

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412579

CARRIE CARTER, EMPLOYEE

CLAIMANT

MCDONALD'S, SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES, TPA

RESPONDENT

OPINION FILED JANUARY 18, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 18, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondent represented by the HONORABLE MILESSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On December 5, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Ms. Carrie Carter, coupled with medical reports and other documents

comprise the record in this claim.

DISCUSSION

Carrie Carter, the claimant, with a date of birth of July 22, 1949, was employed by respondent in November 2003, in the kitchen area. Prior to her employment with respondent claimant was employed at Forrest Heights Junior High School. Claimant developed low back/spinal problems during her employment with the school and wore a back brace.

The testimony of the claimant reflects that while performing employment duties for respondent she suffered an injury to her right ankle. Specifically, the claimant testified that while washing and putting away large pots and pans she struck her right ankle on a lower counter shelf. Claimant acknowledged that she did not report the injury to supervisory personnel. The testimony of the claimant reflects that she continued to work for respondent for approximately two weeks following the accident before quitting. Claimant testified that after leaving the employment of respondent she secured another job however was only able to work for one day before having to quit it.

Claimant testified that she sought and obtained medical treatment relative to her right ankle at a foot clinic where she was seen by Dr. Bruce Sanderson. Claimant noted that after approximately three visits she was referred by Dr. Sanderson to Dr. Steven Kulik, Jr., a Little Rock Orthopedic physician. Claimant testified that she ultimately was admitted to the hospital and underwent surgery under the care of Dr. Kulik. Claimant asserts that following the surgery she was confined to a wheelchair for three (3) months, and thereafter had to use a cane. Claimant acknowledged that Medicare paid for the cost of her surgery.

On cross-examination claimant concedes that she authored the November 20, 2006, letter,

which is a part of her pre-hearing questionnaire response, describing the mechanics of her injury. Additionally, claimant confirmed that the hand writing on the October 6, 2004, Patient History document was her writing. (RX. #1, p. 1). While the claimant acknowledged signing the Form AR-C on September 26, 2004, she denies that the written description of the injury reflected on the document was done by her. (RX #2).

In her November 20, 2006, correspondence claimant noted that she started her employment with respondent on November 22, 2003. In describing the incident which serves as the basis for the current claim, the November 20, 2006, correspondence the claimant reflects:

November 25, 2003 I was shock and I was hurry dishwasher (my hand) after made breakfast Mexico roll burrito early until about 2 hour. And when I done finish, other manger note to me about check lobby dirt and they need me to do . I accept his words. And I doing some restroom and lobby. And I watch on black doing. And I walk back dishwasher again. And I stand up and I saw black guy drop on floor behind me and other chef walk t pick up by old oil pan under where dishes washer I saw oil are dirty did not new oil. And I not eat there. Nothing.

I suffered of my heel from pan are three time and I did visit at Doctor Office. (I won't tell him about I work. (CM #1).

The medical in the record reflects that he claimant was seen by Dr. Steven Kulik, Jr., a Little Rock orthopedic surgeon, on October 6, 2004, pursuant to a referral of Dr. Bruce Sanderson. The October 6, 2004, Patient History, which was completed by the claimant in connection with the visit reflects regarding the mechanism of her injury:

From heavy pan-pot and mops at work Furniture TV move too much. First my back ache for 7 yrs. Next heel pain wear shoes walk too much at old job Quit 4 times. (RX. #1, p. 1).

The October 6, 2004, clinic note of Dr. Kulik relative to the claimant noted that the claimant had been referred by Dr. Sanderson and that she is deaf. The clinic further noted that

the interview was conducted through an interpreter. The October 6, 2004, clinic note further reflects:

For several years, she has had pain at the insertion of her right Achilles tendon. While residing in California, she was to have surgery in September but subsequently returned to Arkansas (which is her original home). Her pain is described as moderate and sharp. It wakes her from sleep. There is weakness. It is getting worse. Lying in bed and rest make it better.

* * *

ASSESSMENT: Calcific Achilles tendonitis with Haglund's deformity. (RX. #1, p. 2).

On November 11, 2004, the claimant was admitted to St. Vincent Health System and underwent surgery under the care of Dr. Kulik relative to the right calcific Achilles tendonitis, right calcaneal heel spur and right calcaneus Haglund deformity. (RX. #1, p. 9-11).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On or about November 1, 2003, the relationship of employee-employer existed between the parties.
3. On or about November 1, 2003, the claimant did not sustain an injury arising out of and in the course of her employment.

CONCLUSIONS

The claimant asserts that she suffered an injury to her right lower extremity within the

course and scope of her employment with respondent in November 2003, which ultimately required medical treatment, to include surgery, and resulted in a period of total incapacitation from engaging in gainful employment. The claimant seeks corresponding temporary total and medical benefits from respondent. Respondent deny that the claimant sustained a work-related injury while within its employment and controvert this claim in its entirety.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. Specifically, claimant maintains that she suffered a specific incident injury to her right lower extremity in November 2003, while discharging employment duties for respondent.

In order to prove 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 an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective finding, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i). Should the claimant fail to establish by a preponderance of the evidence either of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant claim claimant has failed to specifically identify any incident which serves as the basis for her claimed right lower complaint. Specifically, while the claimant identified an

incident at work in November 2003, as the cause of her injury, she readily acknowledged that she did not report the injury or incident to supervisory personnel of respondent. The patient history supplied by the claimant to Dr. Steven Kulik on October 6, 2004, does not recite a work-related injury as the basis for her need for medical treatment. Indeed, the medical records of Dr. Kulik reflect a history to the contrary. The medical in the record is not supportive of a traumatic to the claimant's right lower extremity, nor is there a nexus between the medical treatment claimant received under the care of Dr. Kulik and her employment with respondent. The claimant has failed sustain her burden of proof by a preponderance of the evidence that she suffered an injury arising out of and in the course of her employment with respondent. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE