

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F505540

MONA HARRIS, EMPLOYEE

CLAIMANT

**TYSON POULTRY, INC., EMPLOYER
SELF-INSURED**

RESPONDENT

OPINION FILED MARCH 9, 2006

Hearing before Administrative Law Judge Cynthia Estes Rogers on December 9, 2005, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Ms. M. Melissa Lee, Attorney at Law, Springdale, Arkansas.

A hearing was held on December 9, 2005, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer relationship on May 21, 2005. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$249.00 for temporary total disability (TTD) and \$187.00 for permanent partial disability (PPD) benefits.

Claimant contends that she injured her back while working for respondent-employer on May 21, 2005, and that she is, therefore, entitled to benefits, including

medical benefits and TTD indemnity benefits commencing August 3, 2005, and continuing through a date yet to be determined, as well as attorney's fees.

Respondent contends that although it did pay some medical benefits initially and did provide claimant with light duty at first, it now controverts the claim in its entirety. Respondent contends that claimant did not suffer a compensable injury on May 21, 2005. Respondent contends that claimant was seen by Dr. Gerald Morris on May 21, 2005, who indicated the claimant's injuries were not work-related and, therefore, claimant is not entitled to medical treatment, TTD benefits, or attorney's fees at respondent's expense.

The parties mutually agreed at the hearing in this matter to keep the record open to have an opportunity to depose respondent's witness, Sandra Washington. Ms. Washington was claimant's supervisor at the time of claimant's alleged work-related injury of May 21, 2005, and had previously and timely been named as a witness by respondent but was unable to attend the hearing due to a family emergency. The parties mutually agreed that her deposition, taken post-hearing on January 9, 2006, would be submitted to the court and included as a part of the record in this case.

STATEMENT OF THE CASE

Claimant is twenty-five years old and testified that she had worked for respondent just over a year, as a packer of frozen processed chicken with the Line 4 pack-out department, when she allegedly injured her back on May 21, 2005. She

testified that on Saturday, May 21, 2005, at approximately 10:00 or 11:00 a.m., the following occurred:

I was packing chicken and I was throwing it on top of the conveyer thing, and somehow I guess I must have turned the wrong way, and it caused my back to start hurting.

She testified that she went to the smock room, about thirty feet from her workstation, and reported her injury to Sandra Washington, her supervisor at the time, who was in the smock room and could not see claimant's workstation from that room. She testified that she told Ms. Washington that her back was hurting because "I hurt it after I lifted a chicken." Claimant further testified that she then sat down in the smock room and waited for the company nurse who brought out a wheelchair for her.

She testified that the nurse called claimant's mother and applied heat to claimant's back while waiting for her mother to arrive. She testified that her mother then took her, on her own and without referral from respondent, to HealthCare Plus, where she saw Dr. Gerald Morris. Dr. Morris' notes from his initial visit with claimant state as follows:

SUBJECTIVE: This lady comes in with lower back pain. She was at work at Tyson today and says she was just standing there and she got a *sudden sharp, shooting* musculoskeletal type discomfort in the right flank. *This had nothing to do with work. It is not Workman's Compensation. She was not stooping. She was not bending. It just happened.* I asked her if she had done anything unusual at home, moving furniture, doing unusual housework, callisthenics, walking excessively

and she says “no she is not doing any of that.” Dr. Martha Flowers is her regular doctor. She has never had surgery. . . .

ASSESSMENT: Lumbar strain.

PLAN: We suggested heat and rest, reclining chair position. We gave her a note for no work the 21st through the 23rd, which will give her the next three days off. We prescribed Ultracet and Ed-Flex, told her how to use it and gave her 60 mg of Toradol I.M.

[Emphasis added.]

Claimant testified that Dr. Morris’ notes are incorrect, that it was work related, and that she was bending over when her alleged injury occurred. She testified that the bag of chicken she was allegedly lifting weighs “thirty maybe forty pounds.” Although Dr. Morris’ notes written on the same date as claimant’s alleged injury state that claimant “got a sudden sharp, shooting musculoskeletal type discomfort in the right flank,” claimant testified that her problem “came about slowly.” She testified that she had had no problems that day before she went to work. Per Dr. Morris’ instructions, claimant did not return to work until the following Tuesday.

Sandra Washington, claimant’s supervisor, testified in her post-hearing deposition agreed to by the parties, that the bags of frozen chicken on Line 4 are never more than ten pounds in weight and that the employees never lift more than one bag at a time. Ms. Washington testified that claimant never said she injured her back as a result of work. She testified that claimant reported to work that morning at 8:00

a.m. and that claimant came into the smock room sometime between 8:45 and 9:00 a.m. and stated that her back was hurting. Ms. Washington testified that claimant said she could not walk, so she called the nurse for claimant.

Ms. Washington was asked if she had ever had any previous conversations with claimant about her back hurting on other occasions. The following colloquy occurred:

A Yes.

Q And what was that about?

A I was telling her about – she was complaining about her back was hurting. I told her she probably need a breast reduction, ‘cause she had large breasts. And I said I had a sister that had large breasts and she had to have a breast reduction and that helped her with her back. And she said she had been told that before.

Q Who said that?

A Mona.

Q When she was complaining to you about her back hurting, at that time, at that conversation, *did she relate it to work at all?*

A No.

[Emphasis added.]

Ms. Washington further testified that on May 21, 2005, the alleged date of injury, no product had even come down the conveyor line yet, so claimant could not have been packing chicken, as she testified, at the time of her alleged injury. She testified that the product really does not begin coming down the line until about 9:00

a.m., and that claimant's complaint of back pain occurred before that time on May 21, 2005.

The notes written on May 21, 2005, by Cindy Newton, the company nurse, state as follows:

Picked up Mona Harris from Fully Cooked Side in W/C. She was assisted into chair by another T/M.. She stated, "*I was just standing there [and] it felt like my back went out.* It hurts really bad across my lower back. It's like when you have to keep going to the restroom, just pulling." I checked her V/S [and] B/P 116/74 P 60. She was in no distress. Stated "It is mainly on the (R) side, but it goes all the way across." I applied moist heat to her lower back for 15 min. T/M stated "It feel a little better." I called her mother to pick her up [and] instructed her to return to work [with] a medical excuse. T/M went out [with] mother [at] 11:20 a.m.

[Emphasis added.]

Claimant testified that she did tell Ms. Newton, the company nurse, that she had hurt herself on the line lifting bags of chicken. She testified that Ms. Newton came to get her in a wheelchair and called her mother but that they did *not* talk about how the injury occurred and that she did *not* tell Ms. Newton that she was "just standing there" at the time she felt the pain.

The testimony revealed that claimant did not fill out paperwork regarding an alleged work-related injury until June 2, 2005, when she filled out a Form N. The Form N, filled out and signed by claimant states, "I picked up a bag of chicken and my back went out." According to the testimony, claimant was then referred by

respondent to Dr. Rutherford and saw him in June. However, the record contains no notes or records from Dr. Rutherford.

Vera Taylor, Workers' Compensation Manager for respondent, testified that she became aware of this alleged work-related injury on June 2, 2005, when she was called by a chiropractor's office, asking her to verify workers' compensation for claimant. She testified that, at that time, she had no documented injury, so she requested that claimant come to the office to talk about the alleged injury. It was at that point that claimant filled out the workers' compensation paperwork.

Ms. Taylor testified that claimant was sent out that very same day to see Dr. Morris at HealthCare Plus. She testified that claimant saw Dr. Morris on June 2nd, on June 10th, and on June 16th, 2005, and that during that time, claimant was given light-duty work. Beginning on June 2, 2005, she was placed in a sitting-only position, where she could sit on the bagging line, cut up chicken, and move the product. No notes or records were submitted from the June visits with Dr. Morris.

Ms. Taylor testified that claimant was then referred by Dr. Morris to Dr. Rutherford and that claimant saw him on July 14, 2005. Ms. Taylor then testified as follows:

Q And at what point did Tyson deny the compensability of Ms. Harris' claim?

A On July 15 I received an e-mail from our main office, Tynet. That's a claims adjustor. I was advised that the claim had been denied and that a

letter had been sent to Ms. Harris on 7/7 confirming that.

Q And did the adjustor indicate, or does your record indicate why it was denied?

A The team member was informed that her injury was found to be non-work related via the letter on 7/7/05.

Q And was that based upon Dr. Morris' note?

Ms. Taylor answered that it was based upon the doctor's dictation dated 5/21/05.

Ms. Taylor testified that she informed claimant that her workers' compensation claim had been denied. Records reflect that FMLA paperwork was filled out and that claimant applied for and received short-term disability, indicating in order to receive it, that the injury was *not* work-related.

Claimant testified and records reflect that she then began seeing Dr. Manual Kelley in September of 2005 for her back pain. However, it was not until her November 3, 2005, visit with Dr. Kelley that any mention is made of an injury possibly related to her work with respondent. Dr. Kelley's notes of November 3, 2005, state:

This is a 25 y/o BF employee of Tyson Foods who presents complaining of pain in the low back after lifting 40 50-lb bags at Tyson. The pt states she has been using her legs with the lifting.

No date is mentioned in Dr. Kelley's notes of the alleged injury, and no mention is made regarding taking her to an off-work status. His notes simply state that the patient is "encouraged to seek employment elsewhere."

FINDING OF FACT

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she sustained an injury arising out of and during the course and scope of her employment on May 21, 2005, or that any condition from which she suffered was causally related to her employment.

DISCUSSION

There is a requirement in all workers' compensation cases that the claimant must demonstrate a causal connection between the injuries complained of and the work activity. *See Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Moreover, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(i). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or

reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes and Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra; Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

Ms. Taylor's testimony that no product had even come down the conveyor line yet for claimant to pack on the date of alleged injury, coupled with the company

nurse's notes, written on the date of alleged injury, noting that claimant stated, "I was just standing there and it felt like my back went out," and Dr. Morris' notes that it was not work-related, stating that claimant "says she was just standing there and she got a sudden sharp, shooting musculoskeletal type discomfort in the right flank. This had nothing to do with work. It is not Workman's Compensation. She was not stooping. She was not bending. It just happened," all work to constrain claimant's credibility with regard to her testimony that this was a work-related injury and that she had reported it as same.

In addition, claimant testified that she and the company nurse did not discuss anything about her injury. It is simply unbelievable, to this examiner, that the nurse would have come to get her in a wheelchair and then not discuss the details of her alleged back injury. This, again, questions claimant's credibility, in my opinion.

With no objective, credible evidence to support claimant's allegation that she sustained a work-related injury to her lower back on May 21, 2005, other than her own self-serving testimony and subjective complaints of pain, coupled with indications in the record which suggest that any back problem claimant did have was idiopathic in nature, claimant has simply failed to establish by a preponderance of the evidence that she sustained a compensable injury.

For these reasons, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge