

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612192

BRICKY FERRELL	CLAIMANT
COMPAS-MORRISON	RESPONDENT
NEW HAMPSHIRE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
AIG, TPA	RESPONDENT

OPINION FILED JULY 9, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 30, 2007, in Springdale, Arkansas.

A pre-hearing order was entered in the case on March 6, 2007. At the time of the pre-hearing order, the claimant contended that she had experienced a compensable injury as the result of a specific incident on or about May 25, 2006. However, prior to the hearing, the claimant amended her contentions to also add the issue of whether she sustained a compensable injury to her back as the result of cumulative trauma with a gradual onset over time. 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. On all relevant dates, including September 25, 2006, the relationship of employee-employer-carrier-TPA existed between the claimant, Compas-Morrison, AIG Insurance Company, and Cambridge Integrated Services, Inc.
2. The appropriate weekly compensation benefits are \$252.00 for total disability and \$189.00 for permanent partial disability.
3. 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 lower back as the result of a specific incident on or about September 25, 2006, or as the result of a gradual onset over time.
2. The claimant's entitlement to medical services.
3. whether the claimant is barred from the receipt of benefits by Ark. Code Ann. §11-9-701 prior to December 1, 2006.

In regard to these issues, the claimant contends that the claimant was injured on September 25, 2006. Her lower back was injured from heavy lifting, bending, and pulling double carts.

In regard to these issues, the respondents deny that the claimant sustained a compensable injury to her back or lumbar spine, either as the result of a specific incident or as the result of cumulative trauma over time. The respondents further contend that they were not provided with appropriate notice of the

claimant's alleged employment related injury until December 1, 2006. It is their position that, under Ark. Code Ann. §11-9-701, no benefits that accrued prior to December 1, 2006, can be awarded.

#### DISCUSSION

The central issue in this claim is the question of compensability. The burden rests upon the claimant to prove all of the required facts necessary to establish a "compensable injury".

The first of these statutory requirements are found in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove by medical evidence the actual existence of the physical injury or damage alleged to be compensable. Further, this subsection also requires that the actual existence of this physical injury or damage must be supported by "objective findings", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

Upon review of the medical record, I find that the claimant has presented sufficient medical evidence to establish the actual existence of physical damage or defects that involve her back or lumbar spine. These defects take the form of spondylolysis and spondylolisthesis which involve the L5 and S1 vertebra. She is also experiencing spina bifida occulta of the L5 vertebra. Finally, she is experiencing moderate degenerative disc disease at L4-5 and L5-S1 with mid line disc bulging at both of these levels. The actual existence of all these physical defects is supported by purely objective findings on various radiographic studies. Thus, in regard to these specific defects, the claimant has satisfied the statutory requirements of Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove that the alleged employment related injury to her back satisfies the definitional requirements for a “compensable injury” that are found in Ark. Code Ann. §11-9-102(4)(A). As the claimant has alleged both a specific incident and a cumulative trauma cause, she must satisfy all of the definitional requirements of either §11-9-102(4)(A)(i) or §11-9-102(4)(A)(iii).

One requirement that is common to both of these subsections is that the injury must arise out of and occur in the course of the claimant’s employment. In order to satisfy this requirement the claimant must prove a causal relationship between the physical injury or damage to her back and her employment. Under §(i) this employment related cause must be a specific incident. However, under §(iii) no specific employment related incident is required and the claimant need only prove a causal relationship between the injury or physical damage and the cumulative stress or trauma from her employment activities, in general.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove the existence of a causal relationship between the medically established and objectively documented physical damage or defects involving her lumbar spine and either a specific employment related incident, on or about September 25, 2006, or the cumulative stress and trauma of her day to day employment activities for this respondent, in general. Thus, she has failed to prove that she sustained a

“compensable injury” to her back or lumbar spine, as that term is defined by either §11-9-102(4)(A)(i) or §11-9-102(4)(A)(iii).

Although expert medical evidence is not an absolute requirement to prove causation, it is certainly helpful. In the present case, none of the claimant’s various physicians have expressly attributed the various diagnosed physical defects involving her lumbar spine with her resulting need for medical services to correct these defects to either a specific employment related incident on or about September 25, 2006, or to the claimant’s employment activities to this respondent, in general.

The medical evidence further shows that the claimant has a longstanding history of periodic episodes of low back problems, which date back to at least her high school years. The records of Dr. Vincent Runnels show that as early as December of 1999, the claimant was diagnosed as suffering from spina bifida occulta at L5-S1 with accompanying Grade I spondylolisthesis or slippage of the L5 vertebra on the S1 vertebra. The evidence shows that the claimant continued to experience episodes of difficulties with her back, including radicular symptoms into her legs, from at least 1999 through the present. Although there is some mention in the medical evidence of disc herniations at L4-5 and L5-S1, the actual diagnostic studies were interpreted as showing only degenerative bulging of the discs, rather than actual ruptures or herniations. Particularly, in his report of September 29, 2006, Dr. Raben expressly states that the claimant’s discogram was a “normal study”. The medical evidence supports the conclusion that all of

the objectively documented physical defects involving her lumbar spine are merely the result of congenital abnormalities combined with longstanding and progressive degenerative changes and would not necessarily be associated with any specific physical injury or type of trauma.

Although the claimant testified that she informed all of her treating physicians of the specific employment related incident on September 25, 2006, together with the contemporaneous and sudden onset of new and different symptoms, the medical records show otherwise. While he noted that the claimant reported an increase in her pain since her last visit, he recorded no specific precipitating incident or activity, employment related or otherwise. When the claimant was seen by Dr. Luke Knox, on October 5, 2006, he noted a history of intermittent low back pain for "many years" with a recurrence of pain for two weeks. He also specifically noted that this recurrence was "unrelated to a specific incident". On his clinic form, it was also recorded that there was no history of a work related injury (Claimant's Exhibit No. 1, page 9). The physical therapy records (beginning on October 13, 2006) also failed to note any employment related incident or activity as precipitating or increasing the claimant's difficulties. The only such incident mentioned in these records is in the note of October 25, 2006, which states:

"Hurt back picking up child this a.m."

On 12/6/2006, the claimant apparently saw a physician at Centra Care. Again, there was no mention made of any employment related

incident or activity as playing a causal relationship in the claimant's back difficulties. Finally, the claimant was seen at the Washington Regional Family Clinic on March 28, 2007. Still no mention was made of any employment related incident or activity as playing a causal role in the claimant's back and radicular difficulties.

Curiously, in the clinic note from Centra Care, dated July 11, 2006, the claimant was complaining of difficulties with her upper and lower back and her neck. In this report, it mentions that she "waits tables at Garfield's (a local restaurant)". This second employment was never mentioned by the claimant in any of her testimony or recorded by any of the other physicians.

There is no doubt that the claimant has physical defects or damage involving her lumbar spine. There is also no doubt that this limits the claimant's physical abilities and makes her susceptible to episodes of back difficulties. Finally, it is apparent that these physical defects or damage have caused the claimant to reasonably require medical services and have restricted her physical activities. Unfortunately, due to the progressive nature of these defects, the claimant will continue to experience symptoms and restrictions. However, the evidence presented simply fails to prove that any specific employment related incident or the claimant's employment related services for this respondent, in general, caused or contributed to the current level of physical defects or damage she is experiencing brought about her need for medical services or physical restrictions.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On all relevant dates, including September 25, 2006, the relationship of employee-employer carrier-TPA existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$252.00 for total disability and \$189.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a compensable injury to her back or lumbar spine while in the employ of this respondent. Specifically, she has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between the medically established and objectively documented physical defects or damage to her lumbar spine with her resulting back and radicular complaints and either a specific employment related incident on September 25, 2006, or her day to day employment activities for this respondent, in general.

5. The respondents have denied the occurrence of any compensable injury to the claimant's back 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