

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NOS. F014290 and F100161

TAMMY J. DICKSON, EMPLOYEE

CLAIMANT

DARI INN, EMPLOYER

RESPONDENT

**ZENITH INSURANCE COMPANY,
CARRIER/TPA**

RESPONDENT

OPINION FILED APRIL 30, 2007

Hearing before Administrative Law Judge O. Milton Fine II on March 7, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. Andrew Ivey, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 7, 2007, the above-captioned claims were heard in Mountain Home, Arkansas. A pre-hearing conference took place on December 11, 2006. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. Claimant and Respondents withdrew the third, resulting in the following three, which I accept:

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

2. The employee/employer/carrier relationship existed on or about May 2000 and at all relevant times.
3. The Claimant sustained compensable bilateral carpal tunnel injuries that were reported on September 28, 2000.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Claimant withdrew the issue regarding her alleged entitlement to an evaluation to determine whether she is entitled to an impairment rating, leaving the following that were litigated:

Claimant:

1. Whether Claimant sustained compensable injuries to her back, neck and shoulder.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.

Respondent:

1. Whether Claimant sustained compensable neck and shoulder injuries.
2. Whether Claimant is entitled to medical benefits related to the alleged neck and shoulder injuries.

Contentions

Claimant:

1. Claimant sustained compensable injuries to her neck, back and shoulder and is entitled to reasonable and necessary medical treatment related to these injuries.

2. Claimant is entitled to reasonable and necessary medical treatment, including an evaluation by a physician to determine whether she should be assigned an impairment rating.

Respondents:

1. Claimant is not entitled to the requested benefits for alleged injuries to her neck and shoulder because she cannot establish the injuries are identifiable by time and place of occurrence which arose out of and in the course of her employment with Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including 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, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that her neck, shoulder and back injuries are compensable.
4. The reasonable and necessary medical care issue is moot in light of the above finding.

CASE IN CHIEFSummary of Evidence

_____ Four witnesses testified at the hearing: Claimant; her husband; Sue Allen, the owner of Respondent Dari Inn; and Roxanne Parlet, an employee of Dari Inn.

In addition to the pre-hearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit No. 1, a compilation of her medical records, consisting of three index pages and 51 individually numbered pages; and Respondents' Exhibit No. 1, a compilation of Claimant's medical records, consisting of two index pages and 16 individually numbered pages.

Testimony

Roxanne Parlet. Called by the Claimant, Parlet testified that while she could not remember specifically whether she was working at Respondent Dari Inn in May 2000, she must have because she worked for Sue Allen and with Claimant for four months. It was Parlet's understanding that Claimant had fallen at work; that she had slipped in an area of the kitchen that is close to the deep fryer, that she had tried to brace herself, but had fallen and was injured. At that time, Parlet and Claimant had worked together for approximately one month. At the time in question, Dari Inn had employees other than Parlet and Claimant.

Parlet testified that she knew that Claimant had reported the alleged fall to Allen. But her testimony shows that she had no firsthand knowledge of this. She only knew what Claimant had related to her, and according to her testimony, Allen would have been aware based simply on the discussion of the injury among the employees within the close

confines of Dari Inn. Likewise, Parlet stated that she did not witness the alleged fall, but merely found out about it the next day from Claimant.

Before the alleged fall, Parlet had never heard Claimant complain or observed her to have any difficulties with her neck, back or shoulders. Parlet stated that Claimant was capable of performing all of the required activities at Dari Inn, whether it was her own duties or helping the other employees. Claimant cooked, worked the cash register, waited tables, and helped clean up. However, after the alleged fall, Claimant had trouble picking up the fryers. It was more difficult to move the baskets and perform other tasks. Claimant complained about pain in her hands and neck.

On cross-examination, Parlet reiterated that she was not present when Claimant allegedly fell and that her knowledge of the events in question were based entirely on what Claimant and the other employees had told her. She also stated that any conversations that she overheard between Claimant and Allen regarding workers' compensation could have related to Claimant's carpal tunnel condition. Parlet also testified that she did not know if Claimant had any physical problems prior to the alleged fall.

Parlet stated on re-direct that during her tenure at Dari Inn, there was a problem with employees slipping on the concrete floor.

Sue Allen. Called by the Claimant, Allen testified that was the owner of Dari Inn in May 2000, the period in question. She stated that she was not present on the evening when the fall allegedly occurred. Her knowledge of the occurrence was due to the fact that the employees, including Emily Carion, were laughing about it the day after it supposedly occurred. Dari Inn has a painted concrete floor that has grease and water spilled on it from time to time.

Allen stated that Claimant did not mention getting injured, because if she had, Allen would have gotten in touch with the workers' compensation carrier. Claimant had carpal tunnel before Allen took over Dari Inn. Allen was aware that a doctor had said that Claimant had some kind of injury to her back, neck and shoulder, and that an MRI showed herniated discs at two levels. This occurred in the fall of 2000. Claimant went to a Christian clinic in August or September, and was referred in October or November to a carpal tunnel specialist.

Allen testified that any conversation that Roxanne Parlet overheard between Claimant and Allen regarding workers' compensation related to the carpal tunnel syndrome. She was not sure if Claimant ever told her about her neck problem; but she learned about it right after Claimant went to the doctor in Little Rock. That was the first Allen knew about the fall causing injury to Claimant. Allen learned through the other employees that Claimant was going to try to get her back and neck treated.

Prior to the alleged fall, Allen never heard Claimant complain about neck pain other than ordinary complaints everyone makes after over-exertion. Claimant made complaints after working on building her house. Allen never had any issues with Claimant's work that would show that she had any kind of problems other than the carpal tunnel syndrome. Claimant stated that it hurt when she flipped hamburgers and picked up the deep fryers. Because of this, Allen insisted that someone else change and strain the grease. But Allen never heard Claimant complain about her neck.

On cross-examination from Respondents' counsel, Allen testified that she was not aware of any injuries sustained by Claimant while working at Dari Inn, that she knew the rule of thumb was to report it to the carrier. Claimant told of the fall and was laughing

about it with the other employees. When Allen heard the employees laughing about the alleged fall, she asked Claimant if she was hurt; and Claimant answered, no, just my pride. None of the other employees told Allen that Claimant was hurt. Allen was aware that Claimant had sustained a carpal tunnel injury; and it was reported after she went to the Christian clinic and was diagnosed with carpal tunnel. As for the neck, back and shoulder injuries, Allen testified that she was not aware of them until other employees related to her that Claimant had mentioned it to the doctor while being treated for carpal tunnel.

When examined by me, Allen confirmed that Claimant stated that she only hurt her “pride.” Allen interpreted “pride” as a euphemism for “butt.”

Tammy Dickson. Testifying on her own behalf, Claimant stated that she is 46 years old and lives in Yellville. She worked for Dari Inn between eight and nine years. At the time of her alleged injury, she was cooking there; but she did “a little bit of everything, whatever needed to be done.”

She testified that on the night she allegedly fell, she was walking toward the sink, right in front of the steam table, when she slipped and fell. While falling, she tried to catch herself, reaching with her right hand to grab the steam table. This caused her to nearly pull her arm out of its socket. In the words of Claimant, she fell on her “butt” on the concrete. Although feeling pain, she brushed herself off and went back to work. Claimant testified that Allen was not at Dari Inn at the time of fall, but that she told Allen about it the next day. She stated that it “might have been true” that she told Allen that she hurt her “pride.” Claimant said that her focus had been on the pain caused by her carpal tunnel.

When she went to the Christian clinic regarding her carpal tunnel, which was verified by a nerve conduction study, Claimant told them about the pain in her neck,

shoulder and upper back. She was scheduled for an MRI. When the results came back, Claimant told Allen because Claimant and her husband did not have any insurance to cover the medical care. Her husband accompanied her on the visit to Allen. While Claimant was unsure of the date, she stated that this would have occurred some time after Allen was notified about the carpal tunnel. She believed the visit took place soon after July 14, 2000, when Dr. McBride issued his report on the MRI. According to Claimant, Allen told her that she would turn the claim in to workers' compensation.

Claimant testified that she has not had surgical treatment on her neck because she lacks insurance. Even after she had carpal tunnel surgery in both wrists, the neck pain did not abate but has increased. She stated that it is getting very hard to cope with her neck problem. It requires that she constantly hold her head to the right, over her shoulder. And the pain has gotten worse in her right shoulder as well. Claimant stated that she has had no falls or other injuries to her neck, upper back and right shoulder since the alleged fall in May 2000.

On cross-examination, Claimant testified that she did not present a witness at the hearing that could corroborate her account of the fall because she could not locate Emily Carion. She stated that she told the personnel at the Christian clinic and Dr. Moore's office about the alleged fall, but that she was not aware that her medical records do not mention a fall. While she stated that she told Dr. Anthony McBride about the fall, his July 14, 2000 report reflects that Claimant has had "increasing right arm and shoulder pain over the past two years" and "chronic mild neck pain as well." She also did not dispute the record from her May 25, 2000 visit to the Mountain Home Christian Clinic that reflects that she had had back pain for the past two years.

Claimant had a back injury when she was a teenager that required her to visit a chiropractor on more than one occasion. And she stated that she fell “numerous times at Dari Inn, even before Sue had it.” Claimant also confirmed that she had helped hang sheet rock at her house. As for the visit that she and her husband had with Allen, Claimant denied that it was simply regarding her hands; and she stated that the visit took place after her visit to the Mountain Home Christian Clinic.

On re-direct examination, Claimant confirmed that the record of her May 25, 2000 visit to the Mountain Home Christian Clinic reflects that she has fallen in the past and that she has back, hand and arm pain, as well as numbness. The record also reflects that Claimant was referred for an x-ray of her cervical spine. This, she testified, shows that she was asking for medical help for her neck, hands and back at the very beginning of these injuries. She denied that she lied about the fall or that she actually hurt herself at home. As for Allen’s not recalling that Claimant complained about her neck, Claimant explained that she is not a complainer and is not confrontational. After the MRI, she discovered that she was in worse shape than she thought and knew she would have to turn the claim in. When Claimant and her husband met with Allen, her boss told her to do what she needed to do. Claimant continued working at Dari Inn for over a year after the injury.

On re-cross examination, Claimant confirmed that the medical records lack any mention of Claimant having fallen at work. When questioned again by her attorney, however, she stated that it was not up to her regarding what was written in the medical records.

When questioned by me, Claimant stated that what part of her fall really hurt was when she attempted to catch herself by grabbing the steam table—“it just jerked my whole

right side” But the grabbing action did not completely break her fall. She testified that while she had fallen at Dari Inn before, this one was not like the others: “No, I just hit hard. And really, the hitting hard, honestly, wasn’t what hurt me as much as grabbing that steam table. I wished I hadn’t because that’s what hurt my shoulder. I know it. I mean, it just about pulled it out of the socket” She also stated that while her neck may have had minor problems before, the jerking action is what injured it.

Regarding Parlet’s testimony regarding conversations she overheard between Claimant and Allen, Claimant stated that those conversations were solely about her carpal tunnel. She and her husband met with Allen one morning before Dari Inn opened to tell her that Claimant had to turn the neck injury claim in. This occurred after the MRI results came out.

Jeff Dickson. Called by the Claimant, Dickson testified that he has been married to Claimant for 25 years. He stated that prior to May 2000, he was not aware of her having any problems with her neck, back or shoulders. He first knew of her having neck problems after she fell at Dari Inn.

Dickson recalled going with Claimant to meet with Allen regarding Claimant’s neck. They met before work started, and sat down at a table. According to Dickson, Allen stated in response to being told about the neck injury that “she’d file it through workmen’s comp., no problem.” Since May 2000, Claimant’s physical condition has been poor because she is in constant pain “from her neck to her toes.” While Dickson could not recall whether his wife told the Mountain Home Christian Clinic that she had fallen at work, there was no reason why Dickson or Claimant would not have conveyed this information.

On cross-examination, Dickson admitted that he did not witness his wife fall at Dari Inn, that his information about it is based on what she told him. He was not aware of the reference in the medical record to Claimant having had pain for two years prior to the alleged fall, and did not hear Claimant complain. Dickson stated that he was not always in the room with Claimant when she was visiting with the doctor, and that he did not know that the medical records lack any reference to an injury at work.

Dickson stated on re-direct that the only reason he knew that the record would be devoid of reference to a work-related injury was that Claimant has always been a "peacemaker," and not one to complain.

Sue Allen. Recalled as a rebuttal witness by Respondents, Allen testified that she did not recall meeting with Claimant and her husband regarding Claimant's neck and back problems. She stated that if the injuries had been reported to her, she would have notified Respondent carrier because "That's your first line of defense."

When questioned by Claimant's counsel, Allen admitted that the meeting could have occurred, and that had it taken place, her advice would have been along the lines of Claimant's testimony regarding what she allegedly said: "Do what you have to do." She stated that the only physical difficulties she observed Claimant having she attributed to the carpal tunnel. There was no notable change in this after the time of the alleged fall. She was aware from conversations with employees that Claimant was claiming that she had a neck injury from work.

On re-direct, Allen testified that she heard from employees that Claimant was claiming that she hurt her neck and back in a fall at work and was attempting to get someone to testify that they had seen her fall. This occurred after Claimant had seen the

physician in Little Rock, but before Respondent carrier notified her that Claimant had filed a claim. But Allen reiterated that Claimant never told her that she had injured her neck and back in a fall.

Allen admitted on re-cross examination that she knew that Claimant had fallen. But Emily Carion never told her that she saw Claimant fall. But Allen testified that she believed Carion was working with Claimant that night and saw her fall, and that Allen does not think Claimant is lying about having fallen.

Records

The medical records of Claimant that were introduced at the March 7, 2007 hearing and are part of Claimant's Exhibit 1 and/or Respondents' Exhibit 1 reflect the following:

On May 25, 2000, she presented to the Mountain Home Christian Clinic. Under "Injuries," the patient history reads: "Has fallen in Past & doesn't know if that caused the back pain." Her "disabling conditions" are listed as "Back Pain-Hand+Arm pain-numbness." Her "Chief complaints" were: "Hands go numb - @ nights Back pain past 2 yrs-getting worse." Dr. Joe Tullis's subjective finding was that Claimant was an "earnest non-drug seeking hard working girl [with a] C5-6? radiculopathy." His objective findings were cervical spine spurring and disc narrowing. He diagnosed her as having neck and arm pain, and referred her for an MRI of her cervical spine. His MRI findings were the following:

1. Diffuse degenerative change includes anterior and posterior spurring and ligamentous thickening and hard disc disease and some soft disc disease.
2. At C3-C4, disc bulging causes no stenosis due to a large spinal canal.
3. At C5-C6, there is right paramedian and neuroforaminal hard and soft disc protrusion, causing spinal stenosis. This is definitely abnormal at C5-C6.
4. At C6-C7, there is diffuse posterior spurring and mild disc protrusion posteriorly and into both neuroforamina. Abnormal study.

Dr. Chip Norris of the Mountain Home Christian Clinic saw Claimant on June 8, 2000. He found her to have full range of motion, as well as good sensation and reflexes. His assessment was "spinal stenosis & lumbar disk protrusion," and referred her to Dr. Anthony McBride, who saw Claimant on July 14, 2000. Dr. McBride wrote: "The patient is a 39-year-old right hand dominant female who has had onset of increasing right arm and shoulder pain over the past two years. She has had chronic mild neck pain as well." Dr. McBride found that she had full range of motion of the right shoulder actively with mild crepitation. X-rays of the shoulder revealed that Claimant had superior AC joint spurring but no inferior spurring. There were no signs of glenohumeral arthrosis. He reviewed her cervical spine x-rays and found her to have mild loss of cervical lordosis at C5-6. The oblique views revealed no signs of foraminal stenosis. The June 1 MRI showed a small right-sided C5-6 disk herniation, along with a more significant-appearing C6-7 central disk herniation. His assessment was, "C5-6 and C6-7 cervical disk herniations with right upper extremity radiculopathy." He recommended home cervical traction. On September 6, 2000, Dr. McBride noted:

She is returning for evaluation of her cervical disk herniations. She has had some improvement in her neck pain with the traction; however, she had had persistent hand numbness and this does awaken her from sleep at night. She has apparently had these problems for seven years.

She was referred for a nerve conduction study.

After performing the nerve conduction study, Gary Widner, P.T., opined that

Today's NCV studies seem to indicate entrapment of Median nerve at the carpal tunnel bilaterally. Though some of this patient's symptoms could be coming from cervical or thoracic condition, the results of this study would seem to indicate that the patient has a significant entrapment of the Median nerve bilaterally.

Dr. Michael Moore of the Arkansas Center for Surgery of the Hand and Upper Extremity was brought in on Claimant's case. On November 20, 2000, he wrote Respondent carrier and stated in pertinent part:

Ms. Dickson is a pleasant 39-year-old right hand dominant female who has worked as a cook at the Dari Inn for approximately eight years. Ms. Dickson reports her job requires her to perform lifting, gripping, pushing and pulling, on a regular basis. During the past 2-3 years, Ms. Dickson has noted the onset of pain in both hands. The pain is associated with numbness in her fingers. In addition, she describes neck pain which will radiate in the right shoulder. Finally, she describes pain in the right shoulder when she attempts to abduct the arm. Ms. Dickson reports she lifts pots and pans with her arms in an extended position. In the past several months her symptoms have become more severe. She describes waking up at night with numbness in her fingers.

...

It is my opinion that Ms. Dickson presents with a complex problem. I suspect some of her symptoms may be related to a bilateral carpal tunnel syndrome. In addition, the neck and shoulder symptoms may be related to a disc herniation. Finally, her right shoulder pain is most likely related to impingement. Prior to considering carpal tunnel surgery, it is my opinion Ms. Dickson should undergo an evaluation of her cervical spine and right shoulder.

...

I cannot state that Ms. Dickson's work as a cook would be a primary cause of her carpal tunnel syndrome. However, if she does perform significant lifting and gripping while performing her job, it is my opinion this work activity could exacerbate symptoms associated with carpal tunnel syndrome. Ms. Dickson reports she holds the pots and pans with her arms in an extended position. This type of work activity could precipitate a right shoulder impingement syndrome. With regard to the cervical disc herniations, I cannot state that the cervical disc herniations could be related to her work activities. Dr. Saer would be better qualified to render an opinion regarding this matter. Finally, Ms. Dickson underwent a BTE validity test which revealed a good effort.

His notes from the same day reflect that Claimant had presented with pain and numbness in her fingers, plus right elbow pain. His notes add, "pain x 2-3 years. Possibly coming from neck or shoulder."

On November 29, while Dr. Moore recommended Claimant for carpal tunnel release surgery, pending approval of the surgery he released her to return to work. In a follow-up letter to Respondent carrier that day, Dr. Moore stated that

I cannot definitively state that her work as a clerk [sic] would be a primary cause of carpal tunnel syndrome. However, Ms. Dickson reports that she performs significant lifting and gripping on a regular basis. It is my opinion this work activity could exacerbate symptoms associated with carpal tunnel syndrome.

In his December 18, 2000 letter to Respondent carrier, Dr. Moore wrote the following:

Tammi Dickson has been evaluated for bilateral hand and arm pain. She has undergone a nerve conduction and EMG study which was consistent with a moderate to severe bilateral carpal tunnel syndrome. She reports that she has worked as a cook at a small restaurant. She describes lifting deep fryers, dressing sandwiches, making and boxing lunches, and washing dishes.

It is my opinion if Ms. Dickson had a pre-existing carpal tunnel syndrome, it is likely this work activity would have exacerbated her symptoms sooner. In addition, shoulder impingement, as well as cervical disc herniation, would not be a cause of carpal tunnel syndrome or carpal tunnel-like symptoms.

In his March 19, 2001 letter to Respondent carrier following performing a right carpal tunnel release on Claimant, Dr. Moore stated that she "still describes aching in the right shoulder."

The record of Claimant's May 24, 2001 visit to the Mountain Home Christian Clinic reflects that she presented with right shoulder pain. On October 24, 2003, and February 24, 2005, she presented with back pain. She again complained about her back, along with her neck and shoulder, on August 26, 2006. Two months later, on October 27, 2006,

Claimant again presented with back and neck pain, along with pain in her right arm. On December 18, 2006, she complained of low back and cervical pain; and on January 11, 2007, she reported that her back pain had not gotten any better.

ADJUDICATION

A. Compensability

Claimant has alleged that she incurred injuries to her neck, back and right shoulder as a result of a fall she incurred at Dari Inn in May 2000.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of all of Claimant's alleged injuries, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.* If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

After review of the evidence presented in this case, I cannot find that Claimant has proven by a preponderance of the evidence that her injuries at issue were caused by a specific incident identifiable by time and place of occurrence, nor can I find that there is a causal connection between her May 2005 fall and these injuries.

It is true that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on the 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 reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). The problem with that here is that the medical records in evidence do not support Claimant's contention that her neck, back and shoulder problems first emerged post-fall.

Back. Both Claimant's husband and Roxanne Parlet testified that they were not aware of Claimant having any back problems prior to the time of the alleged fall. But according to the notes from her May 25, 2000 visit to the Mountain Home Christian Clinic, one of Claimant's "Chief complaints" was "Back pain past 2 yrs.–getting worse." Moreover, the medical record reflects that Claimant told the clinic in the course of her May 25 visit that she had fallen in the past and did not know if that was the cause of her back pain. Claimant testified at the hearing that she had a back injury when she was a teenager that required her to visit a chiropractor on more than one occasion. In addition she testified that "numerous times," even prior to Allen's acquisition of it, Claimant had fallen at Dari Inn. In light of the foregoing, I cannot tie Claimant's back problem to the alleged May 2000 fall without resorting to speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co.*

v. Herndon, 264 Ark. 791, 796, 575 S.W.2d 155 (1979); *Gregory v. State Hwy. & Transp. Dept.*, 2006 AWCC 23 (Feb. 7, 2006).

Shoulder. As they did with regard to Claimant's back, both Parlet and Jeff Dickson testified that Claimant, to their knowledge, did not have any shoulder problems prior to May 2000. Claimant stated on the stand that her attempt to break her fall grabbing the steam table wrenched her shoulder, and that she did not hurt it later. However, the first mention in the medical records of a shoulder complaint does not occur until July 14, 2000. And when it does, it is Claimant presenting to Dr. McBride with "increasing right arm and shoulder pain over the *past two years*." (emphasis added) In his November 20, 2000 notes, Dr. Moore states, "pain x 2-3 years. Possibly coming from neck or shoulder." Simply put, a shoulder injury cannot be related to the alleged May 2000 fall without again resorting to speculation and conjecture.

Neck. While Parlet and Claimant's husband testified that Claimant had had no neck problems prior to the alleged fall, Claimant testified that she had had minor neck problems in the past. She presented to the Mountain Home Christian Clinic on May 25, 2000 with neck pain, and was found following an MRI to have C5-6 and C6-7 disc herniations. But as stated above, when Claimant first presented for treatment on May 25, she never mentioned a specific fall—only that she had fallen in the past and that she did not know whether that had caused her back pain. That is the only reference in the medical record to a fall of any type. And again, there is not the mention of the fall at issue as one would fully expect. As noted in the discussion of the medical records, when Dr. McBride first saw Claimant on July 14, 2000, he wrote: "She has had chronic mild neck pain as well." On September 6, 2000, he made the following notation:

[Claimant] is returning for evaluation of her cervical disk herniations. She has had some improvement in her neck pain with the traction; however, she had had persistent hand numbness and this does awaken her from sleep at night. *She has apparently had these problems for seven years.*

(emphasis added) From the last sentence, it appears that Dr. McBride was led to believe that both Claimant's disc herniations and hand numbness had been occurring for *seven* years, or perhaps *several* years, if "seven" is a transcription error. In view of all this, it would again take impermissible speculation and conjecture to find that Claimant's disc herniations arose out of a May 2000 fall at the Dari Inn. Hence, I find that Claimant has not proven by a preponderance of the evidence that these injuries are compensable.

B. Reasonable and Necessary Medical Care

Because of the above finding, the other issue litigated at the hearing— whether Claimant is entitled to reasonable and necessary medical care—is moot and will not be addressed.

CONCLUSION

Claimant bears the burden of proving by a preponderance of the evidence that her alleged injuries are compensable. She has been unable to do this. Therefore, her claims must be, and hereby are, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge