

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F510308

BETTY WEBER, Employee	CLAIMANT
PETERSON FARMS, Employer	RESPONDENT
COMPCARE ADMINISTRATORS, Carrier	RESPONDENT

OPINION FILED MARCH 1, 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 CURTIS L. NEBBEN, Attorney, Fayetteville, 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 December 6, 2006, and a pre-hearing order was filed on December 7, 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 relationship existed between the parties on May 27, 2005.

At the time of the hearing the parties agreed to stipulate with respect to claimant's compensation rate that she earned \$9.70 an hour for 40 hours per week.

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

1. Compensability of injury to claimant's shoulder on May 27, 2005.
2. Temporary total disability benefits from May 27, 2005 through a date yet to be determined.

3. Related medical.
4. Attorney fee.
5. Notice.

At the time of the hearing the parties agreed that claimant's claim is for an injury to her right shoulder and also to her low back.

The claimant contends she suffered a compensable injury on May 27, 2005, and that she is entitled to temporary total disability, related medical, and an attorney fee.

The respondents contend the claimant did not sustain an injury arising out of and in the course of her employment as defined by the Arkansas Workers' Compensation Act. In addition, the respondents contend that its first notice of this claim was the filing of the AR-C on or about September 28, 2005, and in the event this claim is deemed compensable, which the respondents deny, the claimant would not be entitled to benefits until that time.

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 witness and to observe her 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 December 6, 2006, and contained in a pre-hearing order filed December 7, 2006, are hereby accepted as fact.

2. The parties' stipulation that claimant earned \$9.70 an hour for 40 hours per week 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 right shoulder and/or back while employed by the

respondent.

FACTUAL BACKGROUND

_____The claimant is a 59-year-old woman with a ninth grade education who has worked for the respondent off and on since 1994. Most recently, the claimant has worked for the respondent for approximately six years without interruption.

Claimant testified that approximately one month before she was evaluated by Dr. Rebecca Lewis on May 27, 2005 she suffered a compensable injury when she fell off a trimmer stand at work. Claimant testified that she fell off the stand and landed on her back, right shoulder, and tailbone. Claimant testified that she reported the incident and was instructed to see the respondent's plant nurse who provided no medical treatment.

On May 27, 2005, claimant was evaluated by Dr. Lewis who noted that claimant suffered from degenerative joint disease, migraine headaches, a prior lumbar laminectomy, chronic low back pain, and menopause. Claimant was given some medication by Dr. Lewis on that date and instructed to receive follow-up care from Dr. Webb, her family physician.

The medical records indicate that claimant saw Dr. Webb on a number of occasions subsequent to that date primarily for complaints of migraine headaches. In 2006 Dr. Webb ordered an MRI scan of the claimant's lumbar spine and referred claimant to Dr. Raben, neurosurgeon, for additional evaluation. Dr. Raben has recommended that the claimant undergo a fusion on her lumbar spine.

Claimant has filed this claim contending that she suffered a compensable injury to her right shoulder and low back while working for the respondent. She seeks payment of temporary total disability benefits, medical benefits, and a controverted attorney fee.

ADJUDICATION

Even though the claimant is unaware of the exact date of her fall, her claim nevertheless 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 identifiable 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 failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right shoulder and low back while employed by respondent.

Claimant testified that her compensable injury occurred approximately one month before she sought medical treatment from Dr. Lewis on May 27, 2005. Claimant contends that her injury occurred when she fell off a trimmer stand and fell to the floor.

Claimant testified that her family physician for approximately 15 years has been Dr. Webb. The medical records indicate that during May 2005, after her alleged injury, claimant sought medical treatment from Dr. Webb on five separate occasions before she was evaluated by Dr. Lewis. None of Dr. Webb's medical records indicate that claimant made any complaints of shoulder pain or back pain. Instead, Dr. Webb's records indicate

that claimant was primarily complaining of migraine headaches, throwing up, and dizziness.

When claimant was evaluated by Dr. Lewis on May 27, 2005, she did make complaints of right shoulder and low back pain. However, Dr. Lewis' medical report does not mention an on-the-job injury or a fall off a trimmer stand while at work.

Shortly after this visit with Dr. Lewis, the claimant last worked for the respondent. Claimant continued to receive medical treatment from her family physician, Dr. Webb, subsequent to the visit with Dr. Lewis on May 27. Specifically, claimant was evaluated by Dr. Webb on June 28, July 11, July 18, and August 1, 2005 with complaints of migraine headaches. Dr. Webb's medical reports do not mention any complaints of right shoulder or low back pain.

The first mention in Dr. Webb's medical records of any complaints of low back or shoulder occur in a report dated August 9, 2005, at which time the claimant was "wanting to know about x rays for wrist, elbow, shoulder, & back." Even then no history of an on-the-job injury was noted.

Apparently, claimant's complaints of low back pain did not become significant enough for Dr. Webb to order an MRI scan until September 2006 and he subsequently referred claimant to Dr. Raben.

In short, claimant contends that she suffered a compensable injury to her right shoulder and her low back as a result of a fall off a trimmer stand at work which occurred approximately one month before her visit with Dr. Lewis on May 27, 2005. Medical records from claimant's family physician, Dr. Webb, after this alleged fall and before her visit with Dr. Lewis make no mention of any right shoulder or low back complaints. Furthermore, although claimant made complaints of right shoulder and low back pain to Dr. Lewis on May 27, her medical report does not contain a history of an on-the-job injury or a fall at work. Subsequent to the visit with Dr. Lewis on May 27 claimant was evaluated by Dr. Webb on several occasions in June, July, and August of 2005. Complaints of

shoulder and low back pain are not mentioned until August 9, 2005, several months after claimant last worked for the respondent. Furthermore, Dr. Webb's medical report does not relate claimant's right shoulder and back pain to an on-the-job injury or a fall at work. A history relating claimant's condition to a fall at work does not appear until Dr. Raben's medical report of September 18, 2006, more than one year after the alleged injury. In addition, claimant signed an AR-C form on September 21, 2005, indicating that her right shoulder and back injury were the result of a repetitive work-related activity, with no fall mentioned.

Based upon the foregoing evidence, I simply 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 right shoulder and/or low back while employed by the respondent.

ORDER

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

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE