

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511216

MARIAN J. FLOWERS, EMPLOYEE	CLAIMANT
COOPER STANDARD AUTOMOTIVE, INC., EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY COMPANY, CARRIER	RESPONDENT

OPINION FILED JULY 7, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on April 10, 2006, at Fordyce, Dallas County, Arkansas.

Claimant, MARIAN J. FLOWERS, of El Dorado, Arkansas, appeared pro se.

Respondents were represented by HON. MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted April 10, 2006, 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 case on January 19, 2006, and a Prehearing Order was filed on that same day. At the hearing, the parties announced that the stipulations, issues, together with their respective contentions were properly set out in the Prehearing Order, subject to the modifications made on the record at the full hearing. A copy of the Prehearing Order was introduced as Commission Exhibit "1", without objection.

The parties stipulated to the following at the full hearing:

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- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times, including October 7, 2005.
- 3) Compensation rates should be based on the claimant's average weekly wage of \$656.00.

The parties agreed the following issues would be presented for determination:

- 1) Compensability.
- 2) If compensability is overcome, whether claimant is entitled to TTD benefits from 10/7/05 to a date to be determined and all associated medical expenses.
- 3) Whether this claim is barred by the Statute of Limitations.

The claimant contended the following at the full hearing:

- 1) That she sustained a compensable aggravation to her back on October 7, 2005.
- 2) That on October 7, 2005, she was doing job 5191 for an eight hour shift.
- 3) That job 5191 was not her regular type job, but that her seniority caused her to have to do it.
- 4) That due to her compensable aggravation, claimant states

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she is entitled to TTD benefits from 10/7/05 to a date to be determined, plus all associated medical expenses.

The respondents contended the claimant did not sustain a compensable injury while employed by the respondents. That the claimant's claim for benefits is pursuant to an injury which occurred in 2002, and which was assigned AWCC File No. F210053; and the Statute of Limitations has run as to all claims for additional benefits, as the last benefit paid in that file occurred on 10/17/02.

The claimant testified on her own behalf. Tina Bennett and James Benton was called as witnesses for the Claimant. The record is composed of the transcript of the April 10, 2006 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 claimant and the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §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 failed to prove, by a preponderance of the

evidence, that she sustained a compensable back injury, which gradually occurred over time within the meaning of A.C.A. §11-9-102(4)(A)(ii)(b), or a compensable aggravation.

- 4) Since the claimant has failed to establish a compensable injury, the other issues outlined herein are rendered moot.

DISCUSSION

In the present claim, the claimant does not contend that her injury was caused by a specific incident. Instead, she contends she sustained a gradual onset back injury which arose out of and during the course of her employment.

Q. Just so I am clear, it wasn't a specific incident, it was more of a gradual onset?

A. Yes, sir.

Q. Okay. And that is what you are alleging manifested itself on October 7, 2005?

A. Yes, sir. (T. pg. 32, lns 20-25)

When a claimant requests benefits for an injury characterized by gradual onset, A.C.A. §11-9-102(4)(A)(ii) controls, and it states:

"An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(6) A back...injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence....(Emphasis added.)

A claimant seeking benefits for a gradual onset or aggravation injury must prove by a preponderance of the evidence that:

- 1) The injury arose out of and in the course of her employment.
- 2) The injury caused internal or external physical harm to the body that required medical services, or resulted in disability or death.
- 3) The injury was the major cause of the disability or need for treatment. (A.C.A. §11-9-102(E)(ii))
- 4) Objective medical evidence is necessary to establish the existence and extent of the injury.

In the case at hand the claimant has failed to prove by a preponderance of the evidence her injury is the major cause of her disability or need for treatment. In addition, the claimant has failed to provide objective medical evidence of a new compensable injury or aggravation.

The claimant testified that she had previously injured her back at work in 2002, and that as a result she was off work and received workers' compensation benefits. (T. pg. 25, lines 8-10 & pg. 26, lines 15-24). The medical records show that in 2002 the claimant had an

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MRI that revealed a midline disc protrusion at L4-L5. (CI X-1, pg. 18)

On October 26, 2005, another MRI of the claimant's back was conducted. Dr. Edward Saer, III, reviewed both MRIs and concluded as follows:

"There is really not a lot of change between the two MRIs."
(CI X-1, pg. 13)

Dr. Dwayne Daniels also seemed to opine very little change in the claimant's back since her 2002 back injury in his November 14, 2005 report:

"I understand there is a question of whether or not this is work related. We know she has had previous documented L4-L5 disc disease since that time and she does manual labor. She has not suffered any great structural change over that interval. Her pain is in all likelihood being aggravated by her work station. I do not think she has a surgical lesion. (Emphasis added.) (CI X-1, pg. 12)

Dr. Daniels stated he thought the claimant's pain was being aggravated by her work station; however, pain is not an objective finding. In fact, the overwhelming conclusion in the medical records submitted indicate the claimant's problems are primarily pre-existing. I find the claimant has failed to prove by a preponderance of the evidence any compensable injury or aggravation that is supported by objective medical findings.

Further, the claimant has failed to prove "major cause" with respect to her allegations of a gradual onset back injury. The medical records all indicate the claimant's injury, or need for treatment, stems from her 2002 injury. Therefore, the major cause requirement has not been meet.

The claimant has the burden of proving her claim by a preponderance of the

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evidence. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to prove that she sustained a compensable injury, or aggravation within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, the within claim is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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