

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F609107 & F608714

NANCY CARNEY, EMPLOYEE	CLAIMANT
GILCHRIST BAG COMPANY INC., EMPLOYER	RESPONDENT
COMPANION PROPERTY & CASUALTY, CARRIER	RESPONDENT

OPINION FILED MAY 30, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in El Dorado, Union County, Arkansas.

The claimant was PRO SE.

The respondent was represented by HONORABLE ANDY CALDWELL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on April 12, 2007, in El Dorado, Arkansas. An Interim Prehearing Order was entered in this case on January 10, 2007. This Interim Prehearing 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 Interim Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

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

1. It is stipulated that the employer/employee/carrier relationship existed at all relevant times.

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

1. Compensability of claimant's back problems.
2. Claimant's entitlement to additional medical benefits.
3. TTD.
4. Notice.

The record consists of the April 12, 2007, hearing transcript and the exhibits contained therein.

DISCUSSION

The claimant, Nancy Carney, worked as a bag catcher for Gilchrist Bag Company between August 29, 2004, and July 27, 2006. In that job, the claimant would catch bags as they came down a belt. She would put the bags into boxes. She would on occasions put small boxes into larger boxes, and then stack the boxes onto a pallet until the pallet was full. The large boxes weighed 50 to 60 pounds.

On August 1, 2006, Dr. Lee Buono, a neurosurgeon, performed a diskectomy and posterior lumbar interbody fusion surgery at the L4-5 level of the claimant's spine. Dr. Buono's preoperative diagnosis and postoperative diagnosis were each grade II spondylolisthesis, spinal stenosis and lumbar instability at the L4-5 level of the spine.

The claimant contends that she sustained a compensable low back injury as a result of a lifting incident on February 5, 2005, as a result of a lifting incident on April 6, 2006, and/or as a result of repetitively lifting boxes while working for the respondents from August 29, 2004, until July 27, 2006. In the present claim, the claimant seeks an award of her medical treatment and an award of temporary disability compensation while she remains off of work.

In Wal-Mart Stores v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001), the Arkansas Court of Appeals summarized the requirements for establishing a compensable gradual onset low back injury as follows:

When a claimant requests benefits for an injury characterized by gradual onset, Arkansas Code Annotated section 11-9-102(4)(A)(ii) (Supp. 1999) controls, defining "compensable injury" as follows:

(4)(A)(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

. . . .

(b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A claimant seeking benefits for a gradual-onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. [*Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001)]. Furthermore, objective medical evidence is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, I find that the claimant has failed to establish by a preponderance of the credible

evidence that she sustained a work-related back injury. In this regard, *Dorland's Illustrated Medical Dictionary*, 28th Ed., defines "spondylolisthesis" as "forward displacement of one vertebra over another, usually of the fifth lumbar vertebra over the body of the sacrum, or of the fourth lumbar over the fifth, usually due to developmental defect in the pars interarticularis." "Traumatic spondylolisthesis" is defined as "that due to acute fracture of the facets, pedicle, or lamina, rather than of the pars interarticularis."

In the present case, the medical record does not contain any indication of acute fractures of the facets, pedicle, or lamina of the claimant's L4 or L5 vertebra, consistent with the definition of traumatic spondylolisthesis. To the contrary, the claimant's April 8, 2005, x-rays indicate that her spondylolisthesis is secondary to bilateral pars defect. Her April 8, 2005, lumbar spine CT indicates that her spondylolisthesis is secondary to bilateral pars defects at L4. Her September 8, 2005, MRI indicates spondylolisthesis of L4 with respect to L5 due to bilateral pars defects. On July 26, 2006, Dr. Buono interpreted an MRI of that date as indicating "grade 2 spondylolisthesis at L4 on L5 causing severe AP diameter

canal stenosis and lateral recess stenosis. She has an obvious pars defect there." Dr. Buono also indicated on July 26, 2006, that the abnormalities identified on MRI were the etiology for Ms. Carney's symptoms. The preponderance of the evidence establishes that the claimant's spondylolisthesis was secondary to bilateral pars defect.

The claimant's family physician, Dr. Chester Wynn, was the only physician whose comments regarding the cause of the claimant's back abnormalities are contained in the hearing record. Dr. Wynn stated in a January 3, 2006, letter that he agreed with the radiologist's interpretation on the September 8, 2005, MRI, and Dr. Wynn stated that he could not determine or speculate when or how those changes occurred.

In addition, I note that the claimant began working for Gilchrist Bag Company on August 29, 2004, and a February 2, 2005, report from Stephens Community Clinic indicates that at that time the claimant was experiencing lower back pain, with pain radiating bilaterally that day to both hips and legs. Although the report documented that the claimant picked up a box the day before and couldn't straighten up, the report also documented that the claimant's pain began a

year earlier, i.e., before the claimant became employed by Gilchrist Bag Company.

The claimant testified that she had a urinary tract infection in 2003 which she was told caused leg cramps and back pain. The claimant's testimony regarding a urinary tract infection causing her back pain and leg cramps shortly before beginning work at Gilchrist Bag Company on August 29, 2004, is not corroborated by any of the medical reports offered into the hearing record. In light of the history contained in the Stephens Community Clinic report dated February 2, 2005, and the results of the claimant's subsequent diagnostic tests indicating her low back condition was spondylolisthesis secondary to pars defect, the claimant has failed to persuade me that the back and leg symptoms which she experienced in 2004 before starting to work for Gilchrist Bag Company were caused by a urinary tract infection rather than the spondylolisthesis diagnosed in the medical record beginning in April of 2005. I therefore find that a preponderance of the credible evidence establishes that the claimant's spondylolisthesis condition at issue in this claim pre-existed her employment at Gilchrist Bag Company.

The Arkansas courts have long recognized, however, that a preexisting disease or infirmity does not necessarily disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. Jim Walter Homes Travelers Ins. v. Beard, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

In the present case, no physician has opined that the claimant's employment at Gilchrist Bag Company aggravated, accelerated or combined with her spondylolisthesis to produce her disability beginning in July of 2006, when Dr. Buono proposed surgery for her spinal deformity. In light of the nature of the claimant's back condition at issue, and the existence of her back symptoms prior to her employment at Gilchrist Bag Company, I find that it would require speculation and conjecture on my part to conclude on this record that the claimant's employment at Gilchrist Bag Company aggravated, accelerated, or combined with her pre-existing spondylolisthesis to cause her disability and need for surgery in July of 2006.

For the reasons discussed herein, I find that the claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable injury to

her lower back caused by her employment at Gilchrist Bag Company. Because I find the claimant failed to establish that she sustained a compensable injury, I find that the respondent's notice defense is moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employer/employee/carrier relationship existed at all relevant times.
2. The claimant has failed to establish by a preponderance of the credible evidence that she sustained a work-related back injury.

Specifically, the preponderance of the evidence establishes that the claimant's back condition at issue is a grade II spondylolisthesis secondary to bilateral pars defect. The preponderance of the evidence establishes that this condition preexisted her employment with Gilchrist Bag Company, Incorporated. The claimant has failed to establish by a preponderance of the evidence that her employment at Gilchrist Bag Company aggravated, accelerated, or combined with her spondylolisthesis to produce her disability beginning in July of 2006, when Dr. Buono proposed surgery for her spinal deformity.

ORDER

For the reasons discussed herein, this claim must be,
and hereby is, respectfully denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge