

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300066

MARY C. RODRIGUEZ

CLAIMANT

**LAKEWOOD PLAZA NURSING CENTER
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED JULY 10, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES STANLEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on June 8, 2006. A prehearing conference was held on April 11, 2006 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulation:

1. There was an employer-employee relationship on August 8, 2002.

The claimant contends she sustained a compensable injury on August 8, 2002 and contends she is entitled to temporary total disability benefits from August 8, 2002 through December 17, 2002 and attorney's fees. The claimant also contends that her compensation rates are \$425/319 based on an average weekly wage of \$800 per week.

Respondents contend that even though medical expenses regarding the surgery were paid, the condition was a temporary aggravation of a pre-existing condition and the major cause of which was not a lifting incident at work. Respondents contend the compensation rates are \$400/300. Respondents also contend the statute of limitations bars the claim.

ISSUES TO BE LITIGATED

1. Compensability.
2. Temporary total disability benefits.
3. Attorney's fees.
4. Statute of limitations.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an employer-employee relationship on August 8, 2002.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings.

DISCUSSION

The claimant, 56 years of age, worked for the respondent employer as the night charge nurse in 2002. The claimant was supervisor over nine or ten CNAs and helped with patient care. The claimant made rounds three times per shift to the patients' rooms and she assisted in lifting patients and transferring them from the bed to chairs. According to the claimant, on August 8, 2002, it was the end of the shift and she assisted a CNA in lifting a large patient to her chair and she felt pain in her pelvic, lower abdominal area. Additional people had to help lift the patient back into her chair. Within an hour, the claimant testified that she noticed vaginal bleeding and sought medical treatment at the Health Department. The claimant did properly report her incident and was referred to the company clinic and then to Dr. C.A. McKnight, an OB/GYN.

The claimant continued to work light duty for one week but was terminated because she had work limitations. The claimant underwent surgery on November 4, 2002, to repair her prolapsed uterus. The claimant testified that she now has permanent restrictions that prevent her from pushing, pulling, lifting, or straining. The claimant contends the doctor released her on December 17, 2002, but she continued to have restrictions. According to the claimant, all her medical bills have been paid.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (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 harm to the body that required medical services; (3) medical

evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant case, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment on August 8, 2002. While the claimant has presented testimony that she was assisting in lifting a patient on August 8, 2002 and sustained a pelvic or abdominal injury, she has failed to provide any contemporaneous objective medical evidence to substantiate her claim. Ark. Code Ann. §11-9-102(4)(D). In evidence is only one page of information from Dr. C.A. McKnight that deals with returning to work and limitations. There are some illegible notes on a September 3, 2002, letter from Carrie Moore of Systemedic Review to Dr. C.A. McKnight regarding the claimant. There is no signature on these notes and I found them to be illegible.

Since I have found the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings, I have not addressed the appropriate temporary total disability rate, temporary total disability benefits and the statute of limitations.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE