

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F611173

LINDA TREMBLAY, Employee	CLAIMANT
JOURNEY'S INN, Employer	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED FEBRUARY 27, 2007

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

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

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 31, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 29, 2006, and a pre-hearing order was filed on November 30, 2006. 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 September 14, 2006.

At the time of the hearing the parties agreed to stipulate that claimant had suffered a compensable injury in the form of a bruise to her thigh on September 14, 2006 and that the respondent had paid the medical bill from Dr. Kendrick on September 15, 2006.

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

1. Compensability.
2. Temporary total disability benefits.

3. Medical.
4. Attorney fee.

Given the respondents' stipulation that claimant suffered a compensable injury in the form of a bruise to her thigh on September 14, 2006, the issue of compensability involves the question of an injury to claimant's lumbar spine on September 14, 2006. Also, at the time of the hearing the parties agreed to litigate the claimant's compensation rate.

The claimant contends that in addition to the thigh bruise on September 14, 2006, she also suffered a compensable injury to her low back. Claimant seeks payment of medical treatment associated with her compensable injuries as well as temporary total disability benefits and a controverted attorney fee.

The respondents contend that claimant suffered only a compensable injury in the form of a bruise to her thigh on September 14, 2006. Respondent contends that claimant did not suffer a compensable injury to her low back on that date. In addition, respondent contends that it has also paid all compensation benefits to which claimant is entitled as a result of her compensable thigh bruise.

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 November 29, 2006, and contained in a pre-hearing order filed November 30, 2006, are hereby accepted as fact.
2. The parties' stipulation that claimant suffered a compensable injury in the form of a bruise to her thigh on September 14, 2006 and the stipulation that respondent paid for

medical treatment received from Dr. Kendrick on September 15, 2006 are 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 on September 14, 2006.

4. Claimant has failed to prove by a preponderance of the evidence that she is entitled to any additional medical treatment or temporary total disability benefits as a result of her compensable thigh bruise on September 14, 2006.

### FACTUAL BACKGROUND

The claimant is a 59-year-old woman who began working as a maid for the respondent on September 13, 2006. On claimant's second day to work, September 14, 2006, she was cleaning hotel rooms on the second floor when she went to a storeroom to get some toilet paper. Claimant testified that a laundry chute built into the floor was not covered and as she was walking her left foot slipped and her left leg fell into the laundry chute. Claimant testified that her left leg all the way up to her buttocks became lodged in the chute before she was able to extricate herself.

Claimant testified that after she got out of the laundry chute she proceeded to clean the rest of her assigned rooms which were probably five or six. After work claimant went home and informed her husband that she had fallen and noticed that there was a great deal of bruising on her leg. Claimant returned to the hotel and reported the incident to a desk clerk named Diana. Shortly thereafter the owner of the respondent, Sun Dill, arrived and claimant reported the incident to her. Claimant testified that Dill offered to let claimant go to the doctor but claimant decided to apply ice to reduce the pain and bruising.

Claimant testified that she had trouble sleeping that night and the next morning was still in pain so she called Diana and informed her that she would not be able to work that day. Shortly thereafter Dill called and again asked claimant if she wanted to go to the doctor. When claimant indicated she wanted medical treatment she was driven to the

doctor by Dill.

Claimant was evaluated by Dr. Kendrick on September 15, 2006, and was diagnosed as suffering from a contusion of the left thigh and low back pain. Dr. Kendrick prescribed medication and indicated that claimant should recover in some two to three weeks. Dr. Kendrick indicated that claimant could return to work that day with restrictions of lifting no more than five to ten pounds. He also instructed claimant to return to him for follow-up care in two weeks.

Claimant did not return to Dr. Kendrick in two weeks and did not return to work for the respondent. Claimant next sought medical care from St. Francis House on October 20, 2006 for complaints of high blood pressure, back pain, and numbness on her left side. She also received medical treatment from St. Francis House on December 4, 2006 and from the Back Health Chiropractor on January 3, 2007.

The respondent has accepted as compensable a bruise to the claimant's left thigh as a result of the incident on September 14, 2006. Respondent has also paid for the medical treatment from Dr. Kendrick on September 15, 2006. However, respondent denies that claimant suffered a compensable injury to her low back on September 14 or that she is entitled to any additional medical benefits or temporary total disability benefits.

### ADJUDICATION

In addition to the previously accepted injury to her left thigh on September 14, 2006, claimant also contends that she suffered a compensable injury to her back as a result of the accident on that date. Claimant's claim for a low back injury on September 14, 2006 involves a specific incident identifiable by time and place of occurrence. In order to prove compensability of a particular injury caused by a specific incident identifiable by time and place of occurrence, the Arkansas Workers' Compensation law requires a claimant to offer medical evidence supported by objective findings establishing an injury. A.C.A. §11-9-

102(4)(D). Objective findings are defined by A.C.A. §11-9-102(16)(A)(i) as those findings which cannot come under the voluntary control of the patient.

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 offer objective medical evidence establishing an injury to her low back on September 14, 2006.

When claimant sought medical treatment from Dr. Kendrick on September 15, 2006, she did complain of low back pain. As a result, Dr. Kendrick took x-rays of the claimant's lumbar spine. Those x-rays did not reveal objective evidence of an injury, but instead revealed only a degenerative condition caused by a birth defect of an extra lumbar vertebra.

4 views of the lumbosacral spine show her to have chronic degenerative disc disease of severe degree L4-L5, associated with birth defect with extra lumbar vertebra that has probably caused the degeneration.

Other than the lumbar x-rays which revealed a degenerative condition, Dr. Kendrick's medical report contains no other objective findings establishing an injury to claimant's low back. Likewise, subsequent medical reports from St. Francis House and the Back Chiropractor Clinic also fail to contain any objective findings establishing an injury to claimant's low back.

Absent objective findings establishing an injury to claimant's low back, she cannot prove by a preponderance of the evidence that she suffered 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 to her low back as a result of the incident on September 14, 2006.

I also find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment or temporary total disability benefits as a result of her compensable thigh bruise.

A claimant has the burden of proving by a preponderance of the evidence that they are entitled to additional medical treatment. *Daulton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). In this particular case, claimant was evaluated by Dr. Kendrick on September 15, 2006, and he indicated that claimant's condition would heal in approximately two to three weeks. He provided claimant with medication for pain and instructed her to follow up with him in two weeks. Claimant did not follow up with Dr. Kendrick in two weeks and did not request additional medical treatment from the respondent even though respondent had paid for her initial medical treatment. Claimant did not seek any additional medical treatment until she was seen at St. Francis House on October 20, 2006. A health information form from that date indicates that claimant's primary reason for her visit to St. Francis House was high blood pressure. Claimant also listed back pain which has been found to be not compensable and numbness on the left side. There is no indication that this numbness was related to claimant's left leg and there is no mention in the medical reports of any examination or treatment to the claimant's left leg at that time. Claimant did not return for additional medical treatment at the St. Francis House until December 4, 2006. The medical report from that date does not mention any complaints of left thigh pain.

Given the foregoing evidence, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for the thigh bruise which occurred on September 14, 2006.

I also find that claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for the thigh bruise which occurred on September 14, 2006. As previously noted, claimant was released by Dr. Kendrick to return to work on September 15, 2006. Dr. Kendrick did provide a restriction of lifting no more than five to ten pounds on that date. At the hearing, claimant testified that she did not return to work for the respondent because she believed that returning to work would

have probably caused more damage to her body and she also contended that she would have to lift more than five to ten pounds.

Also testifying at the hearing was Sun Dill, the owner of the respondent. Dill took the claimant to Dr. Kendrick and was present during the examination. Dill testified that she understood claimant was not to lift more than 5 to 10 pounds and indicated that she would have made work available for the claimant. Dill testified that when she dropped claimant off at the hotel after the visit to the doctor she asked claimant if she was coming to work the next day and claimant informed her that she did not think she would be able to work.

In summary, claimant was not taken off work by Dr. Kendrick, but instead was released to return to work on the day of his evaluation with a restriction of no lifting more than five to ten pounds. According to the testimony from Dill which I find to be credible, respondent would have made work available for the claimant. Based upon this evidence, I find that claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable thigh bruise injury.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her low back as a result of the accident on September 14, 2006. Claimant has also failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or temporary total disability benefits as a result of her compensable thigh bruise injury. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE