

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403701

SANDRA BYRD

CLAIMANT

TYSON POULTRY
SELF INSURED

RESPONDENT

OPINION FILED JULY 18, 2007

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

Claimant pro se.

Respondent represented by MELISSA LEE, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on May 22, 2007, in Fort Smith, Arkansas. The deposition of the claimant was taken on January 17, 2006, and has been admitted as Respondent's Exhibit No. 3.

At the hearing, the claimant offered various computer generated articles dealing with a number of subjects. The respondent objected to the introduction of these articles and their objection was sustained. However, for Appellate review, these articles were included in the transcript as Claimant's Tendered Exhibit No. 3.

A pre-hearing order had been entered on September 6, 2005. This pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

By agreement of the parties, the following stipulations were offered for consideration and are hereby accepted:

1. On all relevant dates, the relationship of employee-self insured employer existed between the parties.
2. The appropriate weekly compensation rates are \$213.00 for total disability and \$160.00 for permanent partial disability.
3. The claim is controverted in its entirety.

4. The claimant has received short and long term disability from group insurance through the respondent and has also had medical expenses paid under group medical.

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 a compensable injury to her neck or cervical spine as the result of cumulative trauma from her employment activities.
2. The claimant's entitlement to the payment of medical expenses and temporary total disability benefits from October 4, 2003 through a date yet to be determined.

In regard to these issues, the claimant contends that she sustained a compensable injury to her neck or cervical spine as a result of cumulative trauma produced by her day to day employment activities. She seeks the payment of medical expenses and temporary total disability benefits.

In regard to these issues, the respondent denies that the claimant sustained a compensable injury to her neck or cervical spine and controvert this claim in its entirety.

DISCUSSION

_____The central issue in this case is whether the claimant sustained a "compensable injury" to her neck or cervical spine, as the result of cumulative trauma from her day to day employment activities. The burden rests upon the claimant to prove all of the elements necessary to establish such a "compensable injury".

The first of these elements are contained in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove by medical

evidence the actual existence of the physical injury or damage alleged to be compensable. Secondly, this subsection requires that the actual existence of this physical injury or damage must be supported by "objective findings", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

Although the claimant has introduced numerous medical reports and records, she has not introduced any medical reports and records from her primary treating physician for her cervical difficulties. This is the physician that ultimately performed surgery on her cervical spine in March of 2004. According to the claimant's testimony, this was a Dr. Williams in Little Rock.

However, the claimant has introduced the reports and records of Dr. R. J. Olive and Dr. Stephen Hudson. In his report of December 26, 2003, Dr. Olive opined that the claimant's symptoms created a high degree of suspicion of a left cervical radiculopathy. As a result, he ordered an MRI scan of the claimant's cervical spine. This MRI study was performed on December 29, 2003, and confirmed Dr. Olive's suspicions. It was interpreted as showing:

- "1. Diffused multi-level degenerative disc disease of the cervical spine which appears to be most significant at C5-6 with posterior ridging and disc bulging causing at least moderate central canal stenosis.
2. At C4-5 and C6-7, there is also disc dessication and posterior bulging causing mild central canal stenosis.
3. At C3-4 there is a central posterior protrusion effacing the thecal sac and causing at least mild central stenosis at this level."

Upon review of the MRI study, Dr. Stephen Hudson, in his clinic note of February 12, 2004, opined that the bulk of the claimant's residual symptoms (numbness, tingling, and pain in her arm and shoulder area) were due to the defects involving her cervical spine.

It is my opinion that the foregoing medical evidence is sufficient to establish the actual existence of physical injury or damage involving the claimant's cervical spine. Further, the purely objective MRI study is sufficient "objective" support for the existence of these injuries or defects. Thus, the claimant has satisfied the statutory requirements of Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove that her medically established and objectively documented physical injuries or damage to her cervical spine satisfies all of the definitional requirements for a "compensable injury", under the appropriate category of Ark. Code Ann. §11-9-102(4)(A). The injury in the present case occurred prior to the amendment of Ark. Code Ann. §11-9-102(4)(A)(ii)(b) to include the neck or cervical spine within the category of compensable injuries controlled by this subsection. Prior to this amendment, applicable case law provided that cumulative trauma injuries to the neck or cervical spine were only compensable if they satisfied the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(ii)(a). Thus, the claimant must prove that her medically established and objectively documented physical injuries or defects were caused by employment related rapid repetitive motion.

In addition, the claimant must show that her cervical injuries or defects also satisfy the requirements of Ark. Code Ann. §11-9-102(4)(E)(ii). This subsection requires the claimant to prove that the employment related aspect of her injury or difficulties was the major cause of her disability or need for medical treatment.

In her testimony, the claimant described her various employment activities for the respondent during her employment from 1995 through October 8, 2003. Her testimony in this regard is substantially corroborated by

the job descriptions found on pages 1-8 of Respondent's Exhibit No. 2. There is no doubt from this evidence that the claimant's employment activities for the respondent required rapid repetitive motion of essentially all of the components of her upper body, including her neck or cervical spine, for substantial periods of each work day.

The medical evidence clearly shows that, on October 9, 2003, the claimant was experiencing substantial degenerative changes to several cervical intervertebral discs and significant arthritic changes to several cervical vertebra. The degenerative and cervical changes are even more evident on the subsequent MRI, that was performed on December 29, 2003. Although these degenerative and arthritic defects are primarily systemic in origin and are a natural part of the aging process, they can also be precipitated, accelerated, or aggravated by trauma. This would include both cumulative stress or trauma and specific trauma from a single incident or event.

In the present case, the claimant must not only prove that the rapid repetitive employment related motion of her cervical spine, was a likely cause of her subsequent cervical difficulties, she must further prove that this employment related cause or contribution was the major cause for her need of medical treatment or any disability she has experienced. After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove these required facts.

The claimant concedes that, on October 9, 2003, she slipped and fell down the steps of her house on her way to work. However, she testified that she had been experiencing some difficulties with her neck prior to that time. She testified that she would have episodes of some pain in her neck that was relieved by taking over the counter medication. She indicated that on several

occasions she was seen by the plant nurse and was treated with over the counter medication and possibly a heating pad. This latter testimony is refuted by the testimony of the plant nurse, Cristy Stancil.

The claimant admitted that she experienced no radicular type of difficulties with her upper extremities prior to October 9, 2003. She also acknowledged that her difficulties with her neck were not sufficient to cause her to seek medical treatment or to prevent her from performing any employment related or non employment related physical activities.

However, at the time of her fall at home, the evidence shows that she experienced an immediate onset of severe pain in her neck radiating down through her shoulder into her arm that continued thereafter. She also testified that she simply woke up with severe pain in her neck after one morning between Thanksgiving and Christmas of 2003. This testimony would coincide with the physical therapy record, dated December 12, 2003, which notes that the claimant first reported complaints of numbness from her left shoulder into her left elbow, which she attributed to a particular home exercise for the shoulder injury that she sustained in the fall of October 9, 2003.

Finally, the record reveals that the claimant has not worked, in any capacity, since her fall on October 9, 2003. This disability appears to be the result of her left shoulder injury, sustained on that date, and her cervical complaints on and after that date. It would further appear that all of the medical services rendered her, on and after October 9, 2003, were the result of either her left shoulder injury or the cervical symptoms and complaints (including radicular complaints) that began on October 9, 2003, to have progressed thereafter.

It is my opinion that the greater weight of the credible evidence actually shows that the claimant's cervical and radicular difficulties, on and after October 9, 2003, were caused by her non employment related fall, at home. It is my further opinion that the greater weight of the credible evidence actually shows that it was this fall, rather than any employment related rapid repetitive motion of her cervical spine, that was the major cause of her need for the medical treatment she has received on and after October 9, 2003, and the major cause of any disability she has sustained since October 9, 2003.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On all relevant dates, the relationship of employee-self insured employer existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$213.00 for total disability and \$160.00 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 a "compensable injury" to her neck or cervical spine as the result of cumulative trauma from her employment activities. Specifically, she has failed to prove that her cervical and radicular difficulties, on and after October 9, 2003, were causally related to her employment related activities by this respondent that required rapid repetitive motion of her neck or cervical spine. She has further failed to prove by the greater weight of the credible evidence that her employment activities for this respondent, that involved rapid repetitive motion of her cervical spine, were the major cause of her need for treatment that was provided her for her cervical difficulties on and

after October 9, 2003, or any disability these cervical difficulties have produced.

5. The respondent has denied the occurrence of any compensable injury to the claimant's neck or cervical spine 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