

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613963

MARTHA HALE, EMPLOYEE	CLAIMANT
EAST POINSETT CO. SCHOOL DIST., SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED NOVEMBER 13, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 17, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE M. SCOTT WILLHITE, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above- style claim to determine the claimant's entitlement to workers' compensation benefits. On July 31, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Martha Hale, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Martha Hale, the claimant, with a date of birth of July 18, 1956, is a high school graduate. Claimant commenced her employment as a custodian with respondent on January 17, 1995. Claimant explained that her job duties generally entailed cleaning, mopping, picking up trash, and buffing the floors. Claimant denies that she had ever been treated for back problems prior to July 2006. Additionally, claimant's testimony reflects that prior to July 2006, she had never been to a doctor with complaints of back pain or been treated by a chiropractor for any back complaints. Finally, the testimony of the claimant reflects that prior to July 2006, she had never had any automobile accident which resulted in back pain.

There is no evidence in the record to reflect that the claimant experienced any physical limitations or restrictions that prevent her from performing her job duties as a janitor for respondent. The testimony of the claimant reflects that her job duties included routine lifting. Regarding the heaviest thing that she lifted in her job, claimant testified that the same was cans of floor wax.

Regarding her employment history, the testimony of the claimant reflects that she worked in a cotton mill, worked in a lamp factory in Marion, and worked in another school in Marion. After the claimant married she moved to Lepanto and thereafter commenced her employment with respondent. The claimant worked in a janitorial position throughout her employment with respondent, from 1995 through 2006.

The testimony in the record reflects that the claimant attributes two (2) work-related incidents as the basis for the present workers' compensation claim. The first incident occurred in June 2006, and involved lifting a desk. Regarding the afore, claimant's testimony reflects:

We all had to - - we were in the elementary, this teacher, we had to move her furniture from one end of the hall down to the other end of the hall, so all of us custodians had to get together because the desk was heavy. So the end that I was on, they lifted and let theirs go too quick, and then when I had to just - - my back started hurting again and I told them that - - (T. 16).

Claimant explained that her back started hurting when custodians on the other end of the desk dropped their end while she was still holding on to her end of it. Claimant asserts that the desk incident was the first time she experienced back pain.

The testimony of the claimant reflects that she sought treatment from her family physician, Dr. Saito, for her back pain growing out of the June 2006, desk incident. Claimant testified that the incident was reported to her supervisor, Mr. Pearson, the superintendent. Claimant maintains that she was not instructed to go to the doctor by Mr. Pearson, so she went to her family doctor on her own.

The testimony of the claimant reflects that Dr. Saito provided her pain medication in the treatment of her back complaint. Claimant took the pain medication and continued to work.

The testimony of the claimant reflects that she suffered a second incident which resulted in an injury to her back in July 2006, while discharging her employment duties for respondent. In describing the mechanics of the accident, claimant testified:

Okay. I was running a buffer and we were in this room, there was a computer tables, and down at the bottom is the big - - about this much sticking out, a piece of wood, and it had some screws and stuff, so I when I put the buffer up there, and I wasn't watching what I was doing, talking or whatever, and it got hung on the table and it threw me. (T. 11-12).

Claimant explained that she was holding onto the buffer, and once the buffer got hung on the piece of wood, it caused her body to be jerked and thrown around. According to the claimant,

she was literally thrown to the floor in the accident. Claimant testified that she experienced pain like she had never felt before and the same was located down the lower part of her back. Claimant relayed, “to tell you the truth, my whole body was hurting”. (T. 12). Claimant added that most of the pain was in her lower back.

Claimant’s testimony reflects that the accident happened in the morning because she remembered going home. Because the accident happened in the summer there were no children around the school, just staff. Following the incident, claimant testified:

I lay there, but before I got up, one of the workers went and got Ms. Pearson. (T. 13).

Claimant does not remember who the co-worker was that went to get help. The testimony of the claimant reflects that Mr. Pearson was the supervisor. Upon Mr. Pearson’s arrival, claimant testified:

He helped me up and he asked me was I all right. I told him I think so, so he asked me to just sit there for a while and I sat there and I told him I had to go home and take a bath because of the stripper. (T. 13-14).

Claimant explained that at the time of the accident she was stripping the floors. The testimony of the claimant reflects:

I was stripping the floor and when I was stripping the floor, my behind was like - - I was wet all over and I had to get it off because it burns your skin. (T. 14).

In addition to the need to get the stripping product off her person, claimant testified that the other reason that she went home was because she was hurting because of the accident, noting that both legs were hurting and her back was burning.

While the accident occurred in July 2006, claimant did not remember which day. The

testimony of the claimant reflects that she did not go back to work on the day of the accident. Claimant's testimony reflects that after being off work for a couple of days she returned to her regular job duties for respondent. Claimant did not go to the doctor following the July 2006, buffer incident, but rather took some of the pain medication that she had left over from the June 2006, desk incident.

While the claimant testified that she eventually return to Dr. Saito following the July 2006 buffer incident, she is uncertain how much time elapsed between the incident and the visit. Claimant's testimony reflects that when she returned to work following the buffer incident she was able to do her job fully once she got a back brace, which she purchased. The testimony of the claimant reflects that she had health insurance through respondent which paid some of the medical bills that she incurred relative to the two (2) incidents.

The testimony of the claimant reflects that on October 3, 2006, she was seen by Dr. Murray pursuant to the directions of Mr. Pearson. Claimant testified that she was referred for an MRI scan by Dr. Murray, however her insurance company refused to pay for it.

The testimony of the claimant reflects that she was eventually referred by Dr. Saito to Dr. Kornblum, a Jonesboro neurosurgeon. Claimant testified that while she went to Dr. Kornblum's office she was not seem because she was unable to pay for it. The testimony of the claimant reflects that she has been unable to get the MRI scan as recommended by Dr. Murray or the examination by Dr. Kornblum pursuant to the referral of Dr. Saito.

The testimony of the claimant also reflects that she was referred by Dr. Saito to Dr. Braden. Claimant testified that she was seen by Dr. Braden pursuant to the afore referral. The testimony of the claimant also reflects that her health care carrier paid the cost of the visit to Dr.

Braden. Claimant testified that Dr. Murray was also paid by her health care carrier, noting that each time she goes to the doctor she is provided a receipt.

The testimony of the claimant reflects that the last day that she actually worked for respondent was August 25, 2006. Claimant testified that since August 25, 2006, she has not worked anywhere, nor has she received any workers' compensation benefits.

The claimant's testimony reflects that she has continued to suffer residuals of her injury since August 2006. Claimant notes that she has pain in the middle of her back at or below the belt line. Claimant testified that the pain has been in the same location since its onset in June and July 2006. Further, the testimony of the claimant reflects that pain has not improved but worsened. Claimant denies that she has re-injured her back since the two (2) work-related incidents.

Claimant asserts that she reported both work-related incidents to Mr. Pearson. Further, claimant maintains that other than the October 2006, visit to Dr. Murray, respondent made no effort to provide her medical treatment for the reported injuries. Claimant asserts that when Mr. Pearson asked her to go to Dr. Murray he was aware that she was treating with Dr. Saito. Claimant testified that when Mr. Pearson sent her to Dr. Murray in October 2006, he wanted a second opinion. Claimant's testimony reflects that after seeing Dr. Murray on October 3, 2006, she reported back to Mr. Pearson, however there was no action taken thereafter.

The testimony of the claimant reflects that while she did not have the MRI scan as recommended by Dr. Murray, Dr. Saito has taken x-rays of her back. Further, the testimony of the claimant reflects that she had an MRI. Regarding the above, the claimant testified:

Dr. Saito sent me for one and I've had one for Dr. Braden.

Dr. Saito told me to get one. (T. 26).

Claimant's testimony reflects that her health insurance paid for the MRI scan she received through Dr. Saito. Claimant maintains that since she did not have insurance or Medicaid, she would have to pay cash to be seen by Dr. Kornblum.

The testimony of the claimant reflects that she called and scheduled an appointment with Dr. Robert E. Abraham, an Jonesboro neurosurgeon. At the time of the hearing in this claim, claimant had a 9:00 a.m. September 6, 2007, scheduled appointment with Dr. Abraham. Claimant explained that she scheduled the appointment with Dr. Abraham, "because I'm tired of the pain". (T. 27).

Claimant's testimony reflects that prior to July 2006, she had never been off from work for a substantial period of time. Claimant testified that the longest period of time she was off work prior to July 2006, was a week, which was for a death in the family.

During cross-examination claimant testified that she reported both work-related incidents to Dr. Saito when she was seen by him following the occurrence. Claimant's testimony reflects that when she was seen by Dr. Saito on July 18, 2006, she had injured her back in the desk lifting incident.

Regarding the June 2006, desk lifting incident, claimant testified that she did not remember the day of the incident or which half of the month it occurred. Claimant asserts that she went to Dr. Saito in June after the incident occurred. Claimant's testimony reflects that the treatment she received in connection with the injury was pain pills. Claimant maintains that she continued to work following the June 2006, desk lifting incident after she took a couple of days off.

With respect to the July 2006, buffer incident, claimant's testimony reflects regarding the approximate date:

Like I said around maybe the first or early part of July. What exact date I do not know. (T. 31).

Claimant testified that she had not gotten over the desk lifting incident at the time of the July 2006, buffer incident. Claimant testified that when she went to Dr. Saito on July 18, 2006, both incidents had already occurred. (T. 31). Claimant concedes that the July 18, 2006, report is devoid of notations of back problem or injury.

Claimant disputes that she went to Dr. Saito on July 18, 2006, for complaints of burning pain in her head and chest, sore throat and cough. Claimant maintains that she went to Dr. Saito regarding her back. (T.33). Claimant testified that she continued to work following the July 2006, visit to Dr. Saito. The testimony of the claimant reflects that in the summer the custodial staff work long days, up to 10 hours, four days per week.

The record reflects a visit of the claimant to Dr. Saito on August 30, 2006, with complaint of low back pain. While the report reflects the presence of back pain since August 26, 2006, which had worsened since August 29, 2006, and no report of injury, the claimant testified that she informed Dr. Saito of a history of an injury at the time of the visit. Claimant asserts that her daughter gave birth on Saturday, August 26, 2006. Claimant acknowledged that she did not work on Saturdays. Further, claimant concedes that on August 26, 2006, she was probably at the hospital with her daughter.

Claimant acknowledged that she went in and asked to file a workers' compensation claim. Regarding the filing of the claim, claimant testified:

Yes, because I was already so bad I didn't know much about no workers' comp so I come to get - - I had to go to the doctor because I was working and my insurance - - I'm tired of this pain. I'm tired of it. I can't get nobody to do nothing for me. (T. 36).

Claimant maintains that she informed her supervisor, Mr. Pearson, of her injury on the dates that they occurred. Claimant acknowledged that she did not complete a form in connection with the reporting. Regarding Mr. Pearson, claimant's testimony reflects:

He said the school do not pay for workers's comp.

That's what he told me. That's the reason I went and got a lawyer. (T. 37).

The testimony of the claimant reflects that through her attorney she filed a claim for workers' compensation benefits in December 2006. Claimant noted that her group medical insurance ran out in January 2007, and she had to do something.

Claimant maintains that she never stopped work for the school, only that she got hurt and was unable to go back to work. Claimant testified that the last day that she worked was Friday, August 25, 2006.

Claimant asserts that she reported both incidents, lifting the desk and falling with the buffer, to Dr. Saito, Dr. Braden and Dr. Murray. Claimant acknowledged that she received physical therapy from Trumann Physical Therapy for four (4) weeks. Claimant disputes the contents of physical therapy note which reflects, regarding her injury, that she initially injured her back lifting a desk and aggravated it while sleeping on a sofa at the hospital. Claimant insist that she did not sleep on a sofa, however concedes that her daughter was having a baby at the hospital on August 26, 2006. Claimant testified, regarding the afore:

Yes, and they had a chair moved up to a bed. I didn't sleep on no

sofa. I did not sleep on no sofa. (T. 39).

Claimant denies that she her back on either August 26 or August 27, 2006, while at the hospital with her daughter:

I hurt my back at the school when I fell and whenever I ran this buffer. I ain't got any reason to sit up in here and lie. (T. 39).

Claimant denies receiving any kind of benefits for disability from the school while she was off work. Claimant testified that she got her "regular check and then my days up". (T. 39). Claimant's testimony reflect that she had 52 or 53 days that the school had to pay her:

Up to November and December I got 130 something dollars because my days had ran out. (T. 40).

Claimant maintains that she had problems with her kidneys earlier, however denies experiencing them during the time of her injury. Claimant asserts that she was provided medication by Dr. Saito for the blood that was in her urine, and the complaint resolved.

In addition to the MRI scan, claimant underwent x-rays regarding her back complaint. Further, claimant's testimony reflects that Dr. Braden also performed a CT scan. Claimant concedes that Dr. Braden released her to go back to work and provided her a note to try to do something. Regarding the note, claimant's testimony reflects:

Go talk to my supervisor. I told him, you know, and gave him the letter and he put on there no lifting and no heavy, and that was my job consisted of, so he wasn't going to take anybody else's job from them and give it to me, so I went home. (T. 42).

Claimant testified that since she was not allowed to return to work under the restrictions imposed by Dr. Braden, she has been at home sitting and hurting.

The testimony of the claimant reflects that she had no source of income, and is presently

being supported by her son. Claimant filed for Social Security disability benefits, however was denied. Claimant has not been seen by a doctor since she was last seen by Dr. Braden.

On further questioning, the claimant's testimony reflects that the name of the prescription pain medication she already had from the doctor's visit associated with the desk lifting incident was "hydro". A May 5, 2006, report of Dr. Chan reflects that one of the medication provided to the claimant was Hydrocodone. Claimant maintains that the first time she was prescribed Hydrocodone was in connection with treatment for her back complaint following the desk lifting incident. (T. 46).

The testimony of the claimant reflects that prior to changing primary care physician to Dr. Saito, she treated with Dr. Chan in Marked Tree. Claimant testified that she is uncertain if Dr. Chan prescribed the Hydrocodone as opposed to Dr. Saito.

The earliest medical in the record is a January 5, 2006, report of a physical examination of the claimant by Dr. Saito, with complaints unrelated to the claimed injuries. (RX. #1, p. 15). A January 20, 2006, clinic note of Dr. Saito relative to a visit of the claimant reflects that the claimant complained of pain in left shoulder since January 16, 2006. The clinic note also reflects that the claimant thought that she hurt her shoulder at work mopping. Claimant's complaint was assessed as left shoulder pain for which she was prescribed medication (Relofen and Flexeril), rest, and moist heat. (RX. #1, p. 16). On February 2, 2006, claimant obtained a refill of her blood pressure medicine and muscle relaxer (Flexeril). (RX. #1, p. 17).

April 11, 2006, the claimant was seen by Dr. Saito for complaints relative to her headache. (RX. #1, p. 18). A May 5, 2006, clinic note of Dr. Saito relative to an office visit by the claimant of the same date reflects that the claimant had been seen by Dr. Chan, a Marked

Tree family practitioner, on March 18, 2006, for a UTI and provided Hydrocodone. (CX. #1, p. 8). The record is devoid of any medical reports relative to the claimant being seen by Dr. Saito in June 2006. The claimant was seen by Dr. Saito on July 18, 2006. According to the claimant's testimony, by the time of the July 18, 2006, date she has suffered injuries to her back in the desk lifting incident and the buffer incident. The July 18, 2006, clinic note of Dr. Saito reflects that the claimant was seen for sinus pain, burning, and chest congestion. The clinic note does not reflect the reporting of an injury, accident, or complaints relative to the claimant's low back. (RX. #1, p. 20).

The claimant was seen by Dr. Saito on August 30, 2006, for complaints of low back pain. The clinic note relative to the visit reflects the following history, "LBP since 8/26 but worse since yesterday. Pain rad around ant to low abd.". The clinic note also reflects the entry "no Hx of injury. Took a couple of muscle relaxers which helped" (RX. #1, p. 21). The record reflects that the claimant was seen at St. Bernard's Regional Medical Center emergency room on August 31, 2006. The triage notes generated during the afore visit reflect, in pertinent part:

HPI:
STATES PAIN IN LOWER BACK. NO KNOWN INJURY. PAIN
STARTED SUNDAY AM AND HAS GOTTEN WORSE. DIFFICULTY
WALKING, AND GETTING UP AND DOWN. TRIED HEATING PAD
AND PAIN MED, MUSCLE RELAXER W/O RELIEF. (RX. #1, p. 2).

Thereafter, the claimant was seen by Dr. Saito on September 5, 2006, and September 11, 2006, for treatment of her low back complaints. The clinic notes of the afore visits are devoid of histories of injuries or work-related accidents. (RX. #1, 22-23).

Claimant acknowledged that she was referred to physical therapy by Dr. Saito, and underwent four (4) weeks of physical therapy at Trumann Physical Therapy. The October 3,

2006, Therapy Discharge Evaluation of the claimant from the Trumann Physical Therapy reflects under the entry of History of Present Illness:

Patient reports initially injuring low back at work while moving a desk. States she re-aggravated her back on 08/27/06 after sleeping on a sofa at the hospital. (RX. #1, p. 33).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. At all times pertinent, to include June 2006, and July 1, 2006, the relationship of employee-employer existed between the parties.
3. At all times pertinent, the claimant earned wages sufficient to entitle her to weekly compensation benefits at the rate of \$229.00\$172.00, for temporary total/permanent partial disability.
4. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she sustained an injury to her low back arising out of and in the course of her employment on or about July 2006.

CONCLUSIONS

The claimant asserts that in July 2006, she suffered a low back injury within the course and scope of her employment which required and continues medical treatment and for which respondent is liable. Further, claimant contents that the injury rendered her totally incapacitated from engaging in gainful employment and that she entitled to corresponding workers'

compensation benefits. Respondent deny that the claimant sustained an injury within the course and scope of her employment which is identifiable by time and place of occurrence.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. The claimant asserts the occurrence of an accidental injury as the basis for the present claim.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A) (i). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the instant claim, the claimant has asserted the occurrence of two (2) work-related accidental injuries to her low which culminated in the need for medical treatment and her temporary total incapacity earn wages. While maintaining that she first injured her low back while lifting a desk in June 2006, within the course and scope of her employment with respondent, in addition to being unable to identify the specific date, claimant was unable to identify co-workers that were also lifting the desk at the time she suffered the injury. Claimant

asserts that she reported the June 2006, desk lifting accidental injury to supervisory personnel and sought and obtained medical treatment in connection with same from her primary care physician, Dr. Kim Saito.

In addition to the record being devoid of a written incident/accident report regarding the June 2006, desk lifting incident, claimant has failed to present corroborating medical documentation. The afore is particularly noteworthy in light of the fact that the claimant asserted in one instance that following the second work-related incident involving a buffer she did not go to the doctor immediately for her back injury but rather took some of the pain pills which had been prescribed for the June 2006, desk lifting injury, and then returned to work after a couple of days. The only medical in the record of the claimant having received treatment or been seen by her primary care physician, Dr. Saito, in the June/July 2006, time frame is a July 18, 2006, clinic note.

Claimant asserted that she reported both accidental work-related injuries to her treating and examining physician, to include Dr. Saito. The July 18, 2006, clinic note of Dr. Saito does not recite a history of a work-related accident having been relayed by the claimant. Indeed, the July 18, 2006 clinic note reflects that the claimant's complaints were of "sinus pain, burning, chest congestion". Claimant asserts that by the July 18, 2006, date, she had sustained both work-related incidents.

Claimant acknowledged that she last worked from respondent on Friday, August 25, 2006. The evidence reflects that on Saturday, August 26, 2006, the claimant's daughter was admitted to the hospital to give birth to a child. Claimant spent the night at the hospital with her daughter.

The first medical report in the record referencing an injury to the claimant's back is a clinic note of August 30, 2006, when the claimant was seen by Dr. Saito. As noted above, the August 30, 2006, clinic note contains the history of the claimant having low back pain since August 26, 2006, which was worse since August 29, 2006. The clinic note also recited "no history of injury". Dr. Saito assessed the claimant's complaint as "acute low back pain" during the August 30, 2006, visit. More telling is the history reflected in the emergency room records of St. Bernard's Regional Medical Center regarding a visit by the claimant on August 31, 2006. The emergency room report recites a history, regarding the claimant, of low back pain, no known injury, and that the pain started Sunday morning and gotten worse. Neither the asserted June 2006 desk lifting incident nor the asserted July 2006, buffer incident is cited in the afore histories.

The October 3, 2006, therapy discharge evaluation of the Trumann Physical Therapy center where the claimant was referred by Dr. Saito reflects that the claimant reported initially injuring her low back at work while moving a desk, and that she re-aggravated her back on August 27, 2006, after sleeping on a sofa at the hospital. August 27, 2006, was a Sunday. The claimant's initial evaluation at the Trumann Physical Therapy center took place on September 13, 2006. It was until the afore evaluation that a work-related nexus surfaces regarding the claimant's back pain, and even then the June 2006, desk lifting incident is cited as opposed to the July 2006 buffer incident.

The Arkansas Supreme Court has noted that it is not a prerequisite to compensability that the claimant identify the precise date upon which an accidental injury occurred, but rather the claimant must only prove that the occurrence of the injury is capable of being identified. *Edens*

v. Superior Marble & Glass, 346 Ark. 487, 58 S.W.3d 369 (2001). In the instant claim, the claimant's inconsistent testimony and lack of corroborating evidence renders incapable identifying the occurrence of an accidental injury by time and place. The claimant has failed to sustain her burden of proof by a preponderance of the credible evidence that she suffered an injury to her low back arising out of and in the course of her employment with respondent in June 2006, or July 2006. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE