

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113725

MARY K. LIPSCOMB, EMPLOYEE

CLAIMANT

**WALNUT RIDGE RETIREMENT CENTER,
UNINSURED EMPLOYER**

RESPONDENT

OPINION FILED APRIL 11, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 16, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondent pro se.

STATEMENT OF THE CASE

A hearing was conducted in the above style cause to determine the claimant's entitlement to workers' compensation benefits.

On January 9, 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 the issues to be addressed during the course of the hearing and the claimant's contentions relative to same. Respondent failed to participate in the pre-hearing conference or to attend the scheduled hearing in this claim. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The testimony of Mary Lipscomb, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Mary Lipscomb, the claimant, with date of birth of July 13, 1956, is a high school graduate who commenced her employment with respondent in May 1999 or 2000. Claimant performed the job duties of a CNA to include housecleaning/washing windows, cooking, bathing patient/residents, laundry, and taking patient/clients to the doctors. Claimant was paid \$5.35 per hour and worked a 40-hour work week during her employment with respondent.

Claimant estimates that respondent employed seven to eight other employees. Claimant noted that Jeff Cook was the administrator. Other employees of respondent identified by the claimant included other CNAs, John and Willie Brown. Claimant's testimony reflects that the owner of respondent-employer was Paul Minton. Respondent-employer, which is no longer in business, was a residential nursing facility, which had at times in excess of twenty residents.

The testimony of the claimant reflects that she suffered an injury within the course and scope of her employment on November 30, 2001, which serves as the basis for the present claim. In describing the mechanics of the November 30, 2001, accident, claimant's testimony reflects:

I worked the night shift, and I was up, cleaning and stuff, and one of the residents got up and he wanted something to eat, and we're not allowed to, you know, go into the kitchen and get them stuff to eat. Well, eh got all mad and hysterical. He paced back and forth to his room, and he come through kitchen part and I caught him in the cabinets, and I told him, I said, Arthur, you're not allowed - you know I can't give you this. And he got mad and just, I think, grabbed me - physically grabbed me, threw me up against the counter, three or four times, and he got what he wanted, you know. I couldn't stop him - getting what he wanted. And then I called the Administrator, Jeff Cook, and didn't get no answer. And this is the middle of the morning, about 3 o'clock in the morning. (T. 7-8).

Claimant testified that she reported the accident/incident to Mr. Cook when he arrived for work later that morning. Claimant explained that she was experiencing pain in her arms, back and was physically hurting all over. Claimant testified regarding Mr. Cook's response to her reporting:

He just told me that I needed to go ahead and go to the emergency room. I went to the emergency room and they give me x-ray, all kinds of stuff, and said that I had muscle spasms and strains, bruised - I had bruises on me. (T. 8).

The claimant obtained medical treatment at the emergency room of Lawrence Memorial Hospital in Walnut Ridge for her injuries growing out of the assault. Claimant actually commenced her shift at 9:00 p.m. on November 30, 2001. The incident/assault occurred at approximately 3:30 a.m. on December 1, 2001. Claimant's shift concluded at 5:00 a.m. on December 1, 2001.

The testimony of the claimant reflects that the owner of respondent-employer is being investigated by the fraud unit of the Insurance Department, and that as a part of that investigation, medical reports growing out of her injury had been furnished to the investigators.

The claimant testified that the medical treatment rendered to her at the emergency room of Lawrence Memorial Hospital at the time of her December 1, 2001, visit included an injection for pain, and a prescription for medication in addition to the x-rays. Claimant's testimony reflects that she returned to respondent-employer and provided information to the administrator, Mr. Cook, regarding the medical treatment. Claimant continued to work following the incident. A week or two following the December 1, 2001, incident claimant was informed by Mr. Cook that respondent-employer did not have workers' compensation insurance.

The testimony of the claimant reflects that although she continued to work she also continued experience residual symptoms growing out of the accident. Claimant had the prescriptions filled which were furnished by the attending emergency room physician. Claimant explained, regarding the afore, that the medicine was charged an account at Medical Arts in

Walnut Ridge. Claimant testified:

Well, they turned it in to workman's comp, and they kept calling my employer, Jeff Cook, at the time, and he was telling them to go pick up. (T. 11).

Since the respondent did not pay for the medicine, the testimony of the claimant reflects that she incurred a pharmacy bill in the amount of \$300.00.

The testimony of the claimant reflects that she continued to work for respondent-employer until her employment was terminated by same on December 20, 2001. Claimant's testimony reflects, regarding her being fired:

The Administrator, Jeff Cook, come in and he said, Paul Minton said to let you go. And I said, why? And he said, well, he said that - just to let you go. And I said well, there's got to be a reason, and he said that Paul wanted me - the owner wanted me to write a thing - a notice or something, and I said, I'm not going to do it, cause I felt I got fired for being hurt. (T. 12).

The claimant testified that she continued to receive medical treatment in connection to her injury following the termination of her employment by respondent on December 20, 2001. Claimant received medical treatment under the care of Dr. Diamond, her family physician in Walnut Ridge. In addition to scheduling her for an MRI, claimant's testimony reflects, regarding her treatment under the care of Dr. Diamond:

And then he just kept giving me, like, my pain medication, and tried to get me in other places, you know, like see a surgeon, but I didn't have no money to, you know, they usually want \$500.00, and I didn't have it. Cause they said Paul Minton was not going to pay it. (T. 13).

The testimony of the claimant reflects that she has undergone several MRIs. Claimant was recently referred by Dr. Diamond to Dr. St. John.

The testimony of the claimant reflects that she has not worked any place since her

employment was terminated by respondent on December 20, 2001. While the claimant applied for unemployment benefits she did not receive any. Claimant explained:

Because there weren't - the retirement center - I don't know what the ruling was on that - something cause I was fired. (T. 14).

Claimant asserts that she continued to have physical difficulties which she attributed to the December 1, 2001, incident/assault, to include low back pain and a ruptured disc. A January 23, 2007, report of Dr. Diamond reflects that the claimant's MRI shows a large herniated/ruptured disc.

Claimant denies that she experienced any problems with her back prior to the November 30/December 1, 2001, work-related incident. Claimant maintains that she has been physically unable to work since she last discharged employment on December 20, 2001. Claimant testified that surgery has been recommended, however she has been returned to the care of her family physician. Claimant is desirous of proceeding with surgery to address her injury.

The testimony of the claimant reflects that while she has paid some of the medical bills for treatment incurred in connection with her injury, there are some that remain unpaid. Claimant's testimony reflects that Dr. Diamond took her off work shortly after her injury and to date has not released her to return to work.

The medical in the record reflects a January 23, 2007, report from Dr. Kevin Diamond with Lawrence County Family Clinic, regarding the results of the claimant's MRI scan. The document reflect, in pertinent part:

your MRI shows large rupture disc - you need to call our office and let us know what neurosurgeon you would like to see and we will schedule an appointment. (CX. #1).

The medical bill of Lawrence Memorial Hospital regarding a December 1, 2001, visit by the claimant reflects that Flexaril, Darvocet-N, Naprosyn, Ultram, and Vioxx were all provided in the treatment of the claimant's complaint. The document also reflects diagnoses of sprain shoulder/arm.

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical report 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, in that the respondent operated a business within the state of Arkansas and employed in excess of three (3) employees during the pertinent time period.
2. On or about December 1, 2001, the relationship of employee-employer existed between the parties.
3. On or about December 1, 2001, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$143.00, for temporary total/permanent partial disability.
4. On or about December 1, 2001, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period commencing December 20, 2001, and continuing through the end of her healing period, a date to be determined..
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of on or about December 1, 2001.

7. The respondent has controverted this claim in its entirety.

CONCLUSIONS

The claimant asserts that she suffered an injury within the course and scope of her employment with respondent which required and continues to require medical treatment and which has rendered her totally incapacitate from engaging in gainful employment since last discharging employment duties for respondent on or about December 20, 2001. Respondent failed to participate in the pre-hearing process or the scheduled hearing.

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 has the burden of proving the compensability of her claim by a preponderance of the evidence. *Georgia-Pacific Corporation v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

An accidental injury is caused by a specific incident, identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4)(A)(i). In order to establish a compensable accidental injury the claimant must show that she sustained an accidental injury; that the injury caused physical harm to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability. Further, the claimant must establish a compensable injury by medical evidence, supported by objective findings.

In the instant claim the evidence preponderates that the claimant suffered an injury within the course and scope of her employment at approximately 3:30 a.m. , December 1, 2001, when she was assaulted by a resident/client at the facility of respondent. The injury was reported to appropriate supervisory personnel in a timely manner and the claimant was directed to obtain

medical treatment in connection with injury. The claimant was seen at the emergency room of Lawrence Memorial Hospital on December 1, 2001. The evidence in the record reflects that the claimant was provided Flexaril, Darvocet-N, Naprosyn, Ultram and Vioxx by emergency medical personnel in the treatment of her injury, which was diagnosed as “sprain shoulder/arm”. (CX. #1). Further, the evidence reflects that the claimant was again seen at the emergency room of Lawrence Memorial Hospital on December 7, 2001, and MRI scans were obtained relative to her cervical and lumbar spine.

The claimant incurred medical bills relative to her injury, which included pharmacy bills and emergency room treatment. While the claimant paid for some of the expenses there remain outstanding balances and unpaid bills directly related to the compensable injury. Respondent is liable for the cost of claimant’s medical treatment growing out of the compensable injury of December 1, 2001.

The claimant continued in her employment with respondent until on or about December 20, 2001, at which time her employment was terminated by same. Claimant continued to experience residuals of her injury during the period that she worked subsequent to the accident, as well as after her employment was terminated. There is no evidence in the record to reflect that the claimant experienced difficulties, restrictions, or physical limitation relative to her back prior to the December 1, 2001, compensable injury in the employment of respondent.

The claimant underwent diagnostic studies in January 2007, pursuant to a referral of her family physician, which disclosed a herniated disk in her lumbar spine. The claimant’s lack of medical treatment under the care of a specialist is not the product of a lack of need for such treatment but rather a lack of insurance and funds to obtain the treatment. The claimant has

remained within her healing period relative to the December 1, 2001, compensable injury and totally incapacitated from engaging in gainful employment from December 20, 2001, through the end of healing period. Respondent has controverted this claim in its entirety.

The medical benefits owed under the Workers' Compensation Act are only those that are reasonable and necessary. Ark. Code Ann. §11-9-508 (a). *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). Medical treatment rendered to the claimant in connection with her compensable injury is reasonable and necessary. In the instance claim, the evidence reflects that the claimant has incurred expenses for medical treatment at the emergency room of Lawrence Memorial Hospital, as well as other area medical provider in connection with her compensable injury. Further, surgery has been recommended in the treatment of the diagnosed herniated lumbar disc. Respondent has controverted the claim in its entirety.

AWARD

Respondent is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefits rate of \$143.00, for the period commencing December 20, 2001, and continuing until such time as the claimant reaches the end of her healing period, a date to be determine, as a result of her compensable injury of December 1, 2001. Said sums accrued shall be paid in lump without discount.

Respondent shall pay all reasonable and necessary medical, hospital, nursing and other apparatus expenses growing out the claimant's compensable injury of December 1, 2001, to include medical related travel.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

A copy of this Opinion shall be forwarded to the Operations and Compliance Division in light of the failure of respondent to maintain a policy of workers' compensation insurance coverage or to qualify as an authorized self-insured employer.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE