

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F604107

TERESA ROBERTS, Employee

CLAIMANT

KIDS KORNOR DAYCARE, Uninsured Employer

RESPONDENT

OPINION FILED JUNE 27, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondent represented by RICK WOODS, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On May 30, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 21, 2006, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed between the parties at all relevant times.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$152.20 which would entitle her to compensation at the rate of \$101.00 per week for total disability.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's low back on March 2, 2006.
2. Temporary total disability.
3. Medical.

4. Attorney fee.

At the time of the hearing claimant clarified the dates for temporary total disability benefits to include March 7, 2006 through April 2, 2006, with the exception of March 9, 2006.

The claimant contends she was injured on March 2, 2006. Her lower back was injured when she slipped in some water at work. She contends she is entitled to temporary total disability, medical, and an attorney fee.

The respondent contends that if the claimant was injured, she did not suffer a compensable injury as defined by the Arkansas Workers' Compensation law. Further, that if any alleged injury is found to be compensable, that the claimant stopped treating with the physician provided by respondent at respondent's cost, unilaterally.

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 A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 21, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$152.20 which would entitle her to compensation at the rate of \$101.00 per week for total disability is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 43-year-old woman who began working for the respondent daycare in January 2006. Claimant primarily worked in a toddler class and her job duties included feeding children, changing diapers, washing children, clothes, towels, and sheets. Claimant testified that her job also required bending, stooping, and lifting children.

Claimant testified that on March 2, 2006 she came into the respondent's building from a lunch break for the purpose of attending an employee meeting. Claimant testified that employee meetings generally took place in an area in front of the office. While waiting for her supervisor to get meeting notes and for another employee to arrive, the claimant decided to get a Coke from the office. Claimant testified that as she turned to go, her legs slipped out from under her on a wet floor. Claimant testified that she did not fall to the ground but caught herself on the door and twisted her back. Claimant testified that she continued to work with pain after the meeting. Claimant testified that her pain continued that night and when she went home she took a hot shower, applied heat, and took Tylenol.

Claimant testified that she continued to work for the respondent and that her back pain continued to worsen to the point that she was unable to lift the children. Claimant eventually informed respondent that she needed to seek medical treatment and was sent by respondent to Dr. Mullins who diagnosed low back pain and prescribed medication. Claimant eventually sought medical treatment from her family physician, Dr. Jones, who diagnosed a lumbar strain and prescribed medication and physical therapy. In addition, Dr. Jones took claimant off work for a period of time.

Respondent paid for medical treatment and medication prescribed by Dr. Mullins. However, respondent subsequently controverted this claim in its entirety. Claimant has filed this claim contending that she suffered a compensable injury to her low back while working for respondent on March 2, 2006. She requests payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her low back when she slipped on a wet floor while working for respondent on March 2, 2006. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

Compensation will be denied if a claimant fails to prove any one of these requirements by a preponderance of the evidence. *Mikel v. Engineering Specialty Plastics*, 56 Ark. 126, 938 S.W. 2d 876 (1997).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury. Specifically, I find that claimant has failed to offer medical evidence supported by objective findings establishing an injury.

"Objective findings" are those findings which cannot come under the voluntary control of the patient. A.C.A. §11-9-102(16)(A)(i). In this particular case, claimant was diagnosed with back pain by Dr. Mullins and with a lumbar strain by Dr. Jones. However,

there are no objective findings supporting an injury. Dr. Jones' report of March 14, 2006, indicates that x-rays taken of the claimant's lumbar spine were within normal limits. There are no other tests or observations present in the medical record which would be considered objective findings of injury. Absent objective findings establishing an injury, a claimant cannot prove a compensable injury.

Accordingly, for the foregoing reasons, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury. In this particular case, there are no objective findings establishing an injury; therefore, claimant cannot prove a compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by the respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Although this claim was found not to be compensable, the respondent is nevertheless responsible for payment of the court reporter's fee for preparing the transcript. Deducting the \$200.00 deposit made at the hearing leaves a balance of \$370.25. Respondent is hereby ordered to pay this amount to Donald Court Reporting.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE