

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505183 & F511461

TINA M. CANFIELD, EMPLOYEE	CLAIMANT
ARKANSAS EMERGENCY TRANSPORT, EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 17, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on November 30, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. Phillip Cuffman, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted November 30, 2006, to determine claimant's entitlement to additional workers' compensation benefits.

This claim has a lengthy procedural history. It was previously assigned to another administrative law judge. The claim has been the subject of multiple prehearing conferences. The last prehearing conference was conducted September 19, 2006. A Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations contained in the September 19, 2006, Prehearing Order were correct. By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The employee/employer/carrier relationship existed on December 22, 2004; on April 9, 2005; and at all other relevant times.

2. The claimant sustained a compensable injury to her left shoulder on December 22, 2004.
3. The claimant sustained a compensable ulnar nerve injury to her left arm on April 9, 2005.
4. The claimant's temporary total disability rate is \$466.00.

At the hearing, it was further stipulated that respondents had controverted thoracic, lumbar, and cervical spine injuries and had controverted all benefits beyond those previously paid for purposes of attorney's fees.

By agreement of the parties, the following issues were presented for determination:

1. Whether the claimant sustained compensable thoracic and lumbar spine injuries on December 22, 2004.
2. Whether the claimant sustained a compensable cervical spine injury related to the December 22, 2004, and/or the April 9, 2005, admitted injuries.
3. Whether the claimant is entitled to additional temporary total disability benefits.
4. Whether the claimant is entitled to reimbursement for medical expenses paid out of pocket.

Claimant contended, in summary, that in addition to her admitted, compensable injuries, she also sustained injuries to her cervical, thoracic, and lumbar spine in connection with the December 22, 2004, and April 9, 2005, accidents, and that the injuries to those body parts had been controverted for purposes of attorney's fees. The claimant requested temporary total disability benefits for the period from May 1, 2005, through October 5, 2005, and again from

February 2, 2006, and continuing through a date yet to be determined. The claimant specifically reserved the right to pursue all additional benefits.

The respondent maintained that the claimant did not sustain an injury to the cervical, thoracic, or lumbar spine as the result of one or both of her admitted injuries and that she was not entitled to temporary total disability for the dates claimed.

In addition to the claimant, her husband, Dan Byron Canfield, was called as a corroborating witness. The record is composed solely of the transcript of the November 30, 2006, hearing containing a joint medical exhibit consisting of seventy (70) pages introduced as "Joint Exhibit A."

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 Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that, in addition to her left shoulder injury, she also sustained a compression fracture

to her thoracic spine as the result of the admitted incident and injury on December 22, 2004.

4. The claimant has failed to establish, by a preponderance of the credible evidence, that she sustained a lumbar injury as the result of the December 22, 2004, incident.
5. The claimant has failed to establish, by a preponderance of the credible evidence, that she sustained a cervical injury as the result of either the December 22, 2004, and/or the April 9, 2005, work-related incidents.
6. The healing period for all of the claimant's admitted injuries as well as controverted injuries, ended on or before March 1, 2006.
7. The claimant has proven, by a preponderance of the evidence, that she is entitled to additional temporary total disability benefits for the period beginning May 1, 2005, through October 5, 2005, and again for the period from February 2, 2006, through March 1, 2006, when the claimant was released by her authorized treating physicians.
8. Respondents are responsible for all reasonably necessary medical treatment provided by an authorized treating physician, as well as for any valid referrals by an authorized treating physician, including, but not limited to diagnostic studies performed by an authorized treating physician or by referral from an authorized treating physician to determine the nature and extent of claimant's injuries. Respondents are not responsible for medical treatment provided by

unauthorized treating physicians.

9. Issues not addressed herein, including, but not limited to, claimant's entitlement to permanent disability benefits, if any, have been specifically reserved.

DISCUSSION

The record in this case is replete with inconsistencies and contradictions. Further, the claimant's course of conduct, work history, as well as the medical evidence does not support her claim for cervical and lumbar injuries. Admittedly, there is medical evidence that supports her claim for a thoracic spine injury, specifically, a compression fracture which appears to be directly and causally related to the first admitted incident and injury on December 22, 2004. However, the medical evidence reflects that the thoracic compression fracture has long since healed and that the claimant's entitlement to additional temporary total disability is unrelated to said compression fracture. In fact, the medical evidence does not support a claim for continued temporary total disability for either the admitted injuries or the controverted injuries. Further, the only additional medical treatment recommended by an unauthorized medical provider is that the claimant be evaluated by a psychiatrist or psychologist because of her complaints of pain which are not supported by objective findings.

Many of the relevant facts are undisputed. It is undisputed that the claimant was involved in two (2) separate work-related incidents resulting in injuries. The

claimant's first injury was the result of a work-related motor vehicle accident on December 22, 2004. The only medical treatment that the claimant received following the motor vehicle accident was at the Ozark Health Medical Center in Clinton, Arkansas. The history contained in the only medical contemporaneous with the accident reflects complaints of pain secondary to MVA in shoulder, knee, and lower leg. The record reflects that the claimant continued working without seeking any additional medical treatment until on or about April 22, 2005, when she next sought medical treatment from Dr. John W. Balay. The record reflects that the claimant did not seek medical treatment until following a second admitted incident on April 9, 2005, when she lifted a stretcher with a patient weighing over 300 pounds at which time she complained of pain from her neck down her left arm into her left hand. Again, the claimant did not seek medical treatment between December 22, 2004, and April 22, 2005. The claimant continued working her regular shifts after each incident. In fact, the claimant last worked on April 18, 2005, at which time she took off work to seek additional medical treatment. She has not returned to gainful employment since that time. A description of the claimant's two (2) work-related incidents, as well as her course of medical treatment is set out, in part, below:

Q Everybody agrees that on December the 22nd of 2004, you were employed as an EMT and you were involved in an accident.

A Yes, sir.

Q Tell us what happened.

A We were sent out by David Calkin, the Base Manager, to deliver cookies to 911. On the way out the door, I noticed there was snow flurries. So I asked for the tire chains, and he declined and said not to worry about it, that it wouldn't get bad before we got back.

My partner wanted to drive because neither one of us had ever been over there. So we got in the ambulance and headed to Fairfield Bay, went the exact route that the Manager had given us. By the time we got around this – on Lean Creek Hill there's a little curve, and we were just inching along because we had already found a few little slick spots. When we got on that curve, that hill is like this. (Indicating)

Q You're showing us it's a pretty steep hill?

A Yeah, it's like – there was no stopping, and it was either go over a 120-foot ravine or him roll it up onto the rocks and into the trees.

Q Did the vehicle roll completely over?

A It rolled over onto the driver's side.

Q All right. What parts of your body do you say were injured in that accident?

A (Indicating) My neck, and I was bruised all the way down my left side.

Q You just pointed up here to your shoulder and neck area?

A Yeah. I was bruised all down my left side, and I had a bruise on my back.

Q Stop for a second. When you say you were bruised all down your left side, you were showing us down your arm. So your left arm was also involved in this?

A Yeah, my left arm, my hip, and my left knee had a huge bruise on it. My shin – the side of my lower leg had a bruise on it.

Q You said you had a bruise on your back. What part of your back?

A It was in the thoracic area. It was just on the side where I hit the rock that had protruded into the windshield.

Q Now, what sort of physical symptoms did you begin to experience after this accident took place?

A After the accident, I couldn't hardly walk. Once Charles pulled me out, I couldn't walk. It took a few minutes to get me to where I could move, and he helped me get up the hill. I started hurting from my head down to my feet.

Q And you were seen at the Ozark Health Medical Center?

A About six hours later.

Q Okay. Now, during the time from this accident up until April the 9th when you had another accident – during this late December to early April period of time, did you continue to work?

A Yes, sir. The ER doc told me to go home, and my Base Manager said no. So I continued my shift out because he threatened to terminate me, and I continued my regular shifts until the accident happened in April.

Q So in January and February and March, you were doing your regular job duties?

A My regular job duties.

Q How were you feeling during that time?

A The other EMTs and my medic had to help dress me, and we would have to call for First Responders to help with the lifting because I couldn't do it.

Q And these parts of your body that you were making reference to a moment ago were hurting you?

A I complained even to the Base Manager on a daily basis while we were on shift.

Q Who was that person?

A David Calkin.

Q Now, was your low back also involved in this incident?

JUDGE GREENBAUM: I'm sorry, what was the name of your Base Manager?

THE WITNESS: David Calkin.

JUDGE GREENBAUM: Can you spell that for me?

THE WITNESS: C-a-l-k-i-n.

JUDGE GREENBAUM: Thank you.

MR. DAVIS (Continuing):

Q Was your low back also involved in this pain that you were having?

A Yeah. It hurt all the way down.

Q Your hip, as well?

A My hip. I was just hurting all over, but they kept saying it was because I was in a major accident and I'd never been in a major accident before.

Q Well, did you have a problem with your legs?

A I had – they would go tingly.

Q Both legs or just the left?

A Both legs would go tingly.

Q Was one worse than the other?

A No. It was pretty equal.

Q But the bruising and so forth was on the left?

A The bruising was on the left.

Q Now, Ms. Canfield, that brings up to April the 9th of 2005. What happened then?

A We got a call to go over to the jail to pick up a prisoner and take him to the ER. He weighed over 300 pounds; and for whatever reason, the officers could not assist in the lifting. So my partner and I – I just took a deep breath and did what I had to do for the patient.

So we lifted him and loaded him; but as I was lifting him, all of a sudden I felt a

real sharp pain go up and into my back, and I couldn't feel nothing in these two fingers. (Indicating)

Q And again, when you're saying up and into your neck, you're pointing to your left arm.

A It went –

Q Into the fingers on your left hand?

A My left hand.

Q And after that, you resumed your medical treatment; did you not?

A Yes, sir.

Q All right. Tina, I think you told me that you worked until April the 18th, and you didn't work after that time; is that correct?

A Correct.

Q And after that time, the insurance people paid you some temporary disability worker's compensation benefits; correct?

A Correct.

Q My records indicate that you were paid a couple of checks between April the 22nd of 2005 and May the 1st of 2005. Does that sound right to you?

A Correct.

Q Then after May the 1st, your temporary disability benefits were discontinued; correct?

A Correct.

Q But you remained under the treatment of physicians; correct?

A Correct.

Q I think the records would indicate that you saw Doctor Balay.

A Correct.

Q Did Doctor Balay take you off work?

A Yes. I saw Doctor Balay on the 20th or 22nd, and he took me off –

JUDGE GREENBAUM: The 22nd of what month, ma'am?

A The 22nd of April of 2005.

Q And after that, you began to be treated by Doctor Charles Pearce in particular and Doctor Michael Moore; correct?

A Correct.

Q Did these doctors release you to return to work?

A No, sir. (Tr.18-24)

Despite the claimant's assertion that she experienced significant problems following the December 22, 2004, MVA, she did not seek medical treatment. Further, following the April 9, 2005, incident, she failed to give Dr. Balay any history of significant problems between December, 2004, and the April 9, 2005, incident.

The patient history states:

PT. WAS 1ST INJURED IN AMBULANCE WRECK 12/04 & INJURED NECK, L-SHOULDER, L-HIP, L-KNEE. HAD PREVIOUS SURGERY ON L-KNEE. HAS STILL BEEN WORKING. 4TH & 5TH FINGERS ON L-HAND BECAME NUMB AFTER INJURY ON 4/9/05, WHEN CARRYING PT. OVER 300# ON STRETCHER. WORKS AT AMBULANCE SERVICE. INDEX FINGER OF L-HAND BECAME NUMB & TINGLY YESTERDAY W/PAIN IN NECK & DOWN LEFT ARM. (Jt. Ex.A[1a])

The claimant next underwent an MRI on April 26, 2005. The MRI of the cervical spine was normal. The claimant returned to Dr. Balay on April 28, 2005, with complaints of decreased range of motion of her left shoulder. The claimant

was next referred to Dr. Charles E. Pearce, Jr., an orthopedic surgeon with Arkansas Specialty Care Centers in Little Rock, Arkansas, for evaluation of the left shoulder. Dr. Pearce treated the claimant for her left shoulder pain while, at the same time, recognizing that the claimant had also developed numbness and tingling in the left arm which he felt might be related to a cubital tunnel syndrome. Accordingly, Dr. Pearce referred the claimant to Dr. Michael Moore, another orthopedic specialist with Arkansas Specialty Care Centers, to evaluate the claimant's left hand and arm problems. Dr. Pearce's final diagnosis was tendonitis and impingement of the left shoulder which he elected to treat conservatively, along with cubital tunnel syndrome which Dr. Moore was to treat. (Jt. Ex.A, pp.7-9)

The claimant was first evaluated by Dr. Moore on August 11, 2005. Dr. Moore initially treated the claimant conservatively; however, following additional diagnostic studies, Dr. Moore performed a cubital tunnel surgery on October 5, 2005. For some unexplained reason, respondents terminated temporary total disability on May 1, 2005, despite the fact that Dr. Balay took the claimant off work on April 22, 2005. Respondents resumed payment of temporary total disability following Dr. Moore's surgery on October 5, 2005, and paid temporary total disability through on or about February 2, 2006, again while offering no explanation why benefits were not paid during the period claimant was receiving active medical treatment by both Dr. Charles Pearce and Dr. Michael Moore.

The primary issue to be addressed is whether, in addition to the admitted

injuries to the claimant's left shoulder and ulnar nerve injury in the left arm, the claimant sustained cervical, thoracic, and/or lumbar spine injuries related to either the December 22, 2004, and/or April 9, 2005, work-related incidents. If answered affirmatively, claimant's entitlement to associated benefits must be addressed.

From a review of the entire record, including the medical opinion of record, I find that the claimant has proven that she sustained a thoracic spinal injury, specifically, a compression fracture of the thoracic spine as the result of the December 22, 2004, MVA, but has failed to prove a work-related cervical and/or lumbar injury.

The medical evidence reflects that the compression fractures have long since healed. Therefore, the claimant cannot prove entitlement to additional temporary total disability related to the disputed thoracic injury beyond the period of her entitlement for the admitted injuries. Claimant's entitlement to permanent impairment, as well as permanent disability benefits has been specifically reserved. For reasons set out further below, the claimant has proven entitlement to additional temporary total disability related to the admitted injuries.

As previously pointed out, the claimant underwent a left cubital tunnel release with intermuscular transposition of the ulnar nerve performed by Dr. Michael Moore on October 5, 2005. (Jt. Ex.A-12e)

The record reflects that the claimant was next examined and treated in the emergency room at Baptist Health on October 22, 2005, with complaints of pain in

the neck that started at 3:00 a.m. on October 22, 2005. The claimant stated that the pain had progressed to numbness in the arms, pain in the thoracic and lumbar spine area and burning sensation in the legs. It is unclear why the claimant sought emergency room treatment rather than contacting her authorized treating physicians, although the emergency notes do reflect surgery on October 5, 2005. Additional diagnostic studies were conducted, including x-rays ordered by the attending physician, Dr. Scott Exum. Dr. Exum stated that x-rays of the lumbar and thoracic spine revealed compression fractures in the mid-thoracic spine which he stated were old and probably the result of the motor vehicle accident in December, 2004, which he felt was probably the etiology of claimant's back pain. (Jt. Ex. A, p.17)

The claimant also returned to Dr. Pearce for follow-up examination of her left shoulder on October 27, 2005. His report, which addressed her shoulder, left upper extremity, and back complaints is set out in its entirety below:

DATE OF INJURY: 12/22/04, and re-aggravation 4/9/05.

HISTORY: Ms. Canfield (formerly Ms. Gilliland) returns for followup. She has had cubital tunnel surgery about 2 weeks ago. She says that her arm is still hurting. She has no elbow pain. I think that it is a bit early for her to assume that she will have continued shoulder pain.

Apparently, she had an episode of increased back pain, 10/23/05. She was seen at the emergency room at Arkadelphia. Radiographs were made of her back. Compressions were seen in the thoracic spine, thought to be old and likely related to the motor vehicle accident that occurred in December of 2004. She was under the impression that this was causing shoulder pain.

A bone scan has previously been done on June 21, 2005. It did not show any

uptake, so I would agree that the fractures were likely at least from December. There was no uptake in the shoulders.

PHYSICAL EXAMINATION: Shoulder – There is really no objective finding that I can assess, as far as her shoulder is concerned.

IMPRESSION: As above.

RECOMMENDATIONS:

- 1) It is my recommendation that she seek care for her spine problems. I cannot say with certainty, within a degree of medical certainty, whether or not her fractures were related to her motor vehicle accident. This would be better addressed by someone specializing in that area.
- 2) As far as her shoulder is concerned, I have released her from my care to any and all activity.
- 3) As far as her shoulder is concerned, she has sustained 0% permanent partial impairment as it pertains to the upper extremity. This is according to the Guides To The Evaluation of Permanent Impairment set forth by the AMA's fourth edition.
- 4) She still has restrictions for her elbow.
- 5) I have left the door open for her to return at any point, should the need arise. (Jt. Ex. A, pp.28-29)

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the

doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See, *Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). However, if the disability does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and disability, the issue becomes a question of fact for the Commission's determination. *Kivett v. Redmond Co.*, 234 Ark. 855, 355 S.W.2d 172 (1962). See also, *Wentz v. Servicemaster*, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

The claimant's left shoulder injury and left ulnar nerve injury are undisputed. I find that the claimant has proven that she sustained a compression fracture of the thoracic spine as the result of her December 22, 2004, MVA. However, I also find that she has failed to prove a lumbar and/or cervical injury related to either of the

admitted incidents. The only remaining issue concerns claimant's entitlement to temporary total disability benefits.

The claimant's most significant injury which required surgery was her elbow injury. Since that injury is a scheduled injury, temporary total disability benefits are appropriate when the claimant is still within her healing period and has not returned to work. See, Ark. Code Ann. §11-9-521(a) (Repl. 2003); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

Although an argument can be made that the claimant's healing period ended on January 18, 2006, pursuant to the report of Dr. Michael M. Moore (Jt. Ex. A, p.35-36), it must be noted that Dr. Moore referred the claimant to Dr. Reginald Rutherford for additional diagnostic studies. Dr. Rutherford conducted a repeat electrodiagnostic testing and found that the claimant's healing period had ended for the ulnar nerve surgery on March 1, 2006. (Jt. Ex. A, pp.40-41)

I recognize that Dr. Rutherford, in turn, referred the claimant for a functional capacity evaluation; however, said evaluation performed on April 4, 2006, did not extend the claimant's healing period. I feel compelled to point out that the functional capacity evaluation did indicate that the claimant gave an unreliable effort with forty (40) of the fifty-eight (58) consistency measures indicating inconsistent effort throughout the evaluation process. (Jt. Ex. A, pp.42-59)

AWARD

Respondent, Travelers Insurance Company, is hereby directed and ordered

to pay, to the claimant, temporary total disability benefits for the period beginning May 1, 2005, and continuing through March 1, 2006.

All accrued benefits shall be paid in lump sum and without discount. Respondents may claim credit for any temporary total disability previously paid.

Respondents are further directed and ordered to pay all reasonably necessary and authorized medical treatment, including, but not limited to diagnostic studies performed by an authorized treating physician or by referral from an authorized treating physician.

Additionally, claimant's attorney, Mr. Gary Davis, is hereby awarded the maximum statutory attorneys fee on this entire Award pursuant to, and limited by, Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge