

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F704749

VANESSA FATHERREE, EMPLOYEE **CLAIMANT**

**MURFREESBORO NURSING CENTER,
SELF-INSURED EMPLOYER** **RESPONDENT**

**CANNON COCHRAN MANAGEMENT SERVICES,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED DECEMBER 13, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit in Texarkana, Miller County, Arkansas.

Claimant was represented by Mr. James S. Street, Attorney at Law, Hot Springs, Arkansas.

The respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 9, 2007, the above captioned claim came on for a hearing in Texarkana, Arkansas. A prehearing conference was conducted on August 22, 2007, and a Prehearing Order was filed on that same day. A copy of the Prehearing Order has been marked as Commission Exhibit "1" and made a part of the record without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including March 15, 2007.

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- 3) The claimant's compensation rate for TTD would be \$104.00 per week and claimant's compensation rate for PPD would be \$104.00 per week.
- 4) There have been no benefits paid in this claim.

At the full hearing the parties agreed to litigate the following issues:

- 1) Whether the claimant sustained a compensable back injury on March 15, 2007.
- 2) If compensability is overcome, whether claimant is entitled to TTD from the date of injury to a date to be determined, all associated medical benefits, and attorney's fees.

At the full hearing the claimant contended she suffered an on-the-job injury to her mid-back while in the course and scope of her employment on March 15, 2007, while she was helping to lift a patient from a wheelchair to a commode. Respondents contended at the full hearing that the claimant was not injured in the course and scope of her employment, that the claimant does not have any objective medical findings, and that the claimant did not sustain a compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §

11-9-704:

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- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties and recited herein are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury while employed by the respondent. Specifically, there are no objective findings as required for compensability.

DISCUSSION

The claimant began working for Murfreesboro Nursing Center in October of 2001 as a CNA. The claimant testified that she worked as a CNA for Murfreesboro Nursing Center full time for the first four years of her employment, but that the last two years of her employment were spent in a part time capacity because she was going to college. The claimant testified that on March 15, 2007, while working at Murfreesboro Nursing Center she sustained an injury to her back. The claimant testified as follows regarding her recollection of the alleged compensable event that took place on March 15, 2007:

Q Okay. Let's talk about the incident itself here. Can you tell me what happened back on March 15, 2007?

A Yes, sir. Me and another aide were transferring a resident from a wheelchair to the commode. The resident became combative. This resident has never been combative towards us or me before. We were in mid-turn with her, and that's when she become combative, and my back popped, and I told the other aide I thought I'd hurt my back, and I went immediately and I reported

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it to my charge nurse. I told her maybe I'd just caught it wrong, you know, continued to try to work, and it just kept getting worse. I told her I was going to go outside to take a break and sit down for awhile to see if that helped. It didn't and it just continued to get worse, and she called Dr. White, and they immediately saw me.

Q Okay. Now, the popping in your back, can you describe where that . . .

A In the mid of my . . . Like between my shoulder blades, down at the very mid back . . . or mid between my shoulder blades.

(T. pp. 13-14, lines 10-25 & 1-6).

The claimant testified that upon her back popping on March 15, 2007, she reported the incident to her supervisor, Shanie Subin. The claimant testified that her and Ms. Subin filled out paperwork regarding the injury, and that the claimant decided to rest for awhile to see if her symptoms went away. The claimant testified that her symptoms continued to worsen and that she went back to her supervisor and notified her of her worsening condition. The claimant testified that her supervisor then arranged an appointment with a Dr. Phillip White and that the claimant at that time immediately went to Dr. White's office for treatment.

The medical records show that the claimant saw Dr. White on March 15, 2007, was prescribed medications, taken off work, and requested to follow-up with Dr. White. The medical records show that the claimant then reported to Pike County Memorial Hospital for X-rays of her thoracic spine, which came back normal. (C. Ex.

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1, pg. 2). Thereafter, the claimant continued to treat with Dr. White on the dates of March 22, 2007, March 26, 2007, April 2, 2006, April 9, 2007, May 2, 2007, May 21, 2007, May 30, 2007, June 6, 2007, and June 20, 2007. Medical records also show that the claimant saw a Dr. Ross Hardy with Orthopaedic Associates of Arkansas on August 8, 2007. Dr. Hardy's report states that upon exam he noted no muscle spasms in the claimant's thoracic area and recommended a home exercise program. (C. Ex. 1, pp. 17-18).

Claimant contends that she sustained a compensable injury to her mid-back as a result of her alleged March 15, 2007, incident; however, respondents have controverted this claim in its entirety.

This claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in Henry Weaver v. Precision Packaging, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark.

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Code Ann. § 11-9-102(16), establishing the injury;

(4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury. Specifically, I find that claimant has failed to offer medical evidence supported by objective findings establishing a compensable injury.

Under Arkansas Workers' Compensation Law, just because an employee makes complaints of pain and receives medical treatment for those complaints, it does not in and of itself necessarily render those complaints compensable. Arkansas Workers' Compensation Law requires that a compensable injury be established by medical evidence support by objective findings. A.C.A. § 11-9-102(4)(D). Objective findings are those findings which cannot come under the voluntary control of the patient. A.C.A. § 11-9-102(16)(A)(i); Watson v. Tayco, Inc., 79 Ark. App. 250, 86 S.W.3d 18 (2002).

In this particular case, I have reviewed all the medical records which have been submitted by both parties, and my review of those medical records fail to reveal any findings which are considered objective under Arkansas Workers' Compensation

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Law. Further, I have reviewed the deposition of the claimant's primary treating physician regarding her complaints of mid-back pain, Dr. White, and Dr. White's deposition is clear that he also never observed any objective findings of injury to the claimant's mid-back. The medical reports do mention tenderness and pain in the claimant's mid-back; however, muscle tenderness is not considered an objective finding. Kimbrell v. Ark. Dept. of Health, 66 Ark. App. 245, 99 S.W.2d 570 (1999).

The claimant seems to make the argument that because she was prescribed Flexeril by Dr. White that the prescription itself constitutes an objective finding of muscle spasms. However, the medical reports and deposition testimony of Dr. White are crystal clear in that he never observed muscle spasms; and that he only prescribed the Flexeril based on the complaints made by the claimant. It is true that Dr. White prescribed Flexeril on March 15, 2007, pursuant to his initial treatment and meeting with Ms. Fatherree; however, in Dr. White's deposition he says that he would prescribe Flexeril even if he didn't see or observe muscle spasms anytime there is muscle pain or muscle strain. (Dr. White's transcript deposition testimony, page 42, lines 5-16, which is from Joint Exhibit No. 1). Dr. White's deposition testimony is directly in line with the claimant's testimony wherein she states that she never had any muscle spasms until one month after March 15, 2007:

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A It was probably a month after I hurt my back that I started having the spasms, when the constant pain went away, because at first, it was a constant pain. It wasn't just a come and go pain like it is now.

(T. pg. 39, lines 11-15).

Therefore, it is conclusive that Dr. White prescribed Flexeril on March 15, 2007, when the claimant herself admits that she was not having any muscle spasms at that time.

It is clear that the medical records do not contain objective findings of an injury to the claimant's thoracic spine. As stated earlier, an X-ray was taken of the claimant's thoracic spine that came back reporting a normal examination. (C. Ex. 1, pg. 2). Further, the claimant herself testified that at no time did Dr. White or Dr. Hardy ever witness her having any muscle spasms:

Q So you admit he never saw them? He never saw any spasms?

A No, sir. I never had any when he was there. Just pain.

(T. pg. 41, lines 20-23).

Q Do you also agree that Dr. Hardy did not see you while you were having muscle spasms?

A I was not having any muscle spasms when he seen me.

(T. pg. 44, lines 2-5).

Also, Dr. White's deposition contained in the record herein is replete with him

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stating that he never witnessed the claimant having muscle spasms. It is important to note that Dr. White only treated the claimant for muscle spasms based upon the history she provided to him. It is also worth noting that Dr. White testified in his deposition that the claimant could have been on Flexeril prior to March 15, 2007, due to an unrelated incident on October 2, 2006:

Q Okay. And, also, it mentions in the same 3/22/07 report that she was on Flexeril at that time.

A Uh huh.

Q But that must relate back to this 10/02/06 injury you've told us about.

A It may have.

(T. Dr. White's Depo., pg. 43, lines 10-15).

The claimant herself seemed to even admit that she was on Flexeril shortly before or even possibly at the time of her alleged March 15, 2007, incident:

Q Did you have some previous orthopedic-type problem? Some kind of previous . . .

A I hurt my lower back, yes, sir.

Q Did you have Flexeril for that?

A I don't believe it was Flexeril. It might have been. I'm not . . . I mean, I don't . . . It might have been.

Q Okay.

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A I was given something for my back. I'm not allowed to take pain medications because I'm allergic to Hydrocodone and all of it's cousins.

Q Okay. So you'd had Flexeril probably before this injury ever happened?

A Maybe when I hurt my lower back, I might have.

Q Maybe that's why that was in there?

A Maybe. Yes, sir.

(T. pp. 37-38, lines 21-25 & 1-11).

In summary, in order to prove a compensable work related injury under Arkansas Workers' Compensation Commission Law, a claimant must offer medical evidence supported by objective findings establishing an injury. In this particular case, while the claimant made complaints of muscle spasm and pain and was provided medical treatment for that condition, there must still be some objective findings establishing an injury. It can be argued that the prescription for Flexeril would be enough to establish muscle spasms and therefore objective findings criteria would be met; however, in this particular situation the claimant admits she was probably on Flexeril immediately prior or even possibly on the date of March 15, 2007, and the claimant specifically testified that she did not suffer any muscle spasms until one month after March 15, 2007. Therefore, by her own testimony she was taking Flexeril when she had no muscle spasms. In this particular case, the medical records do not

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contain any objective findings. Absent objective findings establishing an injury, a claimant cannot prove a compensable injury.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her thoracic spine while employed by the respondent. Specifically, there are no objective findings establishing a compensable injury. Therefore, claimant's claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb