

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507952

CHERYL YANCY, EMPLOYEE	CLAIMANT
CULPEPPER CHIROPRACTIC CENTER, INC., EMPLOYER	RESPONDENT
TWIN CITY FIRE INSURANCE COMPANY, INSURANCE CARRIER,	RESPONDENT

OPINION FILED MAY 22, 2006

Hearing before Administrative Law Judge Barbara W. Webb on February 21, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. George Ivory, Jr. Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Gene Williams, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted February 21, 2006 to determine whether claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation law. A prehearing conference was conducted in this case on November 30, 2005. At the hearing, the parties announced that the stipulations and issues, together with their respective contentions were properly set out in the Prehearing Order filed November 30, 2005. A copy of the Prehearing Order was introduced as Commission's Exhibit No. 1. At the hearing, the parties announced that they had reached an additional stipulation as to the applicable compensation rate. The following stipulations are accepted:

1. The employee/employer/carrier relationship existed on or about July 6, 2005, on the alleged date of injury.

2. If the claim is deemed compensable, the claimant would be entitled to temporary total disability benefits of \$246 per week from July 6, 2005 through October 1, 2005.

By agreement of the parties, the primary issue presented is the determination concerning compensability. If overcome, claimant's entitlement to associated benefits must be addressed. Claimant contended, in summary, that she sustained an injury to her left shoulder on July 6, 2005, which arose out of and during the course of her employment, and that respondents are responsible for temporary total disability, continuing medical treatment, payment for medical services rendered, and attorney's fees. Claimant has reserved the issue of permanent partial disability and all other issues. Respondents contend that claimant did not sustain a compensable injury during the course and scope of her employment, dispute that a specific incident occurred, and contend that there are no objective medical findings of a compensable injury. Claimant testified on her own behalf. Alon Cooley was called as a witness for the respondents. The record is composed solely of the transcript of the February 21, 2006 hearing, containing numerous exhibits. 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. The Arkansas Worker's Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.

3. Claimant failed to prove by a preponderance of the evidence the elements of a compensable injury under the Arkansas Workers' Compensation laws.

4. The respondents controverted the claim in its entirety.

DISCUSSION

Claimant, Cheryl Denise Yancy, testified in her own behalf. Claimant is thirty-nine(39) years old and was employed as a billing clerk by respondent, Culpepper Chiropractic Clinic d/b/a Injury Care. She worked there approximately two to three months prior to July 6, 2005. She described her job duties as including posting payments to accounts. In order to perform her job, she was required to get folders out of baskets, some of which were located on top shelves. She testified the weight of the baskets varied and often she would lift two baskets in one. The lifting was above her head. Claimant described the events leading up to her injury as follows:

I was reaching up in the baskets to get some folders down, and it was two baskets into one. And I didn't realize it was two baskets into one until I started pulling it down and I had to put my left arm up under it to try to catch the basket.

She further explained:

I reached to get the basket and I heard my shoulder pop. And I -- Ms. Cooley was standing there and I said, this basket is really heavy. And she said yeah those baskets are heavy. And it just popped and it was just paining a little bit, and I just went on to work because I had to finish up what I was doing because it was the end of the day, so I kind of finished up doing what I was doing until it was time to go home.

Claimant continued to work for the balance of the day. She testified that she went to the emergency room the next morning. On referral from the attending physician at the emergency room, she sought medical treatment from Dr. Herbert Hahn with OrthoArkansas. During her initial visit, Dr. Hahn performed an x-ray on her left shoulder. He immobilized the shoulder with a sling and scheduled her for a follow-up visit the following week. At the follow-up visit, the claimant was

prescribed physical therapy and an MRI was performed. Claimant explained that Dr. Hahn took her off from work on July 7, 2005 until October 1, 2005. She attempted to go back to work during the last part of September when Dr. Hahn put her on light duty, but was informed by the office manager, Alon, that the main office had told her that she could not work as long as she was under restrictions. Claimant testified that she remains under the care of Dr. Hahn and has seen him approximately seven more times. When she returned back to work, she returned to a different job helping in physical therapy because the billing clerk position had already been filled. Her wage rate remained the same. She subsequently resigned her employment with Injury Care for personal reasons. She is currently employed at Arkansas Urology in Little Rock handling medical records. Her current job does not require lifting. She testified that she incurred medical bills from St. Vincent's in the amount of \$494.39 and with Ortho Arkansas in the amount of \$1,451. She remains under the continuing care of Dr. Hahn and anticipates additional medical bills being incurred.

On cross-examination, the claimant testified that she had been treated by Dr. Hahn previously when she had hurt her right shoulder in 1997 while she was lifting a bag at work. He had also treated her for knee problems, including surgeries on both knees. Based on her medical records, she agreed that she had seen Dr. Hahn continuously for the last four or five years for different things. She had injuries in car wrecks in March of 2004 and July of 2004. In July 2004, her car was struck from behind and Dr. Hahn treated her for left knee problems, low back problems and right shoulder problems as a result of the accident. In November of 2004, Dr. Hahn treated claimant for left hip problems. On October 27, 2004, she received treatment at St. Vincent's for falling on her right wrist and hand. On April 10, 2005, she again sought medical treatment due to a fall. On September 30, 2005, she saw

Dr. Hahn as a result of another fall. She testified that she had never had an injury to her left shoulder before.

Alon Cooley was called on behalf of the respondents. Ms. Cooley is employed as the office manager at the Culpepper Chiropractic Clinic d/b/a Injury Care. She has been employed as the office manager for approximately six years. She testified that the claimant did not tell her that she hurt her shoulder on July 6, 2005, the day in question. She further testified that the claimant did not mention anything about an incident or a pop in her shoulder. She learned about the incident the following day, July 7, when the claimant came in with the paperwork from the emergency room. She testified that although the claimant made mistakes, she was a good employee. She testified that the claimant told her that her reason for seeking medical treatment was that she had injured her shoulder pulling down the baskets. She did not recall a specific incident where the claimant told her that the basket was heavy. She testified that the claimant had not complained of any left shoulder pain prior to that date.

The only medical records offered in this case relate to office visits with Dr. Herbert L. Hahn. On July 7, 2005, the claimant was seen by Dr. Hahn for left shoulder complaints. The history indicates that the claimant told him that she had reached up for a basket while at work on July 6, 2005 and heard a pop. She further reported going to the emergency room that morning, was x-rayed, and placed in a sling. At that time, Dr. Hahn assessed her with a probable rotator cuff tear in the left shoulder and scheduled the claimant for an MRI of the left shoulder. He prescribed Lortab and advised her to remain off work until the next appointment. On July 22, 2005, the claimant returned for follow-up treatment with Dr. Hahn. At that time, the claimant was wearing her left arm in a sling. She reported that her shoulder was tender but improved. His report indicates that the MRI of the left

shoulder is normal study, no fracture, subluxation, or rotator cuff tear. At that time, he prescribed treatment with rest and physical therapy and assessed her injury as a left shoulder sprain. He referred the claimant for physical therapy and continued her off work status until her next follow-up visit in two weeks. On August 5, 2005, the claimant returned to see Dr. Hahn for follow-up of the left shoulder injury. At that time, the claimant reported that she was not wearing her sling. The claimant was referred for continued physical therapy, additional prescription for Lortab, and held off work until the next appointment. On August 31, 2005, the claimant returned for follow-up with Dr. Hahn. At that time, she reported that her shoulder still bothered her "a little bit". She indicated she was continuing to go to physical therapy but was ready to return to work. At that time, the doctor allowed her to return to light-duty work effective September 7, 2005 with certain restrictions.

On September 30, 2005, the claimant returned for a follow-up visit with Dr. Hahn. At that time, she reported that her shoulder is "doing okay." Dr. Hahn noted that her shoulder sprain was much improved and she was permitted to return to work with no restrictions.

ADJUDICATION

Claimant contends that she sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, Ark. Code Ann. § 11-9-101 et seq. While the claimant's alleged injury is an injury that is covered by the Act, claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence. Act 796 of 1993, as codified at Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury":

(i) an accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances...arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

The employee must prove by a preponderance of the evidence that she sustained a compensable injury. In addition, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). In the present case, I find that the claimant does not establish a compensable injury by medical evidence supported by objective findings.

The testimony of the claimant and her supervisor reflect that there is dispute over whether a specific incident occurred on July 6, 2005, at work. The claimant testifies that she reached for a basket when she heard a pop in her left shoulder and experienced pain. She further testified that she reported the incident immediately to her office manager, Ms. Cooley, and remained at work for the remainder of her work day. However, Ms. Cooley testified that no report was made to her of any specific incident until the claimant brought paperwork from the emergency room the following day. Moreover, the record reflects that the claimant has been under the continual care of Dr. Hahn for the previous four or five years for a number of injuries. In addition, a review of the only medical records offered in this case reflect there is no objective medical evidence that the claimant sustained any injury to her shoulder as a result of this incident. Although Dr. Hahn diagnosed "shoulder strain," he did not report any findings of swelling, bruising, muscle spasms, or any other objective medical findings. Further, the objective findings of the MRI of the left shoulder as reported by Dr. Hahn was that it was a normal study with no fracture, subluxation, or rotator cuff tear.

In Lockett v. Cooper Tire & Rubber Co., 2005 AWCC 123 (June 21, 2005), the Commission found that the claimant had failed to meet his burden of proof when his MRI reflected normal findings. Similarly, in Overstreet v. Pontiac Coil, Inc.,

2004 AWCC 194 (November 2, 2004), while finding that an on-the-job incident happened, the Commission held the claimant failed to meet her burden in that there was no medical evidence offered supported by objective findings of injury in the record. In the case of Hassler v. Thomas & Betts Corporation, 2005 AWCC 215 (October 19, 2005), the claimant contended that she sustained an injury to her right shoulder when she heard it “pop” while lifting parts. In reviewing the evidence, the Commission noted that the “mild tendinosis” and “small amount of fluid” shown on the MRI were not objective findings sufficient to establish a compensable injury to the claimant’s shoulder. Further, the Commission noted that the doctor did not report any findings of swelling, bruising, or any other objective medical findings. In the instant case, the preponderance of the evidence similarly fails to meet the claimant’s burden of proof.

Based on my review of the entire record, I find that the claimant did not establish a compensable injury by medical evidence supported by objective findings. For the reasons discussed herein, this claim must be, and hereby is, respectfully, denied.

IT IS SO ORDERED.

HONORABLE BARBARA WEBB
Administrative Law Judge