

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F705087

HORTENCIA SANCHEZ, Employee	CLAIMANT
PINNACLE FOODS, Employer	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED NOVEMBER 9, 2007

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

Claimant represented by RONALD M. MCCANN, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL R. MAYTON, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 17, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 25, 2007, 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-carrier relationship existed among the parties on January 5, 2006.
3. The claimant was earning an average weekly wage of \$400.00 which would entitle her to compensation at the weekly rates of \$267.00 for total disability benefits and \$200.00 for permanent partial disability benefits.

At the time of the hearing the parties agreed to modify their prior stipulation with regard to the claimant's average weekly wage and compensation rates. The parties have

agreed to stipulate that claimant earned an average weekly wage of \$530.00 which would entitle her to compensation at the rate of \$353.00 for total disability benefits and \$265.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's back on January 5, 2006.
2. Temporary total disability from November 8, 2006 through a date yet to be determined.
3. Medical.
4. Attorney fee.
5. Credit for group disability and medical.

The claimant contends she was injured in the course and scope of her employment in January of 2006. She was initially treated at C.A.R.E. Chiropractic Clinic. She was also treated at the Cooper Family Medicine Clinic and was then referred to the Neurosurgery Clinic. She ultimately underwent back surgery at Washington Regional Medical Center on November 8, 2006. Claimant contends she is entitled to reasonable and necessary medical benefits. She further contends she has remained off work since the date of her back surgery and is therefore entitled to payment of temporary total disability benefits from November 8, 2006 to a date yet to be determined, as well as a controverted attorney fee.

The respondents contend that claimant did not suffer a compensable injury to her back while employed by respondent on or about January 5, 2006. Respondent contends that claimant's physical condition and need for treatment were the result of a pre-existing degenerative condition unrelated to her employment with the respondent. Alternatively, respondent contends that if the claim is compensable that claimant had recovered from her compensable injury by April 14, 2006; therefore, respondent is not liable for compensation benefits subsequent to that date. Finally, respondent requests a credit for any group disability and medical benefits paid on behalf of claimant.

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 Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed among the parties on January 5, 2006.
3. The parties' stipulation that claimant earned an average weekly wage of \$530.00 which would entitle her to compensation at the rate of \$353.00 for total disability benefits and \$265.00 for permanent partial disability benefits is hereby accepted as fact.
4. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by respondent on January 5, 2006.
5. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes, but is not limited to, surgery performed by Dr. Routsong.
6. Claimant is entitled to temporary total disability benefits beginning November 8, 2006 and continuing through a date yet to be determined.
7. Pursuant to A.C.A. §11-9-411, respondent is entitled to a credit for medical and disability benefits paid by a group health carrier.
8. Respondent has controverted claimant's entitlement to all temporary total disability benefits.

### FACTUAL BACKGROUND

The claimant is a 60-year-old woman who began working for the respondent in October 1997 on a processing line. Claimant testified that on January 5, 2006, she was performing a job on the line which required her to put chicken on plates. Claimant testified that this job could be performed while standing or sitting on a bench. Claimant testified that she was performing the job sitting down and in the process of getting up her right foot slipped causing her to grab onto the line to keep from falling. Claimant testified that as she did this she felt immediate pain in her low back. Claimant testified that the pain continued throughout the remainder of her shift and that she got some pain pills out of a machine at the plant.

On January 6, 2006, claimant got up at home and her back pain continued. As a result, she reported the injury to the nurse's station that day and was sent by the nurse to Dr. Weeks, chiropractic physician. Dr. Weeks' medical reports indicate that he diagnosed claimant's condition as a sprain/strain of the lumbar spine and he treated claimant with manipulation and exercises. Dr. Weeks also referred claimant to Dr. Haws who diagnosed claimant's condition as musculoskeletal low back pain. He treated claimant with an injection, medication, and work restrictions. For a short period of time the claimant continued to be evaluated and treated by both Dr. Haws and Dr. Weeks. On February 6, 2006, Dr. Weeks released claimant from his care; however, claimant continued to receive medical treatment from Dr. Haws. Dr. Haws continued to treat claimant conservatively and gave her a second injection on March 14, 2006.

Dr. Haws' medical reports indicate that claimant's condition continued to improve until April 14, 2006, when he indicated that claimant was pain free and released her to full duty.

Claimant's next medical treatment with Dr. Haws occurred on July 19, 2006, when she made complaints of pain in her low back which radiated down her right leg to her

ankle. Dr. Haws ordered an MRI scan of the claimant's lumbar spine. Following the MRI scan, claimant was evaluated by Dr. Cooper, partner of Dr. Haws, on August 10, 2006. Dr. Cooper indicated that the MRI scan revealed a broad-based disc protrusion at the L5-S1 level and he referred claimant to Dr. Knox for a neurosurgical evaluation.

Instead of Dr. Knox, claimant was evaluated by Dr. Routsong, Dr. Knox's partner. Dr. Routsong initially treated claimant conservatively and ordered a lumbar CT myelogram. Eventually he performed surgery on claimant's lumbar spine on November 8, 2006.

Claimant has filed this claim contending that she suffered a compensable injury to her low back while employed by respondent on January 5, 2006. She seeks payment of medical treatment as well as temporary total disability benefits beginning November 8, 2006 and continuing through a date yet to be determined.

### ADJUDICATION

Claimant contends that she suffered a compensable injury to her low back while working for the respondent on January 5, 2006. Claimant's claim is for a specific incident 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 identi-

fiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury.

First, after having had the opportunity to observe the claimant during the hearing and after consideration of her testimony, I find the claimant to be a credible witness. Claimant testified that while working for the respondent on January 5, 2006, she was in the process of standing up from a bench when her right foot slipped causing her to grab onto the production line in order to keep from falling. As this occurred, claimant felt immediate pain in her low back. Claimant admittedly did not report the incident to her supervisors that day, but did report the injury the next day. Corroborating the testimony of the claimant was Celina Espinal, a co-worker. Espinal testified that on January 5, 2006 the claimant was moving to stand up when "she kind of slipped, and she was going to fall, and she grabbed onto the line." Espinal testified that claimant reported her back hurting after this incident.

The medical reports submitted at the hearing indicate that claimant reported a work-related injury to her treating physicians. While the medical reports do not mention the claimant's foot slipping but only mention getting up from the bench, I do not find this significant; particularly, given the language barrier in this case. All communication between the claimant and her treating physician was performed through interpreters.

In short, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered an injury which arose out of and in the course of her employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence. This finding is based upon the testimony of the claimant which I find to be credible, the testimony of Espinal corroborating the incident, as well as the remaining evidence presented.

I also find that claimant has proven by a preponderance of the evidence that the

injury caused internal physical harm to her body which required medical services and that she has offered medical evidence supported by objective findings establishing an injury.

After the claimant reported this incident to the respondent's nurse, she was sent by the respondent to Dr. Weeks for medical treatment. A review of Dr. Weeks' medical reports indicates that he noted muscle spasms and edema present in the claimant's low back area. Muscle spasms and swelling are considered objective findings. A subsequent MRI scan revealed disc protrusion at L5-S1. As a result of claimant's injury she received medical treatment from Dr. Weeks, Dr. Haws, and Dr. Routsong. Based upon this evidence, I find that claimant has satisfied the remaining elements of compensability.

Accordingly, for the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by respondent on January 5, 2006.

Respondent contends that even if the claimant did suffer a compensable injury that she had fully recovered by the time of her release by Dr. Haws on April 14, 2006; therefore, respondent would not be liable for any compensation benefits subsequent to that date. I find based upon the evidence presented that claimant's continued problems subsequent to April 14, 2006 are causally related to her original compensable injury.

Claimant testified at the hearing that she was given two injections by Dr. Haws and that the second injection improved her low back condition. It was while the second injection was still alleviating her complaints that she became pain free and was released by Dr. Haws on April 14, 2006. However, claimant testified that the injection wore off and her back pain returned. Claimant testified that she continued to work and took medication from a machine at work, but did not return to the nurse at that time. Claimant testified that she had a two week vacation scheduled and believed that being off work would help her condition. When the pain did not go away even while claimant was on vacation, she went back to the nurse and eventually returned to Dr. Haws on July 19, 2006.

It might be contended that claimant's subsequent back problems beginning in July 2006 are not causally related to the compensable injury based upon a belief that claimant did not have radicular symptoms until July 2006. In fact, Dr. Cooper in his report of August 10, 2006 indicates that claimant's back pain has recurred "this time with radicular symptoms." This is incorrect. Dr. Haws noted radicular symptoms at the time of his first visit with claimant on January 24, 2006. He noted "She complains of constant pain in this area [right lower back and buttocks] with some radiation down the right leg." Thus, complaints of low back pain radiating down the claimant's right leg were not new in July 2006, but rather this was a complaint that had existed since January 2006 at the time of her first visit to Dr. Haws.

With respect to this issue, it should also be noted that there is no indication that claimant injured her back while on vacation or in any other way in July 2006. Finally, I note that Dr. Routsong's medical reports do not mention any complaints of a new injury, but instead relate claimant's complaints to the injury which occurred at work.

Given the foregoing evidence, I find that claimant's continued back complaints beginning in July 2006 were a continuation of her original compensable injury. Therefore, respondent is liable for payment of compensation benefits attributable to those complaints.

Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes but is not limited to surgery performed by Dr. Routsong in November 2006.

I also find that claimant is entitled to temporary total disability benefits beginning November 8, 2006 and continuing through a date yet to be determined. Even though the claimant continued to receive medical treatment for her back complaints, she continued working for the respondent until the date of her surgery on November 8, 2006. Medical reports from Dr. Routsong indicate that while he and the claimant discussed the possibility of her returning to work at another job, Dr. Routsong has yet to release the claimant to

return to work. Accordingly, I find that claimant has remained within her healing period and that she has suffered a total incapacity to earn wages beginning November 8, 2006 and continuing through a date yet to be determined.

Finally, claimant testified that some of her medical treatment has been paid for by a group health carrier. She also testified that she has received some disability payments from a group carrier. Pursuant to A.C.A. §11-9-411, respondent is entitled to a credit for these payments. Even though respondent is entitled to a credit for disability benefits previously paid to the claimant, respondent has nevertheless controverted claimant's entitlement to all temporary total disability benefits and is liable for an attorney fee on same.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by respondent on January 5, 2006. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes, but is not limited to, surgery performed by Dr. Routsong. Claimant is entitled to temporary total disability benefits beginning November 8, 2006 and continuing through a

date yet to be determined. Respondent is entitled to a credit for medical and disability benefits paid by group carriers pursuant to A.C.A. §11-9-411. Respondent has controverted claimant's entitlement to all temporary total disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$275.50.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE