even "major" cause of the subsequently observed cervical injury or damage.

The primary evidence presented by the claimant to prove the existence of this causal relationship is her own testimony. Although the testimony of a party is never considered uncontradicted, this does not mean that it can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact that it is legally competent to address.

The claimant testified that she had no injuries to her neck or cervical spine, that she had no neck problems, and that she

required no medical treatment for any neck complaints, prior to the November fall. However, prior medical records indicate the presence of complaints involving the claimant's cervical spine and possible radicular symptoms involving her left upper extremity in February of 2002, March of 2004, April of 2004, and even on November 5, 2004.

In her testimony, the claimant described the accident on November 14, 2004. She stated that, while descending a ladder, she lost her footing, and her grip on the handrail. She stated that she fell backward and struck her head on a steel bar that was located at the Quality Control Station and then struck the back of her hands on the same bar. She described ultimately landing on the floor on her left shoulder and the left side of her back. Although this actual fall was unwitnessed, the claimant testified that a co-employee (LaVern Landaverde) arrived while she was still on the floor and helped her to get up.

It was the claimant's testimony that immediately following her fall, she experienced pain and swelling in her right hand, pain under her left arm, pain in her left elbow, and a knot and cut on the top of her head. She was ultimately taken, after drug testing, to the emergency room. After evaluation and treatment at the emergency room, she was taken back to the plant and finished her shift with the assistance of co-employees.

The claimant stated that the next two days were her regularly scheduled days to be off work. During this time she remained at home, took various pain medications and muscle relaxers, and used

ice and heat on the injured parts of her body. She stated that during this period, she began to experience soreness in her neck and ultimately pain from her neck down into her arm. She also experienced an increase in her chronic migraine headaches.

When the claimant returned to work on November 17, 2004, she was asked to complete additional forms, apparently this included on AWCC Form N. This form N (Claimant's Exhibit No. 3, page 2), details the claimant's injuries and difficulties as follows:

"Left side of head (top has knot) down to left side of back/mostly hurting in neck and under arm-rt. hand has small puncture wound and swelling immediately-most pain in thumb and index fingers (knot and swelling). Hand is blackish through knuckles."

The medical evidence shows claimant received no evaluation or treatment for any injury to or difficulties with her neck or cervical spine, when she was seen at the emergency room of St. Mary's Hospital on November 14, 2004 (actually, this evaluation and treatment was during the late night hours of November 14, 2004 and the early morning hours of November 15, 2004). Clearly, there would be no reason for any evaluation or treatment to this area, as the claimant testified that she was not experiencing any difficulties with her neck at the time of this initial visit. The medical evidence shows that the claimant did not receive any evaluation or treatment for any neck or cervical complaints until she was seen by Dr. David Sitzes on March 11, 2005. During this interval she continued her regular employment with the respondent.

The claimant testified that, in January of 2005, she requested

to be sent back to the doctor, because she couldn't get her arms to "work right to do her job." According to her testimony, she missed her first appointment and a second appointment was subsequently made. This would apparently have been the March 11, 2005 visit with Dr. Sitzes at St. Mary's emergency room.

The nursing triage records from this visit noted complaints of pain and tenderness from the base of the left side of the claimant's skull down her neck and into her upper shoulder and the shoulder blade area of her back. On physical examination complaints were recorded of tenderness in the left maxillary and left paraspinal areas with muscle spasms noted in this area. Curiously, the clinical impressions of the etiology of the claimant's symptoms was given as a left myofacial strain and left occipital pain with an "old" contusion of the left rotator cuff muscles (a diagnosis was also made of tenosynovitis and old contusion of the second digit of the claimant's right hand).

On this March 11, 2005 visit, the history of the claimant's complaints were recorded by Dr. Sitzes as:

"Complains of left half of face warm, feels kind of numb, fuzzy feeling-began approximately two weeks after the injury and pulsating in left occipital. Head, teeth and sinuses checked, fine, but had sinus trouble left maxillary early. Complains of head and neck pain and left shoulder with clicking sound on range of motion neck and shoulder. Has (illegible) own exercises. Complains of original hand injury right dorsum punctured and 'swole up bad'. Complains of continued pain and intermittent swelling dorsum of right hand. Pain in left shoulder to left arm, fifth finger of right hand swells with pulling on it. 'Have Fiorcet for migraines that relieve headache'. When my head jerked and when I hit

hard, I tucked (illegible) that's the area (left occiput) struck cement. Complains of pain there since."

On March 29, 2005, a narrative report was authored by Dr. Shirin R. deSilva. In this report, Dr. deSilva expressed the following opinion, in regard to the claimant's neck or cervical difficulties:

"Left sided cervical muscle spasms. Spurling's test points to a cervical lesion. Again, this cannot be due to the original accident, as the E.R. notes diagram the site of her contusion. These did not include the left neck, and indeed, the left neck is specifically recorded as having full, nontender range of motion. The patient is referred to her primary care physician for work up of this problem and for restrictions under the ADA as needed."

In this same narrative report, Dr. deSilva also noted the claimant's failure to seek medical treatment for any neck complaints for a period of months following the accident and her failure to voice any complaints with this part of her body, when she saw her family physician for various other illnesses and complaints between the time of the accident and her March 11, 2005 visit with Dr. Sitzes. These factors appear to have contributed to Dr. deSilva's ultimate opinion. Both of these facts are supported by the record.

The medical evidence indicates that following the evaluation by Dr. deSilva, the claimant was seen and evaluated for her neck or cervical difficulties by her family physician, Dr. Anjum Qureshi. At Dr. Qureshi's request, a cervical MRI was performed on April 6, 2005. This test revealed the cervical defects at C4-5 and C5-6.

The claimant was then seen Dr. Jennifer Zhai, a neurologist.

Although the MRI had revealed that the focal disc degeneration or bulging at C4-5 and C5-6 was producing some effacement of the ventral cerebral spinal fluid space and slight ventral flattening of the cord, electrodiagnostic studies performed by Dr. Zhai showed no cervical radiculopathy. It must also be noted that the history given Dr. Zhai by the claimant, in regard to the onset of her cervical and left upper extremity complaints, is somewhat different than those given in the claimant's testimony. Dr. Zhai noted a two week lapse between the employment related fall and the onset of left occipital pain that radiated into the left neck and left shoulder.

The claimant was ultimately seen by Dr. Hadi and corrective surgery was performed to alleviate the claimant's left upper extremity pain, even though the electrodiagnostic studies had not shown the claimant's left upper extremity symptoms to be neurogenic in origin. Not surprisingly, the claimant testified that she has continued to experience significant complaints with her upper extremities, particularly her hands, even at the time of the hearing.

Neither Dr. Qureshi, Dr. Zhai, nor Dr. Hadi have expressly opined that the claimant's neck or cervical difficulties were caused by the employment related fall of November 14, 2004. Although medical opinion on causation is not absolutely necessary it is certainly helpful. It becomes even more essential to the claimant's case, when there is expert medical opinion indicating that there is no causal relationship between the employment related

fall and the claimant's neck or cervical difficulties.

The claimant's testimony concerning the persistence of her symptoms, following the fall, is somewhat supported by the affidavit of LaVern Landaverde. However, Ms. Landaverde's affidavit only indicated that, following the fall, the claimant appeared to have difficulties performing tasks which she had previously done without apparent difficulty. She also stated that when the claimant would lift her arms up after the fall, she appeared to be in obvious pain. However, Ms. Landaverde did not indicate that these difficulties and pain involved the claimant's neck or cervical spine. Neither party called Ms. Landaverde to elaborate or clarify her written statement.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove the necessary causal relationship between the employment related fall of November 14, 2004, and the medically established and objectively documented physical injuries or defects involving her cervical spine. There is no doubt that the claimant's employment related fall, on November 14, 2004, could have reasonably caused or contributed to the medically documented defects involving the C4-5 and C5-6 areas of her cervical spine. However, it is also reasonably possible that these defects could have been solely caused by trauma that occurred either before or after the employment related fall. This conclusion is supported by the fact that the claimant experienced no symptoms involving her neck and into her upper extremities contemporaneous with the fall or even shortly thereafter. All of

the evidence presented shows the presence of neck and radicular complaints either before the employment related fall (contrary to the claimant's testimony) or after a period of days or weeks following the fall. The evidence also shows that the medically documented defects involving the claimant's cervical spine are essentially degenerative in nature and could have reasonably been merely the result of the natural progression of the stress and trauma produced by the claimant's normal activities of day to day life and the aging process.

Based upon the evidence presented, I am inclined to agree with the conclusion of Dr. deSilva that the facts presented do not show that the employment related fall of November 14, 2004, was the most likely or probable cause of the medically established physical injury or damage to the claimant's cervical spine. Therefore, I find that the claimant has failed to prove the first three of the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). Her failure to prove these necessary requirements for a "compensable injury" to her cervical spine prevents an award of any benefits for her cervical difficulties. Her claim for such benefits must be denied and dismissed.

The remaining matter concerns the claimant's entitlement to temporary total disability benefits for the period of August 19, 2005 through November 30, 2005. The burden rests upon the claimant to prove her entitlement to these benefits. As she had only established "compensable injuries" to her upper extremities, these are the only injuries that can be considered. Thus, the claimant

must prove that she has continued within her healing period from the effects of these injuries and had not “returned to work.”

The evidence shows that the claimant did, in fact, return to work immediately after these compensable injuries and worked for some ten months thereafter. When the claimant ceased work on August 19, 2005, this action has in no way been shown to be the result of her “compensable injuries.” Instead, the evidence shows that this cessation was solely due to her neck or cervical difficulties, which have not been proved to be “compensable.”

Therefore, I find that the claimant has failed to prove her entitlement to temporary total disability benefits for the period of August 19, 2005 through November 30, 2005. Her claim for such benefits must be denied.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On November 14, 2004, the relationship of employee-employer carrier-TPA existed between the parties.
3. On November 14, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$453.00 for total disability and \$340.00 for permanent partial disability.
4. On November 14, 2004, the claimant sustained compensable injuries to her right hand and left ulnar nerve.
5. There is no dispute over the payment of medical expenses for these admittedly compensable injuries and all such

expenses have or will be paid.

6. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a compensable injury to her neck or cervical spine in the employment-related accident of November 14, 2004. Specifically, she has failed to show that the medically established and objectively documented physical injuries or damage involving the C4-5 and C5-6 areas of her cervical spine were caused, aggravated, or contributed to by the employment related fall of November 14, 2004. Therefore, these medically established and objectively documented physical injuries or damage does not represent injuries that arose out of and occurred in the course of her employment, were caused by a specific incident, and are identifiable by time and place of occurrence, as required by Ark. Code Ann. §11-9-102(4)(A)(i).
7. The claimant would not be entitled to any benefits, under the Arkansas Workers' Compensation Act, for her cervical difficulties. This would include both medical expenses and disability benefits.
8. The claimant has failed to prove by the greater weight of the credible evidence that any temporary total disability that she may have sustained for the period of August 19, 2005 through November 30, 2005 was the result of a "compensable injury." Thus, she would not be entitled to benefits for such temporary total disability.

9. The respondents have denied the occurrence of a compensable injury to the claimant's neck or cervical spine and have controverted her entitlement to any benefits attributable to such an injury.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss any claim for benefits attributable to an alleged injury to the claimant's neck or cervical spine.

The respondents remain liable for appropriate benefits, under the Act, for the claimant's admittedly compensable injuries to her upper extremities.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge