

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500524

LILLIE M. MEMS, EMPLOYEE	CLAIMANT
MEADOWBROOK COUNTRY CLUB, INC., EMPLOYER	RESPONDENT
WESTPORT INSURANCE CORP., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 6, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 27, 2005, at Marion, Crittenden County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE JIM WILLIAMS, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-referenced claim to determine the claimant's entitlement to additional workers' compensation benefits.

On May 10, 2005, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. Respondents having failed to file a timely response to the pre-hearing questionnaire or to avail themselves for the scheduled pre-hearing conference were precluded from calling witnesses or offering medical or documentary evidence for inclusion in the record. The Pre-hearing order is herein designated a part of the record as Commission Exhibit #1. Respondents appealed the August 1, 2005, ruling in this claim to the Full Arkansas Workers' Compensation Commission.

In a January 23, 2006, the Full Commission remanded this claim with directions that the

respondents be allowed to state their contentions and that a ruling be had on the statute of limitation issue. Accordingly, the Respondents Amended Pre-hearing Filing, heretofore designated as Respondent Proffer Exhibit #1, which sets forth the contentions of respondents is herein designated a part of the record as Commission Exhibit #2, and is appropriately bluebacked.

The testimony of Lillie M. Mems, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Lillie Maria Mems, the claimant, with a date of birth of March 17, 1970, is a high school graduate, who commenced her employment with respondents on November 16, 2002, as a cook. Claimant last discharged employment duties on or about February 6, 2003.

Claimant's testimony reflects that she suffered an injuries to her hands, wrists, and forearms within the course and scope of her employment with respondents December 12, 2002.

In describing the mechanics of her injuries, claimant testified:

I was asked to wash the pots at the country club, and the hard part of the detergent, you have to mix it with hot water, and it has an acidic formula in it, and it wasn't diluted. I put my hand in there and I was severely burned. (T. 11).

Claimant asserts that she reported to injury to Ms. Felicia Bradshaw, her supervisor, however was not provided access to medical treatment until January 16, 2003.

The testimony of the claimant reflects that she continued to discharge her employment duties as a cook for respondents following the December 12, 2002, injury. Claimant explained regarding the job task of washing the pots relative to her regular employment duties:

Well, not every day, no. We didn't wash pots every day, not the cooks. It was just when the dishwasher wasn't at work, when she off, we would go back there and wash dishes, but that was my first time washing the dishes there at the country club. (T. 12).

Claimant noted that while she continued to work following the December 12, 2002, injury, she did not wash the pots. There is testimony in the record to reflect that the claimant wrapped her wrists with Saran Wrap as she continued to discharge her employment duties as a cook for respondents following her injury.

Claimant asserts that at the time respondents finally scheduled an appointment with Dr. Trent Pierce relative to her injury, her wrists were red and swollen. Claimant was seen by Dr. Pierce on only one occasion relative to her injuries. Regarding the medical treatment furnished by Dr. Pierce, claimant testified:

Well, he looked at my hands and gave me two prescriptions for cream for my hands and told me it was a chemical burn and just apply it and wrap it in Saran Wrap every night when I get ready to go to bed and come back and see him two weeks later. And when it was two weeks later I came to Ms. Bradshaw and she didn't make me an appointment. It was like February 6 I was coming to work, and as I was approaching the porch Ms. Bradshaw came to me and told me I no longer worked there, that I was no longer employed there. And so like a week later I called and asked Ms. Bradshaw to make me another appointment, and she said I was no longer employed there so she couldn't do anything for me. (T. 13).

Claimant asserts that her hands were red, swollen and peeling at the time her employment was terminated by Ms. Bradshaw.

Claimant's testimony reflects, regarding the explanation for her firing by Ms. Bradshaw:

No, sir, she told me, "Well, you know, Arkansas has a no cause law," and that's all she said to me. That's all I received from her, so I turned around and got back in the car and went on. (T. 14).

The testimony of the claimant reflects that while employed by respondents she earned \$6.00 pre

hour, working six (6) days per week, seven (7) to eight (8) hours per day.

Claimant testified that two months later she went to Popeye's restaurant and secured employment for three (3) weeks until a customer's complaint about the conditions of her wrists, residuals of the December 12, 2002, injury resulted in her termination. Claimant's testimony reflects, in pertinent part regarding the Popeye's job:

. . . . The manager came and told me to seek some medical attention and get some help for my arms and I can get my job back, but I was unable to get the money to go back to the doctor because when you go to the doctor payment is surrendered at the time of service, so I didn't have it. (T. 14).

The testimony of the claimant reflects that she used all the ointment furnished by Dr. Pierce, which lasted for about one month. Thereafter, claimant testified that she applied Vaseline and continued to wrap her wrists with Saran Wrap to keep them moisturized and lubricated. Claimant noted that without the afore, when she moved her wrist it would burst back open and split up. Claimant testified about the condition of her wrists while employed at Popeye's which resulted in the customer complaint:

They were still swollen and they were - - I didn't have any skin on them at that time, so it was like pinkish and just blistery with knots in it. (T. 15-16).

While employed at Popeye's claimant earned \$6.00 per hour for a forty (40) hour work week. Claimant testified that she did not go to the emergency room because \$25.00 was required to be seen there as well. Claimant has not worked any place since her employment at Popeye's was terminated. Claimant explained that while she was employed at Popeye's her injuries had not healed. In order to work with the residuals of her injury, claimant's testimony reflects that even though it was in the spring and summer, she wore long sleeves under her work uniform

because she did not want anyone to see her hands. However, the particular day she wore just her regular uniform shirt, the customer observed her wrists and complained to the manager.

In describing the current conditions of her wrists, which she attributes to injury in the employment of respondents, claimant's testimony reflects:

Right now the burns when I immerse them in water, they will swell back up and you will see the cuts coming back in there in my arms. Any kind of detergent, any kind of anything, and you know, you have to wash your hands to deal with food. The soap, I have to use Ivory soap. Any kind of soap, antibiotic soap, or anything like that, will break it back out.(T. 16-17)

Claimant further testified that she experiences intense pain in her wrists when she lays down:

Okay, when I lay down I still wrap my arm in Saran Wrap because when I lay down and once it dries up, if I don't have the Saran Wrap on it, if it dries up and I wake up and just get up out of my bed, or whatever, it cracks. It cracks and there's a burning sensation. (T. 18).

On cross examination, claimant was questioned regarding her first request for medical treatment relative to the December 12, 2002, injuries:

On the 12th, yes, and she told me to go in the kitchen. Ms. Onie Walls, she went back to Ms. Onie and asked Ms. Onie what could she do for it. She told Ms. Onie to put some vinegar on my arm and like after I went to the doctor January 16 she bought some long gloves, which I am short, and the water from the pots would still go in there. She bought some gloves, but it was like after I went to the doctor. (T. 19).

Claimant acknowledged that she saw no other doctor besides Dr. Pierce in 2003, for the December 12, 2002, injury. Claimant did not see a physician in 2004, for her injury, and filed her claim with the Arkansas Workers' Compensation Commission on January 19, 2005.

Claimant asserts that she was directed by Dr. Pierce to return for further medical treatment regarding her injury following the January 16, 2003, visit. Claimant testified:

After my cream ran out I was suppose to go back to the doctor and Ms. Bradshaw had a statement because when I came back from the doctor I brought the excuse, the doctor's excuse, and also the doctor's note stating that it was a chemical burn. Ms. Bradshaw should have that on file. She never made me another appointment.(T. 20).

Claimant further testified regarding her failure to obtain follow-up medical treatment:

Because Ms. Bradshaw didn't make the appointment. You can't make an appointment on your own, and I don't have the money, so I had to wait on Ms. Bradshaw to do it because I was hurt on her premises, at her job, I mean, as her being my employer.

Claimant testified that she had no knowledge regarding Westport Insurance or Gallagher Bassett in terms of securing access to further medical treatment regarding her injury. Claimant denied receiving correspondence from the third party administrator, Gallagher Bassett. Further, the testimony of the claimant reflects that the first contact that she had with Gallagher Bassett was one week prior to the May 10, 2005, pre-hearing conference.

Claimant testified that she had been seen at the emergency room of Crittenden Memorial Hospital in West Memphis, Arkansas, after the January 16, 2003, medical treatment by Dr. Pierce, however the same was for breathing problem. Claimant concedes that she did not seek medical treatment regrading her wrists during the emergency room visit, noting that at that particular time she was more concerned about her breathing, the chief complaint which produced the ER visit.

Claimant denies that she has worked any place since her employment with respondent was terminated on February 6, 2003, other than the three (3) weeks at Popeye's. Claimant asserts that she has looked for work and is on the computer daily searching for a job.

The medical in the record reflects that claimant was seen by Dr. Trent Pierce on January

16, 2003, for complaints relative to her hands. The office note relative to the afore visit reflects an assessment of the claimant's complaint as contact dermatitis involving hands, wrists and forearms. Claimant was treated with Lidex cream and Westcort cream by Dr. Pierce. (CX #1). The record further reflects a Form AR-3, regarding the claimant, dated January 17, 2003. In describing the accident, the document reflects, "washing pots with a solution that is not deluted now with a rash on both hands". (CX. #2, p.2).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documents, application of the appropriate statutory provisions and applicable case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 12, 2002, the relationship of employee-employer-carrier existed among the parties.
3. On December 12, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits at the rate of \$160.00/\$154.00, for temporary total/permanent partial disability.
4. On December 12, 2002, the claimant sustained injuries to both upper extremities arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the periods beginning February 6, 2003, and continuing through April 6, 2003.
6. Claimant received medical treatment relative to her December 12, 2002, compensable injury on January 16, 2003, the cost of which was paid by respondents. Claimant

did not file her claim for additional workers' compensation benefits until January 19, 2005.

Pursuant to Ark. Code Ann. §11-9-702 (b), the present claim for additional workers' compensation benefits relative to the compensable December 12, 2002, injury is barred.

CONCLUSIONS

The compensability of the claimant's December 12, 2002, injuries to her wrists, hands, and forearms, as a result of exposure to undiluted dishwashing detergent while discharging job duties in the employment of respondents is not disputed. Claimant asserts that as a result of the injuries continued to require medical treatment for which respondents are liable. Further, claimant maintains entitlement to temporary total disability benefits as a result of the injury. The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions.

There is no evidence in the record to reflect that claimant, who was employed by respondent-employer as a cook, experienced any difficulty, restrictions or limitations relative to her hands, wrists or forearms prior to her November 16, 2002, employment by respondent. The credible evidence in record reflects that on December 12, 2002, claimant in using dishwashing detergent to wash pots suffered chemical burns to her hands, wrists and forearm as a result of the failure to properly dilute the detergent. The injury was reported to appropriated supervisory personnel of respondents.

Claimant continued discharging her regular employment duties for respondent subsequent to the December 12, 2002, injuries to her hands, wrists and forearms. On January 16, 2003, claimant received medical treatment under the care of Dr. Trent Pierce, respondents' designated

medical provider. Claimant was returned to work by Dr. Pierce after receiving medical treatment. The credible evidence in the record reflects that thought performing her regular job duties, claimant applied prescription cream to her wounds and wrapped the to avoid getting them wet as she worked.

The claimant was directed to be seen in followup by Dr. Pierce following the initial appointment. The credible evidence reflects that at the time of the February 6, 2003, termination of her employment by respondents, claimant continued to experience residuals relative to her compensable injuries. Claimant was informed that because she was unable to perform the job for which she was hire, her services were no longer needed. The credible evidence reflects that claimant contacted appropriated supervisory personnel of respondents after her employment was terminated in an effort to secured a scheduled follow-up appointment with Dr. Pierce relative to her injuries. Respondents refused to schedule the appointment. There is not a disputed regarding the state of the claimant's injuries at the time respondents terminated her employment.

There is no evidence in this record that the claimant was furnished a Form AR-N following her December 12, 2002, injury. Further, there is no evidence in the record that the claimant was made aware of the workers' compensation insurance carrier or the third party administrator following the reporting of her December 12, 2002, injury or need for further medical treatment in February 2003.

The evidence preponderates that the claimant remained in need of medical treatment relative to her compensable injuries subsequent to February 6, 2003. It is undisputed that residuals of the claimant's injuries were visible in February 2003, when her employment was terminated by respondents.

Claimant's injuries are scheduled pursuant to Ark. Code Ann. § 11-9-521. Following the termination of her employment on February 6, 2003, claimant was unable to secure new employment for two (2) months. Further, claimant actively solicited respondents for access to medical treatment relative to her injuries. An employee who suffers a scheduled injury is to receive temporary total or temporary partial disability benefits during her healing period or until she returns to work. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). In the instant claim, claimant was within her healing period and not working from February 6, 2003, through approximately April 6, 2003, a period of two (2) months, and correspondingly entitled to temporary total disability benefits. Respondents have controverted the afore.

The evidence does reflect that claimant secured employment with a different employer on or about April 6, 2003, and continued in the employment for a period of three (3) weeks. There is nothing in the record to reflect that claimant was unable to perform the job in her subsequent employment, but rather ceased due to a customer's complaint regarding the appearance of her hands, wrists and forearm, residuals of her compensable injuries.

Claimant's injuries continue to require medical treatment which is reasonably necessary and related. Since being unable to secure sanctioned medical treatment from respondents and due to a lack of money to pay for the cost of same on her own, claimant has utilized home remedies to address the residuals of her compensable injuries. Ark. Code Ann. §11-9-508 (a) requires employers to provide such medical services as may be reasonably necessary in connection with the employee's injury. Respondents have controverted the claimant's entitlement to medical benefits subsequent to February 6, 2003.

Ark. Code Ann. § 11-9-702 (b) provides, in pertinent part:

(1) In cases where any compensation, including disability or medical, had been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of injury, whichever is grater.

In the instant claim, claimant was seen by respondents' designated medical provider on one occasion, January 16, 2003. In addition to reciting the treatment measures rendered to the claimant during the visit, the office note reflects that the claimant was to return to the clinic on a PRN basis. There is no documentary evidence in the record to reflect that the claimant was provided a scheduled follow-up appointment to be seen by Dr. Pierce subsequent to the January 16, 2003, visit.

Claimant acknowledged that she did not obtain medical treatment relative to her compensable injury in 2004. The evidence does reflect that claimant received medical treatment in the emergency room of Crittenden Memorial Hospital for breathing difficulties subsequent to January 16, 2003. Claimant did not request nor was medical treatment administered relative to her compensable December 12, 2002, injury at the time of the emergency room visit. The evidence preponderates that the present claim for additional workers' compensation benefits having been filed more that a year after last payment of workers' compensation benefits is barred pursuant to Ark. Code Ann. §11-9-702 (b)(1). This claim for additional workers' compensation benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge

