

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505889

YOLANDA L. JORDAN, EMPLOYEE	CLAIMANT
SELECT MEDICAL CORP., EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY CO., CARRIER	RESPONDENT

OPINION FILED APRIL 13, 2006

Hearing before Administrative Law Judge J. Mark White on February 14, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James Stanley, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by Mr. Robert Montgomery, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 14, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on November 7, 2005, and a Prehearing Order was entered that same day. A copy of the November 7, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times; that the claimant earned an average weekly wage of \$392; and that the respondents have controverted this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether the claimant is entitled to medical treatment; whether the claimant is entitled to temporary total disability benefits; and attorney's fees. The issue of permanent benefits was expressly reserved.

The claimant contends that respondent accepted the claim as compensable initially but has controverted further benefits; and that she is entitled to temporary total disability benefits from May 27, 2005 through September 5, 2005.

Respondents contend that the claimant did not sustain a compensable injury while in the course and scope of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

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

claim.

2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that she sustained an injury to her elbow on May 26, 2005, arising out of and in the course of her employment; and that her injury was caused by a specific incident identifiable by time and place of occurrence.
4. The claimant has proven by a preponderance of the evidence that her elbow injury caused internal physical harm to the body requiring medical services; and that the existence and extent of her elbow injury is established by medical evidence supported by objective findings.
5. The claimant has therefore proven by a preponderance of the evidence that she sustained a compensable injury to her elbow on May 26, 2005.
6. The claimant has proven by a preponderance of the evidence that the medical treatment she has received to date has been reasonably necessary in connection with her compensable injury.
7. The claimant has proven by a preponderance of the evidence that she remained in her healing period through at least October 24, 2005
8. The claimant has proven by a preponderance of the evidence that she is

entitled to temporary total disability benefits from May 28, 2005, through September 5, 2005, exclusive of any time worked during that period.

DISCUSSION

I. History

The claimant worked for the respondent-employer as a CNA. She testified that on May 25, 2005, she sustained an injury to her right arm while attempting to lift a heavy patient. She described feeling a sharp pain in the area around her elbow. She sat down for about thirty minutes, put some ice on her elbow, and finished her shift. She testified that she reported the incident to the triage nurse, Donna Jacks, and asked to fill out an incident report, but she said Jacks asked her to wait until later in the shift. I note that although the shift in question began on Wednesday, May 25, it appears the claimant's alleged injury actually occurred in the early morning hours of Thursday, May 26, as her shift was from 7 p.m. to 7 a.m.

The claimant testified that the pain in her elbow grew worse over the following days, and that she continued to apply ice. She did not work in this time and was not scheduled to work. On Saturday, May 28, she sought treatment at Baptist Hospital. The emergency room notes record the claimant complained of pain and an inability to lift in her right arm for the prior four days. The notes say the

claimant denied injury. X-rays of the elbow were negative, and the claimant was diagnosed with tennis elbow and released.

Eula Mitchell, the human resources coordinator for the respondent-employer, testified that the claimant reported her injury the following Monday, which would have been May 31, Memorial Day. Mitchell testified she had seen the claimant the afternoon of May 26, that they had talked about the claimant's travel plans for the holiday weekend, and that the claimant gave no indication of a work injury. The claimant denied having any travel plans for that weekend.

The claimant was referred to a specialist, Dr. David Rhodes, whom she first saw on June 23. Dr. Rhodes recorded the history as follows:

The patient is a 36-year old right hand dominant female, who states that on 5/25/05 she was lifting a heavy person at work and felt a pain in the right forearm. She says it was a sharp pain.

Dr. Rhodes ordered an MRI scan, which revealed a partial tear of the right extensor tendon. Dr. Rhodes performed surgery to repair the tear on July 29, 2005.

II. Adjudication

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of

and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Id.*

Reviewing the record as a whole, I can identify only two discrepancies in the claimant's testimony. The first is the emergency room note which says the claimant denied any injury; the claimant denied saying this. The remaining medical records are consistent with the claimant's account of her accident – in particular the time frame reflected therein – and on balance I do not assign great weight to this one isolated statement in the emergency room records. The second discrepancy is Eula Mitchell's description of talking with the claimant about weekend travel plans, while the claimant testified she had no travel plans. This discrepancy has no bearing on the ultimate issues of this case, and on balance I assign it little weight.

Beyond these two minor discrepancies, there is no evidence to contradict the

claimant's testimony. Mitchell testified there was a machine available to lift heavy patients, but she admitted she did not specifically know if the machine was available for use the day of the injury. The claimant testified the machine was not in working order that day, and nothing in the record contradicts her testimony. The claimant testified she reported her injury to the triage nurse shortly after it happened, and nothing in the record contradicts her testimony. I recognize that Mitchell denied hearing the claimant say anything about an injury, but the claimant never alleged she reported an injury to Mitchell. To say that the claimant must have necessarily told Mitchell about the injury if it had happened is nothing but speculation and conjecture; such can never substitute for credible evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

On balance I find the claimant to be a credible witness. It is undisputed she reported a work injury on the Monday after it supposedly happened, and the one emergency room note is the only medical record inconsistent with her testimony. Given the above evidence, I find that the claimant has proven by a preponderance of the evidence that she sustained an injury to her elbow on May 26, 2005, arising out of and in the course of her employment; and that her injury was caused by a specific incident identifiable by time and place of occurrence. Given the medical records herein, specifically the MRI scan results, I find that the claimant has proven

by a preponderance of the evidence that her elbow injury caused internal physical harm to the body requiring medical services; and that the existence and extent of her elbow injury is established by medical evidence supported by objective findings. The claimant has proven every element of a compensable injury; I therefore find that she has proven by a preponderance of the evidence that she sustained a compensable injury to her elbow on May 26, 2005.

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

There is nothing in the record to contradict the treatment recommendations made by the claimant's doctors. I therefore find that the claimant has proven by a preponderance of the evidence that the medical treatment she has received to date has been reasonably necessary in connection with her compensable injury.

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during her healing period or until she returns to work, whichever occurs first. Ark. Code Ann. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period

continues until the underlying condition has become stable, the employee is as far restored as the permanent character of her injury will permit, and there is nothing further in the way of treatment that will improve her condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

The record does not identify with specificity the dates the claimant was off from work due to her injury. She contends she is entitled to such benefits from May 27, 2005, through September 5, 2005, though the testimony reflects that she did work at least a portion of this time. She admitted working at least one shift, but the testimony is not clear as to whether she worked additional shifts. Mitchell acknowledged the claimant was initially provided an off-work slip by Baptist Hospital from the May 28 visit.

The claimant was released by Dr. Rhodes on September 8, but as of October 24 she was still being treated by Dr. Rhodes for continued problems. I find that the claimant has proven by a preponderance of the evidence that she remained in her healing period through at least October 24, 2005, but I note that at present the claimant seeks benefits only through September 5. Given the above, I find that the claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from May 28, 2005, through September 5, 2005, exclusive of any time worked during that period.

AWARD

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her elbow on May 26, 2005, and that she is entitled to medical treatment and temporary total disability benefits. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. James Stanley, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge