

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513396

CATHIE SHELLEY	CLAIMANT
VAN BUREN SCHOOL DISTRICT	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 16, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAMES FILYAW, Attorney, Fort Smith, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 4, 2006, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on January 31, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On November 9, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation benefits are \$356.00 for total disability and \$257.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant sustained compensable injuries to her hip and/or back on November 9, 2005
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from November 10, 2005 through a date yet to be determined, and attorney's fees.
3. The effect of the notice provisions of the Act on all benefits accruing prior to December 5, 2005.

In regard to these issues, the claimant contends:

"Claimant contends that the injury to her hip and back were incurred in the course of her employment."

In regard to these issues, the respondents contend:

"A. The claimant was injured in the course and scope of her employment. She has pre-existing arthritis and degenerative conditions that were not aggravated by her employment. There is no medical opinion with any degree of medical certainty linking the claimant's degenerative conditions to an injury at work. There are no objective medical findings of a hip or back injury.

B. Attorney's fees are not due as there is no compensable injury.

c. The claimant did not report the alleged injury until 12-5-05."

DISCUSSION

_____The central issue in this claim is the question of whether the claimant sustained compensable injuries to her left hip and back on November 9, 2005. The burden rests upon the claimant to prove all

of the elements necessary to establish these alleged work related injuries as “compensable injuries” under the terms of the Arkansas workers’ Compensation Act.

The first of these elements are found in Ark. Code Ann. §11-9-102(4)(D). This subsection requires the claimant prove by medical evidence, which is supported by objective findings, the actual existence of the physical injuries or conditions alleged to be “compensable”.

The medical evidence presented shows that the claimant has extensive degenerative or osteoarthritic changes involving the L4, L5, and S1 vertebra, as well as the L4-5 and L5-S1 intervertebral discs. Further, the existence of these extensive degenerative or osteoarthritic changes is clearly supported by purely objective findings, which were noted on a CT scan of the lumbar spine that was performed on November 21, 2005. This CT scan was interpreted as showing:

- “(1) Moderate facet hypertrophy and degenerative type changes L4-5 with fragmentation as noted with spondylotic ridging and at least moderate canal stenosis.
- (2) Mild spondylosis and equivocal disc protrusion at L5-S1.”

The CT report also noted that the observed bony fragments along the superior aspects of the facet joints, which were more prominent on the left side of the spine than the right, could represent either unusual bone spurs or possibly even be due to “old trauma”. Finally, from notations on the CT study indicates that the claimant

was scheduled for an evaluation by Dr. Queeney, a neurosurgeon, and Dr. Swicegood, a chronic pain management specialist. However, no reports from either of these physicians have been introduced into evidence.

The medical evidence also shows that the claimant has significant physical defects involving her left hip. These defects are again in the form of substantial degenerative arthritic changes of the hip joint. Similar changes have also been noted involving the claimant's right hip. The existence of these physical defects or damage is clearly supported by objective findings noted on plain x-rays.

Finally, the medical evidence shows that the claimant has further experienced physical damage to her left pelvis. This damage is in the form of a fracture of the left iliac wing of the pelvis. The existence of this fracture is supported by purely objective findings noted in radiographic studies, including both plain x-rays and a CT scan.

After consideration of all the evidence presented, it is my opinion that the claimant has satisfied the requirements of Ark. Code Ann. §11-9-102(4)(D), in regard to these specific physical injuries or conditions. The claimant has "established" by medical evidence, which is supported by objective findings, the actual existence of physical damage or defects involving her lumbar spine from L4 through S1, her left hip joint, and her left pelvis.

Next, the claimant must further prove that these conditions satisfy the definitional elements for a "compensable injury". Based

upon the claimant's allegation that these injuries were the result of a specific incident that occurred on or about November 9, 2005, the appropriate definitional elements are found in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional elements are:

- (1) That the physical injury or condition arose out of and occurred in the course of the employment;
- (2) That the physical injury or condition was caused by a specific incident;
- (3) That the physical injury or condition is identifiable by time and place of occurrence;
- (4) That the physical injury or condition caused internal or external physical harm to the claimant's body;
- (5) That the physical injury or condition required medical services or resulted in disability.

In order to satisfy the first three definitional elements of Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must prove that there is a causal relationship between the medically established and objectively documented physical injuries or defects with her low back, left hip, and left pelvis, and a specific employment related incident or accident on November 9, 2005. However, she need not prove that such an employment related incident or accident was the sole or even "major cause" of the ultimate diagnosed injuries or conditions. Aggravations of pre-existing conditions may also be compensable, so long as they meet all of the Act's statutory elements or requirements for a "compensable injury".

The claimant's own testimony is the only direct evidence she has presented to prove the existence of a causal relationship

between a specific employment related incident or accident, on November 9, 2005, and her subsequent difficulties with her low back and left hip. While the testimony of an interested party is not to be considered uncontroverted, this does not mean that it can be arbitrarily disregarded. If the testimony of an interested party is credible, this testimony may be sufficient, in and of itself, to prove any fact it is legally competent to address. Clearly, the claimant's testimony would be legally competent to establish the occurrence of a specific employment related incident or accident and to show the existence of a reasonably close temporal relationship between the incident or accident and the appearance of symptoms indicative of the occurrence of a physical injury.

At the hearing, the claimant testified that on a Wednesday (presumably November 9, 2005), she pulled a heavy garbage bag of magazines from a garbage can in the library of the school and drug the bag downstairs. She testified that her pain started when she was attempting to get the garbage bag out of the can and, by the time she got the bag downstairs, she was hurting so bad that she "couldn't hardly walk". (T.8-9). She describes her pain as starting in the left "groin area" and that it was like a "severe catch". She stated that the pain then went into her left hip and into her back, and also down her left leg to about her knee. She described the pain in her groin as being "real severe", especially whenever she tried to move her leg, and the pain into her hip and leg as a "solid ache" (T.10).

The claimant testified that following the onset of these

difficulties, she went to the breakroom and took her regular break. It was her testimony that while in the breakroom, she told two co-employees that she was "hurting real bad" and that she thought that she had hurt herself when she had pulled on the garbage bag. She identified these co-employees as a Sheila and a Leon.

However, the claimant testified that she completed the remainder of her shift (approximately six hours), on that Wednesday, and her entire shift on the following day (Thursday). She stated that the next day (Friday) her difficulties were so bad that she did not go into work, but rather consulted her family doctor (Dr. Paul E. Bean). She further stated that she was not sure why she failed to report her accident or injury to any one in a supervisory position or request medical treatment through workers' comp, at that time. She acknowledged that she did not report any employment related injury to the respondent, until the following week. Finally, she denied any other unusual event or trauma involving her back, left hip, or left leg either prior to or after November 9, 2005.

The claimant initially denied any prior difficulties with her left hip, but ultimately conceded that she may have had some difficulties. However, it was her testimony that even if she had had any prior difficulties with her left hip, they were "totally different" from what she experienced after she "hurt" herself (T.15).

On cross examination, she also conceded that she did not experience any pain or symptoms at the actual time she pulled the

heavy trash bag from the barrel. Rather, she described her difficulties as beginning sometime before she could “get downstairs” with the trash (T.16).

On cross examination, the following exchange took place concerning a recorded statement that was taken from the claimant on September 7, 2005:

“Q. Did you--in that statement you said it wasn't your back that you hurt it was your hip.

A. Uh-huh.

Q. That's true, isn't it?

A. That's what it felt like, yes.

Q. And then you said you got to thinking about it and you think that maybe it was pulling that trash.

A. Yeah.

Q. But did you know at the time you were pulling the trash?

A. I didn't know what it was at first. In fact, when I first done it, the reason I didn't--one of the reasons--now, this is not 'the' reason, but one of the reasons, and I just don't like to--I don't like to turn things into the school; I don't like to complain, but I thought maybe I had just strained it real bad and in a day or two it would get better, but in a day or two, it

did not get better, it got worse.”

In support of her testimony, the claimant offered the testimony of Sheila Pinkerton, a co-employee of the claimant. Ms. Pinkerton testified that she had known the claimant for six years. Ms. Pinkerton further testified that she recalled one morning when the claimant complained about the trash being heavy in the library. She further testified that about that time she noticed the claimant “hurting more than other times”. She further testified that later that day the claimant made the statement to her:

“I kind of wonder if I might have hurt myself.”

Ms. Pinkerton also testified that the claimant apparently made numerous complaints with her back and various other portions of her body which she attributed to her arthritis. She further stated that from time to time the claimant’s complaints would be more severe.

In support of her testimony, the claimant also offered the testimony of her husband. Mr. Shelley is a school custodian for another school district. He testified that when he picked the claimant up from work on November 9, she was complaining more of pain and had more difficulty walking. He stated that these problems had not been present when he had dropped her off at work that morning. He further testified that the claimant was “moving different” and that the area of her pain was different from the usual and customary pain areas. However, he did acknowledge that the claimant has a long and extensive history of periodic problems with her back and both hips.

The medical records show that the claimant has experienced difficulties with her back, both hips, and other portions of her anatomy on multiple occasions, prior to November 9, 2005. These difficulties have been diagnosed as being attributable to ongoing degenerative arthritis. The presence of this condition in the claimant's back, hips, and other portions of her body is amply supported by objective findings noted on various radiological studies.

The initial medical report of Dr. Paul Bean, dated November 11, 2005, indicated that the claimant's primary complaints involved pain in her left hip that radiates down into her thigh. He did mention some complaints of pain in the lower back, but indicated that these complaints were less severe. Although he noted that the claimant reported that she had lifted some heavy trash bags "yesterday" (November 10, 2005), he did not record any history of a close temporal relationship between this activity and the initial onset of the claimant's current symptoms. While he noted that the claimant gave a history of a sudden onset of pain "yesterday" (November 10, 2005), he also indicated that the claimant does not "remember any specific trauma" occurring at that same time.

A CT scan of the claimant's lumbar spine was performed on November 21, 2005. This test was interpreted as revealing only extensive degenerative arthritic changes from L4 through L5, and the possibility or "suggestion" of a disc protrusion. This test, in and of itself, would not be particularly supportive of any recent or "acute" injury.

The claimant was apparently evaluated and treated by Dr. Swicegood and possibly Dr. Queeney. However, no reports or records from either of these physicians have been tendered by either party.

The first record of a history of a close temporal relationship between an employment related lifting and the onset of the claimant's symptoms does not appear until the report of Dr. Keith Holder on December 6, 2005. This history was taken after the claimant had reported an employment related accident and injury to the respondents and had been sent to Dr. Holder by the respondent. In his note of December 6, 2005, Dr. Holder stated:

"This is the initially narrative summary on Ms. Shelley, an employee of Butterfield Junior High in Van Burn, who reports she was lifting a bag of trash in a normal duties as custodian. She had actually taken weight out of the trash can in the bag before she lifted it, but she felt pain in the left groin at that time that has continued to increase since the initial date of injury on 11-9-05. She reports this happened at approximately 6:00 a.m. in the morning.(Emphasis mine)

Curiously, Dr. Holder was the first to diagnose the major cause or etiology of the claimant's complaints as a fracture of the left iliac wing of the pelvis. This diagnosis was based on x-rays performed at Dr. Holder's request on December 6, 2005. The radiologist's interpretation of these x-rays indicated that this initial study was not sufficient to determine the age of the fracture or whether it was old or recent. A CT scan of the pelvis was recommended for this purpose and was performed on December 8, 2005. This test indicated that the fracture was of recent origin. The radiologist, who interpreted the CT study, further indicated

that the results of the test also revealed findings that would make it unlikely that the fracture was a "pathologic" fracture (i.e. due to inherent weakening of the bone from a tumor, osteoporosis, etc.). He further stated that for a "simple fracture" of this type to occur, there must have been "significant trauma to this region".

Subsequent studies performed by Dr. James Deneke, a rheumatologist, all showed no evidence, whatsoever, that the claimant was suffering from osteopenia, osteoporosis, or increased risk for fracture. Dr. Deneke does make a rather curious and apparent inconsistent statement:

"If indeed, the patient had a pelvic fracture with minimal trauma, then she does have osteoporosis."

Such a diagnosis of osteoporosis would appear to be clearly contrary to all of his prior conclusions and stated test results. There is clearly no objective findings to support the existence of osteoporosis, involving the claimant's pelvis or to indicate that this fracture was due to any inherent weakness of this portion of her body.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove the existence of a causal relationship between the medically established and objectively documented physical injuries or defects involving her low back, left hip, and left pelvis and any specific employment related incident on November 9, 2005.

First, I do not find the claimant's testimony, concerning the existence of a close temporal relationship between the

employment related lifting incident and the onset of her symptoms with her low back, left hip, and left leg, to be credible. Her testimony is internally contradictory and inconsistent with other histories she has given. This testimony is also inconsistent with the claimant's actions in continuing to work and failing to report the accident and injury in a timely manner. It is also inconsistent with her delay in seeking medical treatment and consulting her family physician. The medical evidence and even the claimant's testimony would indicate that any difficulties which the claimant has experienced with her back and left hip are similar to the periodic episodes of difficulties, as well as the chronic or relatively continuous difficulties, which she has experienced with these portions of her body for some time. The evidence shows that these complaints are most likely due to her pre-existing and ongoing degenerative arthritis, rather than any employment related event or activity.

In fact, the claimant's current difficulties appear to be primarily, if not solely, the result of the fracture of the left wing of her pelvis. However, the lifting incident described by the claimant, as occurring on November 9, 2005, would not be reasonably or logically expected to produce such a fracture. The evidence presented fails to support the existence of any pre-existing weakening of the claimant's pelvis due to tumor, osteoporosis, or any other pre-existing condition. As noted by Dr. David Diment, the radiologist, "significant trauma" directly to the pelvic region would be required to produce this fracture. Lifting and pulling on

a trash bag of magazines, regardless of the weight, would not reasonably or logically result in any direct trauma to or significant stress on the claimant's left iliac crest of her pelvis. Even Dr. Bean, the claimant's family physician, has conceded that "there is no obvious source for why she had her fracture".

There appears no doubt that the claimant sustained a fracture to the left iliac wing of her pelvis some time between September 21, 2005, and December 5, 2005 (the dates of two pelvic x-rays). However, the greater weight of the credible evidence presented shows that the employment activities described by the claimant would not be a reasonable cause of this fracture. Thus, this incident would clearly not be the probable or likely cause that is required by the Act.

As the claimant has failed to show that any of the medically established and objectively documented physical injuries or conditions, which involve her back, left hip, or left pelvis, are causally related to a specific employment related incident (on November 9, 2005), she has failed to satisfy the first three definitional elements necessary for establishing "compensable injuries", under Ark. Code Ann. §11-9-102(4)(A)(i). Her failure to prove these statutory elements is fatal to her claim. I have no alternative but to deny and dismiss her claim in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On November 9, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On November 9, 2005, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$356.00 for total disability and \$257.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained "compensable injuries" to her left hip (pelvis) and/or back on November 9, 2005. Specifically, she has failed to prove by the greater weight of the credible evidence that any physical injuries or conditions, which she has and is experiencing with these portions of her body, were in any way causally related to a specific employment incident on that date.
5. The respondents have denied the occurrence of any compensable injuries and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

