

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607568

MYRA GOURLEY	CLAIMANT
CRESCENT OIL COMPANY, INC.	RESPONDENT
ST. PAUL TRAVELERS INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 19, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant appeared pro se.

Respondent represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 8, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 16, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. On June 16, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$189.00 for temporary total disability and \$154.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injury to both knees.
2. Related medical.
3. Temporary total disability from June 17, 2006, to a date to be determined.
4. Compensation rate.

In regard to the foregoing issues the claimant contends that she sustained an injury while working for the respondent. The claimant contends that she is entitled to get paid for lost job, add 1/4 of surgery and late charges on bills.

In regard to the foregoing issues the respondents contend that the claimant's condition, knee problems, predated her claimed injury and that the treatment recommended by her treating physician is not a consequence of the claimed injury.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The respondents submitted the deposition of Dr. Edward Rhomberg marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that when she went to work for the respondent she already had arthritis in both of her knees and she

walked with a bad limp but she was able to do her job. The claimant testified that one of the ladies she was working with spilled coffee on the floor and she slipped and fell forward landing on both of her knees with all of her weight. The claimant testified that it took help to get her up because she could not walk on her own especially on her right knee because the pain was so great. The claimant testified that her husband took her to the VA Hospital where she had been seeing the medical doctors, her knees were x-rayed, and she understood that nothing could be done for her until she was 55 so they prescribed medications and sent her home. The claimant testified that the respondent fired her as she was going out the door to go to the hospital and she has not been able to find a job since. The claimant testified that she is not able to clean her house and she can only stay up on her feet ten to fifteen minutes before she has to lay down. The claimant testified that she has gained fifteen pounds, is depressed, and has become a diabetic since this event. The claimant testified that in the past her hobbies were hunting and fishing with her husband which involved walking which, of course, she cannot do now.

On cross examination, the claimant agreed that prior to her fall she had significant problems with both of her knees and has in fact had a couple of arthroscopic procedures done. The claimant testified that she had her right knee done in 2004 and her left in 2005. The claimant testified that she had her arthroscopic surgeries done at the VA Hospital in Fayetteville but she has been to the clinic where Dr. Rhomberg is a physician and had injections

in her knees. The claimant testified that, in fact, she had a series of three injections in her knees and that her private insurance paid the majority of this cost. The claimant testified that these injections were done prior to her fall in June 2006. The claimant testified that these injections did not help her symptoms. The claimant testified that when she received her last injection, it was suggested to her by the doctor to lose weight and to get off her feet because they did not want to do surgery due to her age. The claimant testified that the doctor who did the injections, Dr. Bolyard, eventually recommended that she be seen by a rheumatologist and put her on steroid medication which caused her to gain weight. The claimant testified that after the fall she was seen by Dr. Rhomberg who recommended surgery. The claimant testified that currently she is only taking pain medications for her knees and that her condition has not improved. The claimant testified that she has done food service work for over forty years and can no longer do this work due to her knees. The claimant again agreed that she had significant knee problems prior to her fall but that she was able to work. The claimant agreed that due to her fall she experienced pain in both knees and sought medical treatment at the VA that day. The claimant testified that the x-rays taken at the VA Hospital did not reveal any fracture or broken bones. The claimant was asked if the main consequence of her fall was that she had her pain increased, the claimant responded, "An extreme increase in pain." The claimant testified that before her fall at the end of a working day her knees would be tired and she

would have pain in them as well as locking occasionally. The claimant testified that her problems with her right knee began in 2004 and as she was walking across the dining room floor her right knee just blew out and she fell. The claimant testified that this was when she did her first arthroscopic surgery to repair a torn ligament although when the surgery was done there was very little for them to repair. The claimant agreed that after a few months following her 2004 arthroscopic surgery her pain reoccurred. The claimant testified that she gradually began to get worse and began to walk with a limp and put more pressure on her left knee which resulted in her arthroscopic surgery on her left knee in 2005. The claimant testified that the doctors cleaned out her left knee and showed her pictures where it was bone on bone. The claimant testified that it was her understanding that she was too young to undergo anymore invasive procedures and when she told her doctors that she had to work they just gave her more pain medication.

Dr. Edward Rhomberg testified by way of deposition that he first saw the claimant on August 3, 2006. Dr. Rhomberg testified that another physician in the clinic had also seen the claimant on October 6, 2005. Dr. Rhomberg testified that the clinic's notes indicate that on October 6, 2005, the claimant was treated with an injection of Hyalgan which is a substance used to treat degenerative joint disease. The doctor explained that these injections are a non invasive method where a substance is injected into the knee that salvages the knee prior to a more invasive treatment such as a prosthetic replacement or an osteotomy. Dr.

Rhomberg testified that an earlier doctor's note indicates that the claimant had undergone arthroscopic surgery and there were findings of a meniscus tear as well as articular damage noting that articular damage would verify a diagnosis of degenerative joint disease for which the doctor was treating the claimant. Dr. Rhomberg testified that they did not have operative reports on the claimant's knees because they had been done at the Veteran's Hospital. Dr. Rhomberg read from his August 3, 2006, office note that the claimant reported that on June 19, 2006, she fell at work and landed on both knees. The doctor notes that this resulted in an acute onset of knee pain and that the claimant reports that she had had knee pain in the past and has been treated with narcotic medications for this pain. Dr. Rhomberg agreed that the claimant did not have any clicking, catching, locking, or giving way of her knee at that time. Dr. Rhomberg testified that when he saw the claimant x-rays were taken which revealed that there was evidence of loss of cartilage over the medium aspect of her knees indicating that a process had been evolving for some time. Dr. Rhomberg agreed that tenderness to palpitation of various areas of the claimant's knees was his main finding. Dr. Rhomberg agreed that tenderness is a subjective response by a patient. Dr. Rhomberg testified that he viewed x-rays of the claimant's knee taken a year prior to her visit with him as well as the x-rays which he had taken and he noted that the findings were similar on both. The doctor noted that both of these x-rays set forth that the claimant's right knee was worse than her left knee. Dr. Rhomberg

was asked if there was any way to conclusively determine from a comparison of the two x-rays whether the claimant suffered some new injury as a consequence of her fall in June 2006. Dr. Rhomberg testified that one can simply measure the remaining joint space to determine if it was measurably thinner then one could infer that the disease process has progressed. Dr. Rhomberg stated, "But whether this progress occurred as a consequence of the injury is speculative in nature." Dr. Rhomberg agreed that in his progress note he remarked that the claimant suffered from degenerative disc disease that predated her fall but did conclude that the fall made her more symptomatic. Dr. Rhomberg testified that based on the history given to him by the claimant as well as his physical examination, she appeared to be more symptomatic than prior to her fall. Dr. Rhomberg agreed that this conclusion was drawn based on what the claimant told him. Dr. Rhomberg was asked, "There is no way for you to conclusively say with any degree of medical certainty that there was some anatomical change that took place as a result of this fall?" Dr. Rhomberg responded, "Correct, no hard objective evidence."

After a complete review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on June 19, 2006. It is not questioned that this claimant has serious problems with her knees and after her fall her pain experience was elevated. However, there are no objective findings in this record to establish a new injury and Dr. Rhomberg

in his deposition has stated that there is no way that he can state conclusively within a degree of medical certainty that there was some anatomical change that took place as a result of the claimant's fall. Arkansas law requires objective medical evidence to establish an injury. Ark. Code Ann. §11-9-102(16)(B) sets forth that medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Based on Arkansas law as well as the information in this case, I find that this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

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

2. On June 16, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$189.00 for temporary total disability and \$154.00 for permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her knees on June 19, 2006, while working for the respondent. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence in light of Arkansas law that she sustained a compensable injury to her knees on June 19, 2006, while working for the

respondent. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE