

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605362

AMANDA DAVISON	CLAIMANT
MCDONALD'S	RESPONDENT
RISK MANAGEMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 9, 2007

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

Claimant represented by ORVIN FOSTER, Attorney, Mena, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on November 21, 2007, in Fort Smith, Arkansas.

A pre-hearing was entered in this case on August 30, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated at this time. Immediately prior to the commencement of the hearing, the parties announced that they could agree on the appropriate weekly compensation rates. A copy of the pre-hearing order with this amendment noted thereon was made Commission's Exhibit No. 1 to the hearing.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. April 13, 2006, the relationship of employee-employer-TPA existed between the parties.

3. The appropriate weekly compensation benefits are \$84.00 for total disability and \$84.00 for permanent partial disability.

4. The claim is controverted in its entirety.

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 right arm on April 13, 2006.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from April 14, 2006 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant while at her workstation slipped and fell in the McDonald's Store in Mena, Arkansas, on April 13, 2006, injuring her right arm and wrist. Claimant remains off work, has sustained a degree of permanent injury which is yet undetermined. Claimant is entitled to temporary wage loss benefits, medical benefits, now and in the future, permanent injury benefits, possible rehabilitation and other benefits. Claimant is not waiving her right to future rehabilitation benefits, but is not receiving any such sources now."

In regard to these issues, the respondents contend:

"Respondents contend the claimant did not suffer a compensable injury on or about 4/13/06. The claimant was not performing employment related services at the time of the injury."

DISCUSSION

_____The central issue to be resolved is whether the claimant sustained a "compensable injury" to her right arm on April 13,

2006. The burden rests upon the claimant to prove all of the facts necessary to establish a “compensable injury”, as that term is defined by the Act.

The first elements that must be proven in order to establish “compensable injury” are contained in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant to prove by medical evidence, the actual existence of the physical injury or condition alleged to be compensable. Further, the actual existence of this physical injury or condition must be supported by “objective findings” as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case, the medical evidence presented “establishes” the existence of two types of possible injuries or conditions involving the claimant’s right arm. The claimant’s primary treating physician for her right arm difficulties has been a Dr. James Rogers. In his initial records, Dr. Rogers diagnosed the claimant as suffering from a contusion of her right shoulder and right wrist. In his subsequent report of May 4, 2006, Dr. Rogers diagnosed a right brachial plexus injury.

However, Dr. Rogers’ opinion concerning the existence of these two types of injury are based solely upon the claimant’s subjective complaints. X-rays of the claimant’s right shoulder, right elbow, and right wrist failed to reveal any physical abnormalities or signs of injury. These studies noted no fractures, dislocations, or joint effusion (swelling). The physical examinations conducted by Dr. Rogers, during his course of treatment have failed to record

any objective findings. He has noted no observations of swelling, discoloration, crepitus, atrophy, abnormal reflexes or other objective neurological findings, involving the claimant's right arm.

In his report of May 4, 2006, Dr. Rogers does note a rather bizarre subjective finding. He recorded that the claimant complained of severe pain upon active range of motion of her right arm, but only complained of minimal pain on passive range of motion of this arm. Such a finding would be inconsistent with any type of physical injury, either musculoskeletal or neurological.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove the existence of any physical injury to her right arm that would be supported by "objective findings". Thus, she has failed to satisfy the requirements for a "compensable injury" set out in Ark. Code Ann. §11-9-102(4)(D). Her failure to satisfy this statutory requirement would prevent a finding of a "compensable injury" to this portion of her body.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On April 13, 2006, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On April 13, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$84.00 for both

total disability and permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the evidence presented that she sustained a “compensable injury” to her right arm on April 13, 2006. Specifically, she has failed to establish the existence of any physical injury to this portion of her body, which would be supported by “objective findings” as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

5. The respondents have denied the occurrence of any compensable injury to the claimant’s right arm, on April 13, 2006, 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