

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605653

GABRIELA MARTINEZ

CLAIMANT

PINNACLE FOODS

RESPONDENT

ZURICH AMERICAN INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 22, 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 MICHAEL RYBURN, Attorney, Little Rock,
Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on February 26, 2007, in Springdale, Arkansas. A pre-hearing order had been entered in this case on February 5, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the parties announced that they had agreed on the appropriate weekly compensation rates and such rates were identified. The claimant also requested to amend the issues to reflect that she was now contending that she sustained a compensable injury to her lower back only as the result of a specific employment related incident on October 11, 2005. A copy of the pre-hearing order with these amendments 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 in 2005, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation benefits are \$387.00 for total disability and \$290.00 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 low back as the result of specific incident on October 11, 2005.
2. The claimant's entitlement to the payment of medical expenses.

In regard to these issues, the claimant contends that "her back was injured when she fell at work."

In regard to these issues, the respondents contend:

1. The claimant did not sustain compensable injury to her right shoulder and back.
2. The claimant is not entitled to any benefits.
3. There were no objective medical findings.
4. The claimant's physical problems and need for treatment if any, are preexisting and not related to her employment for the respondent employer.

DISCUSSION

_____The initial issue for resolution is the question of whether the claimant sustained a "compensable injury" to her lower back on

October 11, 2005. The burden rests upon the claimant to prove compensability. In order to meet this burden, the claimant must prove all of the essential elements for an injury to be considered “compensable” under the Arkansas Workers’ Compensation Act.

The first of these essential elements are found in Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the actual existence of the physical injury, which is alleged to be compensable must be “established” by medical evidence. It further requires that the existence of this injury must be supported by “objective findings”. The term “objective findings” is defined by Ark. Code Ann. §11-9-102(16)(A)(i), as those findings that cannot come under the claimant’s voluntary control.

The medical evidence introduced in the present case shows that the claimant has been diagnosed as suffering from musculoskeletal low back pain and shoulder pain by Dr. Karl Haws and Dr. David Davis. A diagnosis of musculoskeletal neck, shoulder, mid, and low back pain was made by Dr. Larry C. Weeks. Scoliosis with degenerative facet changes and degenerative disc disease was the diagnosis of Dr. Carl Kendrick.

The diagnoses by Dr. Haws and Dr. Davis appears to be based solely upon the claimant’s subjective complaints. X-rays that were taken at the direction of Dr. Haws revealed no abnormalities involving the claimant’s left shoulder and no significant abnormalities involving the claimant’s lumbar spine. The only defect noted was a “slight” or “very minimal scoliotic curvature of the lumbar spine. A lumbar MRI, which was performed at the request

of Dr. Haws, was interpreted as being entirely within normal limits with the vertebral bodies well aligned and the disc spaces well maintained. The neuroforamina were shown to be highly patent with no spinal stenosis, disc bulges, protrusions, or herniations.

The diagnosis of Dr. Weeks would also appear in large part to be based upon the claimant's subjective complaints and the results of various subjective testing. Some of his records do mention apparent paravertebral muscle spasms. These were first noted at T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T12, L1, L2, L4, and L5. Later records indicated the apparent presence of paravertebral muscle spasms at C6, C7, T1, T2, T5, T6, T7, L4, L5, S1, and the sacroiliac joints bilaterally. The last recorded observation of these muscle spasms was noted in his records of November 18, 2005, as involving only the C6, C7, T1, T2, T5, T6, and T7 areas of the claimant's spine. However, Dr. Weeks never mentioned the presence of muscle spasms in the claimant's lumbar spine in any of his narrative reports. Instead, he only noted positive results on various subjective testing. It is also curious that neither Dr. Haws nor Dr. Davis recorded the observation of any muscle spasms involving the claimant's thoracic or lumbar spine, even though they treated and evaluated the claimant on numerous occasions both before and during the period of treatment by Dr. Weeks. X-rays of the claimant's lumbar spine, which were taken at the request of Dr. Weeks, were interpreted by Dr. Robert Kuhn (also a chiropractor) as showing no evidence of any acute fracture or dislocation, but only evidence of developmental degenerative changes in the form of a

left towering left convexity, spondylosis, joint space narrowing affecting the mid to lower lumbar levels with associated facet degeneration or arthrosis. It must be noted that the interpretation of these x-rays is somewhat inconsistent with the interpretation of the previous lumbar x-rays and lumbar MRI that was performed at the request of Dr. Haws. However, these x-rays as well as the studies done at Dr. Haws' request fail to show any abnormal spinal lordosis, which would be expected if muscle spasms were present.

When the claimant returned to Dr. Weeks, in July of 2006, his diagnosis of the claimant's difficulties were low back and neck pain from disuse during her convalescence from an unrelated surgery on her right shoulder, which acted in conjunction with the degenerative disease of her lumbar spine. This diagnosis would also appear to be based upon the claimant's subjective complaints, the results of various subjective testing, and the interpretation of the previous x-rays that were taken at his request.

The diagnosis made by Dr. Kendrick appears to be based primarily on the claimant's subjective complaints. However, he also appears to have relied to some degree on the interpretation of the lumbar x-rays taken at the request of Dr. Weeks, as he expressly noted that x-rays showed scoliosis, facet changes, and degenerative discs involving multiple levels of the lumbar spine. It would appear that he was unaware of the x-rays taken at the request of Dr. Haws, and more importantly, the lumbar MRI performed at Dr. Haws request.

After consideration of all the medical evidence presented, it is my opinion that the claimant has failed to prove by credible medical evidence the actual existence of any physical injury to her lumbar spine that is supported by “objective findings”, as defined by Ark. Code Ann. §11-9-102(16)(A)(i). In reaching this decision, I have given more weight and credit to the interpretation of the x-rays and lumbar MRI study performed at the request of Dr. Haws than the interpretation of the x-rays taken at the request of Dr. Weeks. I have also given no weight and credit to the paravertebral muscle spasms that were purportedly observed by Dr. Weeks. As previously noted, Dr. Weeks does not expressly mention, in his narrative reports, the observation of lumbar paravertebral muscle spasms. No such muscle spasms were noted by Dr. Haws or Dr. Davis, either prior to or during the time that they were purportedly noted by Dr. Weeks. The presence of lumbar muscle spasms would also be contraindicated by the normal lumbar lordosis shown on the x-rays and MRI study.

In order to constitute a “compensable injury” as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must also prove that her alleged back injury arose out of and occurred in the course of her employment with the respondent, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to her body, and required medical services, or resulted in disability. The only evidence presented by the claimant to prove the occurrence of a physical injury to her lumbar spine that arose out of and occurred in the

course of her employment with the respondent that was caused by a specific incident, and that is identifiable by time and place of occurrence, is her own testimony. Although her testimony could be sufficient to prove these facts, I do not find her testimony to be sufficiently credible to do so.

At the hearing, the claimant testified that she had had no prior back injuries while working for the respondent or any where else. She further described her injury as occurring when she fell off a little "table", bench, or stool at her work station. She stated that, when she fell, she struck her back and hip on a lower bench or stool before falling completely to the floor. The injury was subsequently reported and she was sent by the respondent for medical treatment (apparently by Dr. Haws).

The claimant's testimony does coincide with the history she gave to Dr. Haws, on October 13, 2005. However, during his actual examination of the claimant he expressly noted no evidence of recent trauma, such as inflammation, abrasions, edema, or ecchymosis (bruising) anywhere on the claimant's body.

However, when the claimant consulted Dr. Weeks (on November 7, 2005), she gave a history that her pain started "when I came the first time that I fell". Obviously, this would clearly indicate more than one fall. This statement would also indicate that the claimant's back complaints had been present, prior to the alleged fall on October 11, 2005. There is no evidence that the claimant had seen Dr. Weeks between October 11, 2005 and November 7, 2005.

In fact, Dr. Weeks expressly states that he first saw the claimant for the alleged injury of October 11, 2005, on November 7, 2005.

Finally, the magnitude of the claimant's subjective symptoms and complaints appear to far outweigh any objectively demonstratable defects involving her lumbar spine. At best, the only arguable objective defects involving the claimant's lumbar spine are minor degenerative changes which would not be associated with any specific traumatic event.

In summary, I find that the claimant has failed to prove that she sustained a "compensable injury" to her lower back or lumbar spine on October 11, 2005. Specifically, she has failed to prove by medical evidence, which is supported by objective findings, the actual existence of any physical injury to this portion of her body. She has further failed to prove by the greater weight of the credible evidence the occurrence of any physical injury to this portion of her body that arose out and occurred in the course of her employment, as the result of a specific incident on October 11, 2005.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On October 11, 2005, the relationship of employee-employer-carrier existed between the parties.

3. On October 11, 2005, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$387.00 for total

disability and \$290.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove that she sustained a “compensable injury” to her low back or lumbar spine on October 11, 2005. Specifically, she has failed to establish by medical evidence, which is supported by objective findings, the actual existence of any physical injury to her low back and lumbar spine. She has further failed to prove by the greater weight of the credible evidence that on October 11, 2005, she sustained a physical injury to low back or lumbar spine that arose out of and occurred in the course of her employment with the respondent, that was caused by a specific incident, and that is identifiable by time and place of occurrence.

5. The respondents have denied the occurrence of any compensable injury to the claimant’s low back or lumbar spine and have controverted this case 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