

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511125

MATTIE JACKSON, EMPLOYEE CLAIMANT

**JENKINS MEMORIAL CHILDRENS
CENTER, EMPLOYER** RESPONDENT

**COMMERCE & INDUSTRY INSURANCE
COMPANY, CARRIER** RESPONDENT

OPINION FILED JUNE 6, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on March 24, 2006 at Pine Bluff, Jefferson County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and benefits must be denied.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship during 2005 at which time the claimant earned sufficient wages to entitle her to a

compensation rate of \$249.00/\$187.00 in the event this claim is found to be compensable. Her last day of work was October 3, 2005. Some expenses have been paid by the group carrier, Benescript Support APPO.

The claimant contends she developed a right shoulder injury caring for a handicapped client who relied on her for all his personal needs (grooming, feeding, lifting, etc.). The claimant reported the injury to her supervisor, Jennie Tooke, on October 3, 2005 and completed an injury report but the insurance carrier denied the claim. The claimant required surgery on November 30, 2005 for a torn rotator cuff. She seeks payment of her medical expenses and time off from work from October 3, 2005 to a date yet to be determined.

The respondents contend the claimant did not suffer a work-related injury. Her present condition is the result of a preexisting condition.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript. After the hearing, the claimant filed three pages of medical expenses associated with Dr. Clark's treatment. The respondents' objection to the introduction of exhibits after the hearing is sustained, and these documents are proffered.

The following witnesses testified at the hearing: the claimant, who appeared to be credible, Rosie Mosely and Zelda Hoaglan, the executive directors of Jenkins. Ms. Mosely confirmed that the claimant complained of shoulder pain in September but she was under the impression the claimant was being treated for lupus.

The claimant, age 51 (D.O.B. July 24, 1954) has a high school education. Her work experience includes caring for patients at a nursing home and with the Area Agency on Aging and cooking at a school cafeteria. She has worked for the respondent-employer since 2002. Her health history includes a 2004 back injury at work. The carrier paid for physical therapy but the claimant received no temporary total disability benefits.

The claimant's job duties require her to care for the daily needs of a handicapped patient. She must bathe, groom, dress and feed the patient who weighs 98 pounds. The claimant estimated she is required to lift him 4-6 times per day.

In her deposition, the claimant stated she began having problems with her right arm in February or March 2005. She did not report an injury to her employer or request medical treatment. At her own expense she sought treatment with her family physician, Dr. Carrie Pennington, who diagnosed tendinitis. The pain persisted for 5-6 months and she came under the care of Dr. Ackerby who attributed her complaints to lupus.

After an MRI scan, the claimant was diagnosed with a rotator cuff tear in the right shoulder. The claimant reported a shoulder injury to her employer on October 3, 2005 and filled out an accident report. The Form AR-N shows the following history of injury: "I guess when picking up and pulling on my client". The claimant does not recall a specific incident, date or time of injury but she attributes her right

arm pain to lifting her patient.

The carrier controverted the claim in its entirety. The claimant has not worked since October 3, 2005. Dr. Clark performed surgery on November 30, 2005 and prescribed physical therapy.

Zelda Hoaglan testified the employees are advised to report all injuries and the claimant was familiar with the procedure since she reported a back injury in March and filled out the accident report form in April, 2005. The claimant did not report a shoulder injury until October 30, 2005, and related it to working with her patient. Ms. Hoaglan pointed out that the patient's home was equipped with a portable mechanical lift but the claimant stated that the lift was old and not convenient to use. Ms. Hoaglan said she offered the claimant light duty but she declined citing a lack of transportation.

MEDICAL EVIDENCE

Medical records show the claimant complained of joint, arm and shoulder pain on August 22, 2005. Based on positive test results for lupus, Dr. Pennington referred the claimant to a rheumatologist, Dr. Alsebai, on September 20, 2005. The claimant did not report an injury to either of these physicians.

I note Dr. Pennington's records show, "exquisite tenderness along the olecranon process bilaterally as well as both AC spaces of the shoulders particularly with overhead extension." Pain with extension of the arm over the head is commonly associated with a rotator cuff tear, however, the claimant's symptoms were bilateral.

The claimant's medical records suggest her symptoms changed in the fall of 2005 with more pain in her right shoulder.

Dr. Alsebai's report of 9-20-05

...She complains of aching and arthralgias of her arms and elbows, and shoulders which started six months ago. She denies any precipitating injury. The pain was tolerable, but suddenly it became very severe, and it is persistent. She had difficulty resting at night, because of pain and she had difficulty laying on right side. She also has difficulty with reaching behind her back, especially in the right side.

Dr. Alsebai ran additional testing and concluded the claimant did not have lupus but considered the possibility of drug induced lupus and arthralgias affected by the claimant's preexisting condition of hepatitis. He diagnosed left tennis elbow, "bilateral rotator cuff tendonitis, probably secondary to overuse and probable right rotator cuff tear." Dr. Alsebai recommended an MRI scan of both shoulders.

Dr. Alsebai referred the claimant to orthopedic surgeon, Dr. Charles Clark. He has authored two reports commenting on the history of injury and the causal connection.

Dr. Clark's report of 10-31-05:

She notes that she injured this about 4 mos ago when she was lifting a pt from the bed and she got a sharp pain in her shoulder after that and this persistently had become worse. She said she had problems in the shoulder before that, but never like this.

Dr. Clark's report of 2-9-06:

She notes that this happened while she was lifting a patient from a bed and got a sharp pain in her shoulder. At that point, she was unable to lift the patient.

...her injury that she describes is consistent with the findings at the time of surgery, i.e. a rotator cuff tear. With her given history and the findings at surgery, the odds are greater than chance that this occurred at the time that she describes the injury. Although she may have had preexisting impingement or acromioclavicular joint osteoarthritis, the tear most likely occurred at the time she lifted the patient and this is the most likely cause of her problem. This is within a reasonable degree of medical certainty.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The evidence of record shows the claimant worked as an aide to a handicapped patient requiring daily care for all his needs. Although the patient's home was equipped with a lift, the claimant did not use it and routinely lifted the 98 pound patient four to six times a day.

The claimant suffered a back injury lifting the patient and received conservative care from February to April in 2005. This claim for a back injury was accepted by the carrier.

The claimant saw her family physician for shoulder pain in August 2005 but gave no history of injury. The claimant saw a rheumatologist in September, 2005 and denied any traumatic injury. It was not until after an MRI scan revealed a rotator cuff tear and the claimant knew she needed surgery that she reported an injury to her surgeon and employer in October, 2005.

The claimant cannot recall a specific incident or time when the injury occurred. She attributes the injury to lifting a patient because she cannot think of any other way she might have hurt herself.

In order to prevail, the claimant must prove that her injury was caused by a specific incident identifiable by time and place of occurrence.

The claimant was familiar with filing workers' compensation claims and yet did not report an injury to her own physicians she consulted for shoulder pain. Also, it is evident from the AR-N form that she was guessing as to the cause of injury. While Ms. Jackson is a very nice lady who performs a valuable yet arduous job for her client, I find she has not proven that her injury was caused by a specific incident identifiable by time and place of occurrence based on a preponderance of the evidence of record.

1. The Workers' Compensation Commission has jurisdiction of this claim in which an employer-employee-carrier relationship existed during 2005.
2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This case is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge