

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIMS NOS. F609774 & F609775

JENNIFER L. MARTIN

CLAIMANT

SCROLL TECHNOLOGIES

RESPONDENT EMPLOYER

WAUSAU

RESPONDENT CARRIER

ORDER AND OPINION FILED APRIL 9, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

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

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on February 16, 2007. A prehearing conference was held and a prehearing order was filed on February 7, 2007. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an April 10, 2006, and a June 6, 2006, employer-employee relationship.
2. The compensation rates for the April 10, 2006, incident are \$302/227.
3. The compensation rates for the June 6, 2006, incident are \$255/191.

The claimant contends that she sustained a compensable injury during the

course of employment on either April 10, 2006 or June 6, 2006. The claimant contends the initial injury was on April 10, 2006, with a recurrence on June 6, 2006. The claimant contends she is entitled to medical benefits and temporary total disability benefits from July 16, 2006, to a date to be determined as well as attorney's fees.

Respondents contend the claimant was not injured at work and an injury was not reported until August 29, 2006. Respondents, alternatively, contend if the claim is found to be compensable, the only orthopedic physician who has seen her released her to full duty on September 28, 2006. Respondents are also requesting an offset for any group benefits paid in this matter, if the claim is found to be compensable.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Notice defense.
5. Attorney's fee.
6. Offset of group benefits.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann.

§11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an April 10, 2006, and a June 6, 2006, employer-employee relationship.
2. The compensation rates for the April 10, 2006, incident are \$302/227.
3. The compensation rates for the June 6, 2006, incident are \$255/191.
3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on April 10, 2006, or June 6, 2006.

DISCUSSION

The claimant, 41 years old, worked as a tester for the respondent employer since November 2005. On April 10, 2006, the claimant was moving compressors, using a manipulator and she felt back pain after unloading five pallets of compressors. She testified that she felt a sharp back pain as she was moving the last compressor and this required her to stop for a short time before continuing her job. The claimant testified that a typical day would involve handling only two pallets of compressors but on April 10, 2006, she handled five pallets. The claimant holds the bars of the manipulator and keeps it steady as it moves the compressors and she guides it wherever it needs to go. The claimant testified that she told Andy Biddle, the floor supervisor, that she had hurt her back. Andy suggested that she put back patches on her back as he thought she probably had pulled a muscle. Andy did not complete any paperwork nor send her to the nurse's station.

According to the claimant, she told Steve May when she was switched from the

manipulator to finals the following day. At that time, she told Steve May that she had hurt her back on the manipulator and she believed the move to finals was related to that incident. According to the claimant, the finals work is easier. She puts oil in the compressors and charges the oil in the compressors.

The claimant told a fellow worker, Yvonne Penney, that she had hurt her back on the manipulator and had been shifted to finals. The claimant continued to take Advil and ibuprofen and wear a back patch and continued to work through April. The claimant bought her back patches herself and she testified these helped some. The claimant testified that on June 6, 2006, she was working in finals and was pulling out one of the fittings from the compressor and it was stuck and difficult to remove and she felt the sharp pain shoot down from her butt through her leg. Yvonne got Andy Biddle and Jonathan Tate was there and Steve was summoned. Steve helped her to the nurse's station and Caron Manning, the nurse, was called by telephone. Ms. Manning advised not to write the report as a workers' compensation claim. The claimant sought medical treatment at the emergency room. The claimant was given Prednisone and Vicodin and remained off work for a day and a half. The claimant was allowed to sit and perform her job and not stand after she returned to work. The claimant testified that she continued to try to talk to Caron Manning, the nurse, but the claimant's shift was a night shift and she did not talk to Caron until July. In July, Caron told the claimant to go see Aimee Hughes, a nurse practitioner. After the claimant saw Aimee Hughes, she was placed on medical leave. The paperwork the claimant completed stated in the how did the injury occur section, "I was [sic] pulling fittings out of compressor." The claimant identified the date of her injury as June 6, 2006, at 9:45.

According to the claimant, her short term disability benefits were denied because the injury was deemed to be work related.

The claimant was referred to an orthopedic specialist, Dr. Lawrence Dodd, and she had a MRI. Dr. Dodd ordered some physical therapy and ultimately released her to regular duty. According to the claimant, Caron Manning wanted a second opinion and she began treating with Dr. James Raker, a chiropractor, where she took some physical therapy and was referred to Dr. Iftqar Syed. Dr. Syed gave the claimant steroid injections in the back. The claimant has remained off work.

According to the claimant, she has pain in the lower part of her back and pain in both legs and has trouble sleeping. The claimant testified that she still felt unable to perform her job as her job requires a lot of walking, standing and pulling.

Under cross examination, the claimant further explained that the manipulator is similar to a robot that actually lifts the compressors; however, she has to hold onto the manipulator to move the compressors. Steve May was the claimant's supervisor at the time of the incident and Andy Biddle was the lead person on April 10, 2006 and Jonathan Tate was the lead on June 6, 2006. The claimant testified that she told Steve May about the April 10, 2006, incident the following day when she was moved to finals. The claimant verified that she felt pain when she was moving a specific compressor on April 10, 2006. The claimant described the incident on June 6, 2006, as pain going down her leg after she was attempting to remove a fitting from the compressor that had become stuck. The claimant testified that she had worked in pain from April 10, 2006 until the June 6, 2006, incident and believed the June 6, 2006, incident aggravated her condition. The claimant testified that after the June 6, 2006, incident Steve May took

her to the nurse's station and the nurse was out and she was called on the telephone. The nurse, Caron Manning, told Steve not to write the incident up as a work injury.

The claimant sought emergency room treatment on June 6, 2006 and remained off work for a day and a half and then returned to work and continued working until July 26 or 27, 2006. The claimant verified that she has had over 20 physical therapy sessions.

Steve May, production supervisor for the second shift for the respondent, testified that the claimant did not advise him of an injury on April 10 or 11, 2006. Mr. May testified that on June 6, 2006, the claimant advised him that her leg was hurting but she stated she had hurt her knee working in the yard at home. Mr. May stated he learned the claimant was contending a work injury a couple of months after the June 6, 2006, incident and he learned such from Caron Manning. Mr. May confirmed the claimant left work on June 6, 2006, by wheelchair but did not arrive to work in a wheelchair that day.

Jonathan Tate, Lead Production Tech in Final Processing for the respondent employer, testified that the claimant did not report to him on April 10, 2006, that she had injured herself on the job. Mr. Tate remembers the claimant telling him at the beginning of a shift that her knee was bothering her; however, she did not state it was an on-the-job injury. Mr. Tate does not recall the claimant being wheeled out of the plant in a wheelchair on June 6, 2006. Mr. Tate did confirm he is considered a lead person on the night shift and was in charge if Mr. May was unavailable. Mr. Tate confirmed that Andy Biddle was a Tech III like himself and had simply a different responsibility.

Caron Manning, supervisor of medical and benefit services for the respondent employer, testified that she works from 8:00 to 5:00 Monday through Thursday and from 8:30 to 5:30 on Fridays and is on call. Ms. Manning was unaware of a work injury involving the claimant on April 10 or 11, 2006, but did get a phone call from Steve May on June 6, 2006. According to Ms. Manning, Mr. May stated that the claimant told him she thought she had hurt her knee at home in the yard; therefore, the injury was not written as a work injury. Ms. Manning stated the claimant spoke with her in July 2006 and the knee was discussed and a nurse practitioner was recommended. Ms. Manning faxed the short term disability forms to Aimee Hughes, the nurse practitioner, and the forms were completed there. Ms. Manning stated she called the claimant after receiving the short term disability paperwork and discussed with her the information about the injury happening at work and that certain paperwork had to be completed for filing a workers' compensation claim.

Ms. Manning was questioned about the claimant's release to return to work in September 2006 and Ms. Manning explained that the employee is required to be examined by the company doctor for a fit-for-duty examination and that was arranged. The claimant did not keep that appointment. Ms. Manning emphatically testified that she was unaware of the claimant contending a work injury until she received the short term disability paperwork. Ms. Manning was questioned whether it might be unusual for someone to be at work and work half a shift and then have to be wheeled out to the car in a wheelchair. Ms. Manning simply stated that the claimant stated she had hurt herself at home.

Bridgette Lassiter, a co-worker, testified that she worked in the same department

with the claimant in June 2006 in finals. Ms. Lassiter testified that she learned the claimant had hurt her back in the girth weld department and she had been moved to finals because it was easier work and that Andy Biddle had moved her. Ms. Lassiter testified that she heard the claimant tell her supervisors that her back was hurt and it was clear to her that the claimant was hurt at work. Ms. Lassiter confirmed that the fittings in finals get stuck and require force to get them out of the compressors.

Yvonne Penney, a co-worker, testified that she spoke with the claimant about her back and the claimant told her she had not spoken with her supervisor because she did not know if she hurt her back on the manipulator or at home. Ms. Penney testified that Steve May asked her to write a statement about the claimant and how she got hurt. Ms. Penney testified that she wrote that the claimant was not certain if she had hurt her back at home or on the manipulator in girth weld.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails 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. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876

(1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that she sustained a specific incident injury on April 10, 2006 or June 6, 2006. The claimant has presented an account of an incident on April 10, 2006, where she had back pain. There is no medical evidence to validate her account. The claimant next provided an account of another incident on June 6, 2006, where she began having leg pain while working. The claimant did seek medical treatment following this incident; however, the contemporaneous medical reports do not mention an injury at work. In fact, the first report dated June 6, 2006, from the Baptist Medical Center in Arkadelphia specifically states “she knows of no acute injury otherwise.” Medication was prescribed with no diagnostic testing. The next medical was July 26, 2006, from Galleria Oaks Diagnostic Center from Aimee Hughes, a nurse practitioner, who saw the claimant for back pain; however, this report states the back pain began three weeks ago. Some x-rays were performed and the claimant was diagnosed with strain of the lumbar region. Again, no mention of a work injury. The first indication in writing of a work injury was the claimant’s completion of the Short Term Disability Benefits forms. The claimant indicated this happened at work on June 6, 2006, again no mention of the April 10, 2006, incident. Aimee Hughes’ August 14, 2006, report again does not mention any work injury but does again mention the claimant’s back pain began one month ago. The first mention in the medical evidence of a work-related injury is Dr. Dodd’s September 28, 2006, report and he mentions both the April 10, 2006, incident and a second injury a couple of months later. Dr. Dodd ordered physical therapy after reviewing the claimant’s MRI, which showed mild stenosis at L4-5 on the right. On

September 28, 2006, Dr. Dodd released the claimant to regular duty but ordered the physical therapy. The claimant began treating with Dr. Raker beginning in October 2006 and continued to treat with him at the time of the hearing.

While I found it to be an odd coincidence that the claimant was moved to an easier job the day after she contends she initially hurt her back on April 10, 2006, the supervisor, Steve May, testified the move had no relation to the claimant contending she hurt her back. In fact, Steve May testified that the claimant never reported a work injury to him and he only learned she was contending a work injury from the company nurse and that was after the claimant completed the short term disability papers. Jonathan Tate and Caron Manning both testified the claimant did not tell them she had a work injury. Bridgette Lassiter, a co-worker, testified that she had no first hand knowledge of either an April 10, 2006, incident or a June 6, 2006, incident but she did hear the claimant tell her supervisors that her back was hurting. Another co-worker, Yvonne Penney, testified the claimant told her she was not sure if she hurt her back at home or in girth welding.

After considering the medical evidence and the testimony of all the witnesses, I was not persuaded that the claimant had sustained a compensable injury either on April 10, 2006 or June 6, 2006. The contemporaneous medical evidence did not support the claimant's testimony of her accounts of a work injury and the management witnesses' testimonies differed from the claimant's account. Even the one co-worker, Ms. Penney, provided some damaging testimony that the claimant told her she did not know when she hurt her back. The burden is on the claimant to show a causal connection between his or her injury and employment. *C.J. Horner Co. v. Stringfellow*, 286 Ark. 342, 691

S.W.2d 861 (1985). I was not persuaded that the claimant's account of the events provided a credible account nor did I find the contemporaneous medical evidence supported the claimant's account.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on April 10, 2006 or June 6, 2006. The claim for benefits is respectfully denied.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**