

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F603234**

**TAKEESHA R. BRYANT**

**CLAIMANT**

**DILLARD'S, INC.**

**RESPONDENT EMPLOYER**

**FIDELITY & GUARANTY INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED MAY 2, 2008**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE MICHAEL R. MAYTON, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on March 19, 2008. A prehearing conference was held on September 18, 2007 and a prehearing order was filed the same date. A copy of the prehearing questionnaire was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a March 17, 2006, compensable injury.
2. The compensation rates are \$332/249.

The claimant contends she sustained a compensable slip and fall injury and is entitled to medical benefits pertaining to her spontaneous abortion. The claimant also is requesting medical benefits pertaining to her other injuries sustained in the fall, as well as temporary total disability benefits from March 18, 2006, through January 2007.

Respondents contend the claimant did not sustain a compensable injury on or about March 17, 2006. Respondents contend the claimant had a syncopal episode on March 17, 2006 and the fall was an idiopathic fall for which respondents are not responsible. Respondents contend there are no objective findings to support a compensable injury. Respondents further contend that light-duty work was made available at all times when claimant was released to light duty but claimant refused such and is not entitled to any temporary total disability benefits. Respondents contend that the claimant's physician released her to return to work on April 4, 2006. Alternatively, if the claim is found to be compensable, respondents contend that the spontaneous abortion/miscarriage was not a compensable consequence of any injury sustained on March 17, 2006. If the claim is found to be compensable, respondents request a setoff for any group benefits paid and unemployment benefits the claimant received.

### **ISSUES TO BE LITIGATED**

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.

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 Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. There was a March 17, 2006, compensable injury.
2. The compensation rates are \$332/249.
3. The claimant has proven by a preponderance of the evidence that she sustained a spontaneous abortion/miscarriage following a compensable slip and fall incident at work on March 16, 2008.
4. Respondents are responsible for the accrued medical expenses associated with the spontaneous abortion/miscarriage.
5. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment for her lumbar condition is reasonable and necessary.
6. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from March 18, 2006 through April 2, 2006, and respondents are responsible for temporary total disability benefits.
7. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period from April 3, 2006 through January 2007 and unable to earn wages.
8. Respondents are entitled to an offset for any group medical or disability benefits the claimant may have received.

**DISCUSSION**

The claimant, 31 years old, began her employment with the respondent employer in March 2004 as a sales representative in the fragrance department. The

claimant worked 40 hours per week and sold fragrances, stocked and kept her area clean and tidy. According to the claimant, on March 17, 2006, she was carrying some items from the stockroom and was walking to a counter to help a customer when she slipped on some spilled makeup on the floor and fell. The claimant testified that she hit her back on a bay area and her head kept bouncing off the marble floor. The claimant was unconscious for a time and was taken by ambulance to the emergency room.

According to the claimant, at the hospital she was dizzy and nauseous and she began to have stomach cramps. The claimant testified that she started bleeding and passing clots and an ultrasound was done to see if she had a miscarriage. The incident happened on Friday and the claimant had a doctor's appointment on Monday with her OB-GYN doctor. Dr. Cortez McFarland performed a dilatation curettage procedure on Monday and some medication was prescribed.

The claimant described other problems she was having as bad headaches, her head in the back was swollen and she had some bleeding in the back of her head and her cervix was painful. According to the claimant, her employer referred her to Concentra for treatment for her headaches and she saw Dr. Michelle Ibsen and was prescribed some medication, physical therapy and rest. The claimant continued physical therapy for two or three weeks for her lumbar spine. Dr. Ibsen next referred the claimant to Dr. Reginald Rutherford, a neurologist, who ordered a spinal tap. Mitch Blakely, the claims adjuster, told the claimant her test showed lyme disease; although, the claimant never saw a report to that effect nor did the doctor advise her of such.

According to the claimant, Dr. Rutherford would not see her anymore and he referred her to Dr. Winston Wilson, a psychiatrist. The claimant received a change of

physician to another neurologist, Dr. David Oberlander. The claimant lives in Jacksonville and Dr. Oberlander was a Conway physician. According to the claimant, Dr. Oberlander ordered physical therapy and the claimant underwent physical therapy for about four weeks and this was to help her with her back pain. By this time, the claimant was pregnant again.

The claimant testified that she did not receive any indemnity benefits, she only was paid her sick and vacation time from her employer. The claimant testified to contacting her employer about returning to work and light duty was not offered her nor was any job offered her.

During cross examination, the claimant confirmed that she had returned to school on a full-time basis in January 2006 and completed one session of summer school and has now graduated. The claimant's deposition was taken in July 2006 and at that time, the claimant stated she was looking for work. The claimant applied for and received unemployment benefits beginning in July 2006 and running until benefits ceased. The claimant has accrued about \$13,000 in medical bills related to the March 17, 2006, incident.

### **ADJUDICATION**

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a

preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury of a spontaneous abortion/miscarriage arising out of and in the course of her employment. The claimant described an incident on March 17, 2006, when she slipped on spilled makeup and fell while performing her job. I found the claimant to be credible. The claimant was taken by ambulance to the emergency room and was treated for any head injuries, lumbar injuries and an ultrasound to detect pregnancy-related problems. Respondents accepted responsibility for some medical care and treatment for the claimant's lumbar and headache problems; however, the spontaneous abortion/miscarriage-related problems were controverted. The burden is on the claimant to show a causal connection between his or her injury and employment. *C. J. Horner Co. v. Stringfellow*, 286 Ark. 342, 691 S.W.2d 861 (1985).

The March 20, 2006, medical report from the claimant's treating physician, Dr. Cortez McFarland, describes the claimant's problems at work as a "syncopal episode." Cl. Exh. No. 1, p. 9. The claimant ultimately was diagnosed with a "probable spontaneous abortion." Cl. Exh. No. 1, p. 10. The claimant next underwent a dilatation curettage procedure. We have a January 5, 2007, letter from Dr. Cortez McFarland opining that the claimant had no major problems before the March 17, 2006, fall at work

but followed by heavy bleeding after the fall. Cl. Exh. No. 1, p. 11.

The contemporaneous medical evidence attributes the claimant's fall to a "syncopal episode" and this would be an idiopathic injury rather than a specific incident injury. An idiopathic injury is one whose cause is personal in nature, or peculiar to the individual. *Swaim v. Wal-Mart Assoc., Inc.*, 91 Ark. App. 120, 208 S.W.3d 837 (2005). Injuries sustained due to an unexplained cause are different from injuries where the cause is idiopathic. *Id.* Where a claimant suffers an unexplained injury at work, it is generally compensable. *Id.* Because an idiopathic injury is not related to employment, it is generally not compensable unless conditions related to the employment contribute to the risk of injury or aggravate the injury. *Id.* In the present case, the fall was not unexplained but was a slip and fall on a spilled product on the floor.

In the present case, the claimant presented credible testimony about slipping on spilled makeup and falling hard on the marble flooring. The testimony and medical evidence indicate the claimant was pregnant and that she began bleeding immediately after the fall. The claimant's treating physician noted that the claimant had no problems before the fall at work. Even if the claimant did have a "syncopal episode," as Dr. McFarland has noted on March 20, 2006, the claimant presented credible testimony about the makeup spill. In this situation, the spilled makeup is a situation or condition that would contribute to the risk of injury. It has long been recognized that a causal relationship may be established between an employment related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident,

and there is no other reasonable explanation for the injury. *Hall v. Pittman Const. Co.*, 235 Ark. 104, 357 S.W.2d 263 (1962).

After considering the credible testimony of the claimant and the medical evidence, I find the claimant has proven by a preponderance of the evidence that she sustained a spontaneous abortion/miscarriage immediately following a hard slip and fall at work and, therefore, I find her injury is compensable and that the medical benefits regarding the spontaneous abortion/miscarriage that have accrued are the responsibility of respondents.

Ark. Code Ann. §11-9-508(a) (Supp. 2005) provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.* The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

The claimant has also requested that the physical therapy treatment be deemed compensable and related to her lumbar injury. She changed treating doctors to Dr. Oberlander and apparently he recommended the physical therapy. The medical evidence introduced and considered in this opinion simply did not provide any medical

reports from Dr. Oberlander. Therefore, the medical evidence introduced does not address the physical therapy the claimant discussed and I find that the additional medical treatment the claimant has requested for her lumbar condition is not reasonable and necessary and supported by medical evidence.

The claimant has requested temporary total disability benefits while she remained off work. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the medical evidence provides that the claimant was released to return to work April 3, 2006, with no repetitive lifting over 10 pounds. The claimant testified that she continued to complete her college program and was enrolled full time from January 2006 through May 2006 and she ultimately graduated from college. The claimant applied for unemployment benefits and was awarded such and the claimant drew these benefits for the maximum amount of time allowed. After considering all the evidence, I find the claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from April 3, 2006 through January 2007. The claimant has proven through her testimony and medical evidence that she did remain in her healing period and unable to work from March 18, 2006 through April 2, 2006 and respondents are liable for temporary total disability benefits for that period. Respondents are entitled to an offset for any group medical or disability benefits the claimant may have received pursuant to Ark. Code Ann. §11-9-411.

## **ORDER**

The claimant has proven by a preponderance of the evidence that she sustained a spontaneous abortion/miscarriage following a compensable slip and fall incident at work on March 17, 2006. Respondents are responsible for the accrued medical expenses associated with the spontaneous abortion/miscarriage. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment for her lumbar condition is reasonable and necessary. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from March 18, 2006 through April 2, 2006 and respondents are responsible for temporary total disability benefits. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period from April 3, 2006 through January 2007 and unable to earn wages. Respondents are entitled to an offset for any group medical or disability benefits the claimant may have received.

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.**

---

**LINDA K. MARSHALL**  
**ADMINISTRATIVE LAW JUDGE**