

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707171

KAREN COOPER	CLAIMANT
ARK. DEPARTMENT OF PARKS & TOURISM	RESPONDENT
PUBLIC EMPLOYEE CLAIMS INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 24, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by DUSTI MILLER, Attorney, Fort Smith, Arkansas.

Respondents represented by RICHARD SMITH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 8, 2008, in Fort Smith, Arkansas. The deposition of Dr. Joseph Dunaway was taken on October 25, 2007, and has been admitted as Claimant's Exhibit No. 3.

A pre-hearing order was entered in this case on October 1, 2007. The pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the issues were amended to reflect that the claimant was contending that she sustained not only a compensable injury to her neck or cervical spine, but also to her low back or lumbar spine, and left hip. A copy of the pre-hearing order with this amendment noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction over this claim.

2. On July 2, 2007, the relationship of employee-employer-carrier-TPA existed between the parties.

3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to her neck or cervical spine, low back or lumbar spine on July 2, 2007.

2. The claimant's entitlement to the payment of medical expenses, temporary total disability from July 2, 2007, through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"The Arkansas workers' Compensation Commission has jurisdiction over the parties and subject matter of this action. On July 7, 2007, the relationship of employee/employer/insurance carrier existed between Karen Cooper and Mount Magazine State Park, respectively. On July 7, 2007, the claimant, Karen Cooper, suffered a compensable injury to her back. On July 7, 2007, the claimant, Karen Cooper, was earning wages sufficient to entitle her to the maximum rate of workers compensation. The claimant injured her back as a result of the aforementioned accident. The claimant is entitled to medical treatment for her back injury and additional temporary total disability benefits."

In regard to these issues, the respondents contend:

"That the claim is not compensable, because the medical evidence we have seen does not

document objective clinical findings of injury.”

DISCUSSION

I. COMPENSABILITY

The central issue in this case is whether the claimant sustained compensable injuries to her lower lumbar in an employment related accident on July 2, 2007. The burden rests upon the claimant to prove these compensable injuries.

In order to meet this burden, the claimant must first show that this alleged injury satisfies the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove by medical evidence the actual existence of the physical injuries alleged to be compensable. Further, this subsection requires that the actual existence of a physical injury must be based upon or supported by “objective findings” as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The claimant testified that she went to the Community Service Clinic on July 3, 2007, and saw Dr. Buckley concerning her lower back difficulties. The North Logan Mercy Hospital Community Service Clinic record from July 3, 2007, regarding the claimant reflects a note from Dr. Buckley that she was hanging shower curtains, standing on an edge of the tub, stepped down, and felt a pop which caused severe lower back pain. Dr. Blake Hocott authors a report on July 3, 2007, looking at three views of the lumbar spine and notes a “mild rightward curvature upper aspect of five lumbar vertebral bodies and notes that the SI joints are unremarkable, there is a mild inter space narrowing at L5-S1 with

about 9 mm of anterolisthesis of 5 on 1 and, probable L5 spondylolisthesis although it might be better seen on oblique views.” His impressions were “degenerative change at L5-S1 with probable spondylolisthesis and spondylolysis.” Documentary evidence also reflects a certificate to return to work or school from the North Logan County Mercy Hospital signed by Dr. Buckley indicating that the claimant has been under his care beginning July 4, 2007, and was unable to return to work until July 7, 2007.

The claimant also testified to seeing Dr. James Schmitz where she again recounted hanging the shower curtain, stepping down, feeling a popping in her back, and having tremendous pain. This visit was on July 9, 2007. At that time Dr. James Schmitz orders an MRI of the claimant’s back.

The MRI was performed on July 24, 2007, and a report of that MRI signed by physician Debra Russell is found in Claimant’s Exhibit No. 1. The report indicates that the claimant has “early degenerative changes at the level of L5-S1 including mild defused disc bulge.”

The claimant was seen again on July 31, 2007, by Dr. Schmitz where her pain is still noted at the L5-S1 area. The claimant notes that it is painful to lay flat. On that date, Dr. Schmitz executes a certificate to return to work for the claimant saying that she is able to return to work on August 8, 2007.

After consideration of all the medical evidence presented, it is my opinion that the claimant has “established” by medical evidence, which is supported by “objective findings” (i.e. the

independent observation of findings beyond the claimant's voluntary control), the actual existence of physical injury or damage to her lower lumbar. Thus, the claimant has satisfied the statutory requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove that her medically established and objectively documented lumbar injury or damage meets the definitional requirements for a "compensable injury" that are found in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) The injury arose out of and occurred in the course of the employment.
- (2) The injury was caused by a specific incident.
- (3) The injury is identifiable by time and place of occurrence.
- (4) The injury caused internal or external physical harm to the claimant's body.
- (5) The injury required medical services or resulted in disability.

In order to prove the first three of these requirements, the claimant must show the existence of a causal relationship between a specific employment related incident and the physical injury. However, the claimant need not prove that the employment related incident was the sole or even "major" cause of the physical injury. It is only necessary that the employment related incident contribute to her ultimate difficulties. Clearly, aggravations of pre-existing conditions may still constitute "compensable"

injuries. Further, it is not necessary that the claimant prove the existence of this causal relationship by medical evidence. Nor, is there any requirement that this causal relationship be supported by objective findings. The existence of such a relationship can be reasonably derived from the record as a whole.

The Appellate Courts have consistently held that the required causal relationship has been established when the claimant proves:

- (1) The occurrence of a specific employment related incident or accident.
- (2) The appearance of symptoms indicative of the occurrence of the physical injury within a reasonable period of time following the employment related incident.
- (3) The injury is logically and reasonably attributable to the trauma that was produced by the specific employment related incident or accident, and
- (4) There is no evidence of any other equally or more probable cause of the claimant's current difficulties.

In the present case, the greater weight of the credible evidence clearly shows that the claimant was involved in a specific employment related incident on July 2, 2007.

The claimant testified that while working for the respondent as a maid on July 2, 2007, she entered a bathroom to change a shower curtain in one of the guest rooms. The claimant testified that she did not have a step stool so she stepped onto the tub and put one foot on one side of the tub and one foot on the other side of the tub so that she would not fall. She then testified that she changed the shower curtain and went to step down and turned in such a way as she stepped down which caused her back to pop. The

claimant further stated that she worked in pain for the remainder of the day. She reported that the pain was like someone shoving a knife into her spine and that the pain was concentrated in the lower part of her back. She reports that she did tell Deborah Jones, her work partner, that she hurt her back on July 2, 2007, but could remember as far as actually telling anyone else about the incident.

The claimant testified that she returned to work on July 3, 2007, and that her back was worse. On July 3, 2007, she was coming out of a guest room to get supplies and go back into the room when she turned, her legs gave out, and she hit the floor. The claimant testified that after that incident she went to the lodge superintendent's office where she filled out paperwork so that she could be sent to the doctor.

The claimant's testimony, in regard to this accident, also coincides with the various histories she related to her medical providers. Further, this testimony coincides with the history that she related to her employer in the initial injury forms, which they required her to complete on July 3, 2007.

There is no question that the claimant had defects and damage to her lower, prior to her fall on July 2, 2007. This consisted of degenerative changes at the level of L5-S1. However, these facts do not, in and of themselves, prevent a finding that the claimant experienced a compensable injury to this same portion of her body in the employment related fall of July 2, 2007. In fact, the very existence of these defects would act to make the claimant more

susceptible to an injury to this portion of her body in the employment related slip. It is a long-standing rule in workers' compensation cases that an employer takes the employee "as is" with all preexisting weaknesses and propensities for injury.

Clearly, the employment related slip could reasonably and logically have resulted in an aggravation of the claimant's pre-existing condition so as to cause or precipitate her current episode of lower lumbar difficulties, on and after July 2, 2007.

Due to the very nature of the claimant's pre-existing condition, her lower lumbar complaints, on and after July 2, 2007, could also represent only the natural progression of her degenerative systemic condition. However, the claimant's credible testimony proves that she was not experiencing any difficulties in the lower lumbar area prior to the incident on July 2, 2007. Her credible testimony further shows the sudden onset of symptoms in this area contemporaneous with this incident. Therefore, I find that the claimant's lower lumbar difficulties, on and after July 2, 2007, were the result of an entirely "new" injury or, at least, an aggravation of her preexisting condition that resulted from the employment related accident.

At the hearing, the claimant gave testimony as to how and when she experienced pain in her lower lumbar area. She consistently recounted the events that she claims occurred on July 2, 2007, to her supervisors, medical providers and this commission. The record in this case is also void of any evidence contrary to the claimant's recitation of the facts surrounding the incident or any

medical evidence of the claimant prior complaint of difficulty to her lower lumbar. In regard to this testimony, the claimant appears a credible witness.

The claimant was a part time employee and was released by her employer; however, the employer has since rehired the claimant to a similar position. This indicates to me that she was good a employee in that the employer desired her return shown by her rehire to the similar position.

Clearly, it is possible that the claimant's difficulties on and after July 2, 2007, are merely the natural progression of her pre-existing condition with her lower lumbar. However, after consideration of all the evidence presented, it is my opinion that the greater weight of the evidence shows that the most likely or probable cause of the claimant's lower lumbar difficulties on and after July 2, 2007, is an aggravation of this pre-existing condition by her employment related slip on July 2, 2007. Thus, I find that the claimant has proven the existence of a causal relationship between this specific employment related accident on July 2, 2007, and her subsequent episode of lower lumbar difficulties. This would be sufficient to satisfy the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

The magnitude of the claimant's symptoms with her lower lumbar, together with the physician's clinical findings, are sufficient to prove that the employment related aggravation of the claimant's pre-existing condition caused internal physical harm to her body (at least temporarily) and reasonably required medical

services. Thus, the claimant has proven the final two definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, I find that the claimant has proven by the greater weight of the credible evidence that on July 2, 2007, she sustained a “compensable injury” to her lower lumbar that was in the form of an aggravation of a preexisting condition. As a result, she would be entitled to appropriate benefits under the Act for this aggravation.

II. BENEFITS

Clearly, the claimant would be entitled to reasonably necessary medical services for her compensable injury. The burden rests upon the claimant to prove that the specific medical services, which have been actually provided and/or recommended, represent “reasonably necessary medical services” for her compensable injury.

Medical services are reasonably necessary when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

I find that the medical services rendered to the claimant for her lower lumbar difficulties by Blake Holcott M.D. Dr. Buckley, James Schmitz D.O., Debra Russell M.D., and Fareeda A. Al-Refaii, M.D. do constitute “reasonably necessary medical services” for the claimant’s compensable injury.

The final matter concerns the claimant’s entitlement to temporary total disability benefits. Again, the burden rests upon

the claimant to prove that her compensable lower lumbar injury has rendered her temporarily totally disabled.

In order to meet this burden, the claimant must show that she continued within her healing period from the effects of her compensable injury. She must also show that she has been rendered totally disabled from performing regular gainful employment, as a result of this injury.

The duration of the healing period is a medical question which must be resolved on the basis of the greater weight of the medical evidence presented.

The healing period continues until the actual physical damage caused by the compensable injury has resolved or at least stabilized at a level where nothing further in the way of time or medical treatment offers a reasonable expectation of improvement. In the present case, I find that the claimant is entitled to temporary total disability from July 4, 2007, to August 8, 2007.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 2, 2007, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On July 2, 2007, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$213 for total disability and \$160 for permanent partial disability.

4. On July 2, 2007, the claimant sustained a compensable injury to her lower lumbar spine in the form of an aggravation of

a pre-existing condition. Specifically she has established by medical evidence, which is supported by objective findings, the actual existence of this physical injury. She has further proven that this injury arose out of and occurred in the course of her employment, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to her body, required medical services, and resulted in disability (at least temporarily).

5. The claimant is entitled to reasonably necessary medical services provided Blake Holcott M.D. Dr. Buckley, James Schmitz D.O., Debra Russell M.D., and Fareeda A. Al-Refaii, M.D.

6. The claimant has proven that she was rendered temporarily totally disabled as a result of the effects of the compensable lower lumbar injury for the period of July 4, 2007, through August 8, 2007.

7. The respondents have denied the occurrence of compensable injuries to the claimant's lower lumbar spine. The respondents have controverted any and all benefits attributable to such injuries.

8. The appropriate fee for the claimant's attorney is the maximum statutory attorney's fee on all applicable benefits herein and herein awarded to the claimant.

ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to the medical services provided by Blake Holcott M.D. Dr. Buckley, James Schmitz D.O., Debra Russell M.D.,

and Fareeda A. Al-Refaii, M.D. Therefore, the respondents shall pay for those medical services.

The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability from July 4, 2007, to August 8, 2007. Therefore, the respondents shall pay benefits as such.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE