

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F200884

DELORES STROOPE, EMPLOYEE	CLAIMANT
FARMERS BANK & TRUST, EMPLOYER	RESPONDENT
ST. PAUL GUARDIAN INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED SEPTEMBER 20, 2007

Hearing before Administrative Law Judge S. Dale Douthit on June 27, 2007, at El Dorado, Union County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents #1 represented by Mr. Guy Alton Wade, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 represented by Ms. Judy W. Rudd, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 27, 2007, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A prehearing conference was conducted in this matter on February 14, 2007, and a Prehearing Order was entered on February 15, 2007. A copy of the Prehearing Order was marked as "Commission's Exhibit 1" and made a part of the record without objection, subject to any modifications made at the full hearing. The February 15, 2007, Prehearing Order set the full hearing for April 26, 2007; however, upon request from respondents #1, and with no objection from the other parties, the full hearing was continued to June 27, 2007.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all relevant times, including December 10, 2001.
- 3) The claimant's applicable compensation rate is \$154.00 per week for both temporary total disability and permanent partial disability.
- 4) The claimant sustained a compensable shock injury on December 10, 2001, and sustained a four percent (4%) whole body impairment as a result.
- 5) Claimant reached the end of her healing period on August 18, 2003.
- 6) The hearing transcript and all exhibits from the December 14, 2004, hearing is hereby incorporated by reference.
- 7) The ALJ Opinion filed March 3, 2005, in this matter is hereby incorporated by reference.

The parties agreed to litigate the following issues:

- 1) Whether the claimant is entitled to wage-loss disability benefits in excess of her four percent (4%) anatomical impairment rating.
- 2) Whether there is Second Injury Fund liability.

The claimant contended at the full hearing that she sustained admitted compensable injuries which resulted in an impairment rating of four percent (4%) to the body as a whole. The claimant contended that she is entitled to a determination with respect to the extent of wage-loss disability experienced over and above her compensable impairment, and that these matters have been controverted for purposes of attorney's fees. The claimant reserved the right to pursue other benefits to which claimant may become entitled in the future and

claimant's attorney respectfully requested that any attorney's fees owed by the claimant on the controverted benefits paid by award or otherwise be deducted from claimant's benefits and paid directly to claimant's attorney by separate check.

Respondents #1 contended at the full hearing that the claimant is not entitled to any benefits over and above the permanent impairment rating. Respondents #1 contended that the claimant is not entitled to any wage-loss disability benefits in relation to the work-related injury. Alternatively, respondents #1 contended that, if claimant is found to be entitled to wage-loss disability, such wage-loss should be the responsibility of the Second Injury Fund.

Respondent #2 contended at the full hearing that the claimant is not entitled to permanent partial disability benefits in excess of her anatomical rating pursuant to Arkansas Code Annotated §11-9-522. Alternatively, respondent #2 contended that there is no combination of disabilities to produce Second Injury Fund liability pursuant to *Mid-state Construction Company v. Second Injury Fund*, 295 Ark. 1, 746 S.W.2d 539. Respondent #2 contended that pursuant to Arkansas Code Annotated §11-9-525, if a pre-existing condition is latent, it is not subject to combination for purposes of Second Injury Fund liability.

#### DISCUSSION

\_\_\_\_\_The parties agreed that the ALJ Opinion filed March 3, 2005, would be incorporated by reference to the record herein. Said Opinion has been blue-backed for convenience purposes. In the March 3, 2005, Opinion, this ALJ outlined, in

detail, claimant's injury of December 10, 2001, and her subsequent treatment up through the December 14, 2004, hearing. The history is outlined at pages 3 through 8 in the March 3, 2005, Opinion and hereby incorporated into this Opinion.

In summary, the claimant sustained an electric shock injury while working for the respondents on December 10, 2001. After being shocked, the claimant testified that she struck her head and, as the result, respondents accepted and paid a four percent (4%) whole body impairment rating due to a disc bulge at the C3-4 level. (See Exhibit #5 to Joint Exhibit #2) The claimant did attempt to return to work as a bank teller on a few occasions, but testified she could not perform her duties due to her medical condition.

As listed in the previous Opinion, the claimant has seen numerous physicians in regard to her ongoing physical complaints/symptoms. Some of the symptoms the claimant testified she has includes the following:

- 1) Muscle spasms everywhere. (Transcript, page 63, lines 20-23)
- 2) Problems with thighs.
- 3) Problems with calfs.
- 4) Problems with shoulders.
- 5) Problems with upper quadrant of back.
- 6) Problems with arms.
- 7) Cannot stand.
- 8) Cannot sit.

- 9) Cannot concentrate.
- 10) Cannot hold her emotions in. (Transcript, page 59, lines 9-14)

Due to these numerous problems, the claimant relates to her compensable shock injury, the claimant testified that she cannot hold gainful employment. As such, the claimant requests wage-loss disability in excess of her four percent (4%) anatomical rating.

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App. 232,58 S.W.3d 848 (2001). To be entitled to any wage-loss disability benefits in excess of permanent physical impairment, a claimant must first prove, by a preponderance of the evidence, that he or she sustained permanent physical impairment as the result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage-loss, such as the claimant's age, education, and work experience. *Emerson Electric v. Gaston, supra*

In determining wage-loss disability, the Commission may take into consideration the workers' age, education, work experience, medical evidence, nature and extent of injury, and any other matters which may reasonably be expected to affect the worker's future earning power. Such other matters are motivation, post-injury income, credibility, demeanor, and a multitude of other

factors. *Curry v. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990). A claimant's lack of interest in pursuing employment with her employer and negative attitude in looking for work are impediments to the full assessment of wage-loss.

Additionally, Arkansas Code Annotated §11-9-102(4)(F)(ii)(a) states:

“Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.”

To award the claimant wage-loss disability benefits, it must be shown that the compensable injury is the major cause (or more than fifty percent [50%] of the cause), of her wage-loss disability. I find the claimant has failed to prove that her compensable injury is the major cause of any wage-loss disability benefits for a number of reasons.

The claimant's impairment rating was for a disc bulge at the C3-4 level. According to the doctor that gave the rating, Dr. Baskin, no restrictions were placed on Ms. Stroope because of her neck or the rating assigned. (See Dr. Baskin's deposition testimony at page 38, lines 21-24 of Joint Exhibit 2) Additionally, Dr. Baskin stated that the claimant's neck rating would not keep her from working. (See Joint Exhibit 2, page 38, line 25 and page 39, line 1)

Dr. Baskin went on to testify that his only concern with the claimant returning to work as a bank teller was her subjective complaints of pain. This ALJ finds that the claimant's complaints of pain are speculative, at best, but definitely not related to her December 10, 2001, injury based on the overwhelming medical evidence.

First, as stated in the March 3, 2005, ALJ Opinion and which is *res judicata*, doctors have referred to the claimant's complaints of pain as follows:

- 1) Dr. Johnson – “Strong tendency to convert physiologic or psychological discomfort into physical symptoms.” (ALJ Opinion filed March 3, 2005, pages 6-7)
- 2) Dr. Rutherford – “I would consider stress related phenomenon to be playing a large if not predominant role.” (ALJ Opinion filed March 3, 2005, page 6)
- 3) Dr. Barry Baskin – “When she was evaluated at UAMS, she had a seizure that was felt to be non-epileptic or a pseudo-seizure.” (Exhibit 1 to Joint Exhibit 2)
- 4) Dr. Baskin – “I think she does have some symptoms of depression and anxiety.” (Exhibit 1 to Joint Exhibit 2)

Ultimately, when reviewing all the medical records as a whole, it appears that the doctors were at a loss to explain the claimant's complaints of pain. Finally, the diagnosis of fibromyalgia was assigned to the claimant. I cannot find the claimant's fibromyalgia diagnosis to be causally related to her December 10, 2001, incident, especially in light of the medical reports that cast serious doubt as to whether these complaints are real.

Dr. Baskin specifically stated that the claimant has had normal nerve conduction studies, normal EEG, and unremarkable MRIs for the most part. (See Exhibit 1 to Joint Exhibit 2) Dr. Baskin did report some scattered abnormal signal of the MRI of the brain, but specifically found that the condition would not be the result of an acute or traumatic type of injury. (See Joint Exhibit 2 at page 13, lines 12-19) Dr. Baskin stated that he never witnessed any muscle spasms, even though

the claimant testified her whole body would spasm. Dr. Baskin reported: “I think we can attribute most of her symptoms to anxiety,” and further testified that the claimant had some anxiety type symptoms in the past. (Joint Exhibit 2, page 23, lines 19-25)

Dr. Baskin testified at deposition that he recalled reports from Drs. Johnson and Zolten about possible malingering on the part of the claimant. (Joint Exhibit 2, page 31, lines 2-25) Dr. Baskin testified that he had treated numerous patients with shock related injuries and seemed to question Ms. Stroope’s complaints:

Q Did you ever find any objective explanation for her continued complaints or symptoms, Doctor?

A No, sir.

Q You indicated you had treated people with a shock injury or people that had had shock injuries before, was Ms. Stroope’s treatment and complaints consistent with those or were they inconsistent, Doctor?

A Well, her complaints of numbness and tingling and muscle spasm and things of that nature are not every time that I see, every case that I’ve seen of electrocution injury, present. I’ve seen some people that have said they had numbness and tingling and muscle spasm and things of that nature, but the typical objective findings would be abnormal nerve conduction and EMG; sometimes when the person has had a substantial electrical injury, they will have abnormal muscle enzymes. The CPK will be elevated. Sometimes aldolase will be elevated. That’s another marker of muscle damage, if a person had a substantial shock that caused the muscle to contract very firmly for a while. And I didn’t see – we didn’t see that in Mrs. Stroope’s case.

As far as the, again, the objective findings with regards to her spinal studies, nothing really out of line there except some degenerative changes, and again, protruding bulging disc. And the EEG, the electroencephalogram, was normal. No cognitive abnormalities. So, compared to some other patients that I’ve seen that have had electrical injuries – and again, all electrical injuries are different, some people are exposed to higher voltage, higher amperage, they are better grounded,

they may be on a wet surface, they may be up on a high power line. I get a lot of people that work for the electrical cooperatives and have a number of those patients that have been electrocuted and burned. And, in those cases, you frequently see a lot more muscle damage, elevated muscle enzymes, elevated – prolonged, I should say, nerve conduction studies, things of that nature.

Q And you didn't see any of that in Ms. Stroope. Is that correct?

A No, I didn't.

Q Would you place any limitation on Ms. Stroope because of her neck or the rating that you provided with regard to her neck?

A No, sir. (Joint Exhibit 2, page 37, lines 8-25 and page 38, lines 1-24)

The claimant's family physician, Dr. Fred Roberts, opined that the claimant's work injury of December 10, 2001, keeps her from working, but in his July 6, 2004, report, he states the claimant's condition is due to chronic pain, depression, and anxiety. (See page 141 of Claimant's Exhibit 1 from the December 14, 2004, hearing record) The diagnosis of anxiety is precisely what Dr. Baskin had opined as well. I cannot find that the claimant's depression and anxiety is causally related to her December 10, 2001, compensable event. It is clear that the claimant's depression and anxiety, as diagnosed by multiple doctors, is the major cause of any wage-loss the claimant may or may not have; however, clearly, the claimant's neck condition from which she sustained a four percent (4%) whole body anatomical impairment is not the major cause of any wage-loss the claimant may or may not have at the present time. That point is further driven home in Dr. Baskin's deposition wherein he opines that the claimant's neck condition does not prevent the claimant from returning to her pre-injury employment.

The nature and extent of one's compensable injury is a relevant factor when determining whether a claimant is entitled to wage-loss disability benefits. The bulge at C3-4 from which the claimant received her four percent (4%) rating was described as minimal. Further, there have been no doctors to state that the claimant cannot work due to her neck condition, or even that the claimant's ability to work is diminished because of her neck injury. It is clear from the medical records that fibromyalgia, depression, and anxiety are reasons given for the claimant's alleged symptoms. I find that none of these reasons are related to the claimant's compensable injury. I find that the nature and extent of the claimant's injury does not warrant an award of wage-loss disability benefits in this case. Additionally, I find that the claimant has failed to prove her compensable injury is the major cause of any alleged wage-loss disability.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with Arkansas Code Annotated §11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby

accepted as fact.

- 3) The claimant has failed to prove, by a preponderance of the evidence, that she is entitled to wage-loss disability benefits.
- 4) The claimant has failed to prove that her compensable injury was the major cause of any alleged wage-loss disability benefits.
- 5) Issue #2 outlined herein is hereby rendered moot.

After taking into consideration all the relevant factors when determining wage-loss disability, I find that for the reasons outlined herein, the claimant is not entitled to wage-loss disability benefits. Therefore the claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

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S. DALE DOUTHIT  
Administrative Law Judge