

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F708422

KATHY FAIN, EMPLOYEE **CLAIMANT**

AMFUEL, SELF-INSURED EMPLOYER **RESPONDENT**

**CROCKETT ADJUSTMENT, INC.,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED MAY 13, 2008

Hearing conducted before Administrative Law Judge S. Dale Douthit in El Dorado, Union County, Arkansas.

Claimant was represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above-claim came on for a hearing in El Dorado, Arkansas, on February 19, 2008. A prehearing conference was conducted on December 6, 2007, and a Prehearing Order was filed the same date. A copy of the Prehearing Order was marked as Commission Exhibit "1", and made a part of the record without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The self-insured employer/employee relationship existed at all relevant times, including April 25, 2006.

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- 3) The parties agree to reserve all issues related to permanency, TTD, and comp rates.

At the full hearing, the parties agreed to litigate the following issues:

- 1) Compensability of a neck injury.
- 2) Compensability of a back injury.
- 3) Medical benefits.

At the full hearing, claimant contended that she sustained a compensable injury to her neck and back on April 25, 2006. The claimant contends that she is entitled to the additional medical treatment being recommended by Dr. Chris Alkire, as such treatment from Dr. Alkire is reasonable, necessary, and related.

At the full hearing, respondents contended that the claimant was not injured while in the respondents' employ; that claimant has an idiopathic condition that was not caused or aggravated by her employment; that there was no trauma involved and there are no objective medical findings of an employment related injury; that with regard to the claimant's cervical condition, there is no causation report and no reasonable degree of medical certainty that there is a cervical condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 claimant and to observe her demeanor, the following

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findings of fact and conclusions of law are hereby made in accordance with A.C.A.

§ 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The parties' stipulations are reasonable and are hereby accepted as fact.
- 3) I find that claimant has failed to prove by a preponderance of the evidence that she sustained a compensable back injury (thoracic) on April 25, 2006.
- 4) The claimant has proven by a preponderance of the evidence that she sustained a compensable neck injury on April 25, 2006, while in the course and scope of her employment.
- 5) Respondents are responsible for all reasonable and necessary medical treatment related to the claimant's compensable neck injury of April 25, 2006; which includes all medical treatment contained in the record herein that the claimant has received to date with the exception of the August 17, 2007, second thoracic spine MRI. I find the second thoracic spine MRI was for the claimant's degenerative back condition and/or possible congenital problem. Respondents are responsible for all reasonable and necessary future medical treatment from Dr. Alkire related to the claimant's compensable neck injury.

DISCUSSION

The claimant, born March 30, 1962, was working as a production builder for the respondent-employer on April 25, 2006. The claimant testified as follows regarding her job duties for the respondent-employer on April 25, 2006:

Q Now, you have alleged that this injury occurred April 25, 2006.

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Can you describe for us what you were doing and how you felt you injured yourself at the time?

A Yes, sir. I was working in the dunnage bag area building what we call dunnage bags. These are 4 X 8 foot bags and the material that we have to put together, when it comes to us it's cut in 4 X 8 sheets but it has a plastic lining on the back of it that we have to pull off. In the process of pulling this lining off you have to pull pretty hard and stretch pretty hard, and in the process I felt a very sharp pain in my upper back, just below my neck, and my arms went totally numb.

Q All right. Now, these sheets that you are describing, can you describe for the record and kind of show us how you would go through the motions of pulling these things apart?

A You have a 4 X 8 foot sheet and there is two people on it, one at each end. You have to get hold of the plastic and the fabric and separate it.

Q And you are taking your arms out in front of you and –

A You are pulling. You are taking your arms and you are holding it like this and you are pulling it apart.

Q So you are separating the plastic from the fabric?

A Yes, sir.

Q All right. And does that come apart easily?

A No, sir, it does not. As an example, if you just – I don't know if anybody has ever done this but if you take a piece of tape and folded it together and then tried to pull it apart. You know how difficult that is? Well, imagine that in a 4 X 8 foot sheet, trying to separate it.

(T. pp. 10-11, lines 11-25 & 1-21).

The claimant testified that while performing her job duties in the dunnage bag

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area, she felt a sharp pain and immediately reported her condition to her supervisor. Upon reporting her problems, her employer immediately sent her to Dr. Franklin Roberts. Dr. Roberts' Physician's Report/Form AR-3 contained in the record at page 2 of Claimant's Exhibit No. 1, shows that Dr. Roberts treated the claimant on the date of the alleged compensable injuries (April 25, 2006). The AR-3 Physician Report contained at Page 2 of Claimant's Exhibit No. 1 describes the claimant's accident occurring on April 25, 2006, and states "Pulling on a bag, strained middle of back from neck down below shoulder blades." The claimant continued to treat with Dr. Roberts for several weeks whereby ultimately Dr. Roberts referred the claimant for physical therapy.

The physical therapy notes contained in the record shows that the claimant made some progress in physical therapy, but according to the physical therapist, Mr. Byron Blackwell, the claimant was "just not doing as well as I thought she would have." (Cl. Ex. 1, pg. 21). Ultimately the claimant was referred to Dr. Alkire. On September 14, 2006, Dr. Alkire had the claimant undergo an MRI of the thoracic spine which showed degenerative disc changes at T6-7, T7-8, and T9-10. The 9/14/06 thoracic spine MRI also showed a disc bulge/protrusion at C6-7. (Cl. Ex. 1, pg. 31). Dr. Alkire also opined that the claimant could have syringomyelia. Dr. Alkire then recommended a second MRI of the thoracic spine to "document the progression or her

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no progression of her syringomyelia.” (Cl. Ex. 1, pg. 38). However, respondents controverted a second MRI of the thoracic spine and the claimant testified that she then obtained the second MRI without the blessing of her employer. The claimant testified that after her second MRI she has been unable to return to Dr. Alkire to be treated for her neck or back.

The claimant testified that while pulling the fabric apart, she felt a pop and felt like somebody had stuck a dagger in her. The claimant testified that it was very painful and numbing. The claimant testified that upon the sharp pain/pop she felt on April 25, 2006, both her arms and hands went numb. The claimant testified that prior to this accident she had never had any numbness or tingling in her hands or fingers.

Q Before this accident, had you had any of the numbness or tingling in your hands or fingers?

A No, sir, I had not.

(T. pg. 31, lines 18-20).

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 physical harm to the body that required medical services; (3)

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medical evidence supported by objective findings establishing an 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. Arkansas Code Annotated § 11-9-102(4). 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. Mickel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

I find that claimant has proven by a preponderance of the evidence that she sustained a compensable neck injury while performing her job duties on April 25, 2006. The claimant was a credible witness who described the incident itself on April 25, 2006, and her treatment following the incident. The contemporaneous medical records support the claimant's contention that she was complaining of neck and middle back pain immediately following the "pop" in her back/neck on April 25, 2006.

The medical records contained in the record herein further show that the claimant continued to have the same complaints throughout her physical therapy treatment. With regard to the claimant's neck, respondents argue that since the "small disc bulge/protrusion at C6-7" was an incidental finding on the 9/14/06 thoracic spine MRI, that somehow the cervical disc/bulge protrusion is not an objective finding. I

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disagree, and find that the disc bulge/protrusion shown in the 9/17/06 thoracic spine MRI at the C6-7 level is an objective finding. Respondents also argue that the claimant's neck was not a necessary mechanism for her job duties. However, the claimant credibly testified that her neck was involved in the process of her job duties on April 25, 2006. (T. pg. 32, lines 14-17). Further, the AmFuel job evaluation form contained at page 1 of Claimant's Exhibit No. 1 states the following physical activities required for the claimant's job duties:

Continuous standing or walking. Simultaneous use of hands.
Considerable bending, pushing, pulling, reaching, squatting and
stooping. Some arm strain when stitching or spraying. Intermittent
handling up to 100 lbs. weight.

Although the medical reports from Drs. Alkire and Peebles suggest that the claimant's thoracic MRI findings are degenerative or congenital, the doctors make no such findings regarding the claimant's cervical disc bulge/protrusion. Therefore, I find that the claimant has proven by a preponderance of the evidence all of the elements outlined above to meet compensability of a neck injury on April 25, 2006. Further, it must be noted that I found the claimant to be a credible witness and therefore find she credibly testified that she had never had any of the numbness or tingling in her extremities that she has experienced and continues to experience since her April 25, 2006, compensable neck injury.

The claimant has also alleged a compensable back injury occurring on April 25,

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2006. The claimant alleges her thoracic back injury occurred during the same “popping” incident on April 25, 2006. I find that the claimant has failed to prove by a preponderance of the evidence that her thoracic condition arose out of or in the course of her employment. It is true that the thoracic MRIs contained in the record show that the claimant has small disc bulges/protrusions at T6-7 and T7-8. (Cl. Ex. 1, pp. 31 & 37). However, both Drs. Alkire and Peebles opine that the claimant’s thoracic spine changes at T6-7 and T7-8 are degenerative in nature. (Cl. Ex. 1, pg. 38 & R. Ex. 1, pg. 1). Dr. Alkire also opined that the claimant’s thoracic condition could also be syringomyelia which is congenital in nature. I find that the medical records show that the claimant’s thoracic condition is either degenerative and/or congenital in nature and therefore did not arise out of or in the course of the claimant’s employment. Therefore, I find the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable thoracic back injury on April 25, 2006.

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. Arkansas Code Annotated § 11-9-508(a). The claimant has met her burden of proving by a preponderance of the evidence that she sustained a compensable neck injury on April 25, 2006, and therefore I find the respondents are liable for all associated medical treatment. I find that respondents are liable for all

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medical treatment contained in the record with the exception of the second thoracic MRI conducted on August 17, 2007. I find that the second MRI was solely to help the claimant with her degenerative and/or congenital problems and had nothing to do with her compensable neck injury. I do find that the claimant is entitled to all reasonable, necessary and related future medical treatment from Dr. Alkire regarding the claimant's compensable neck injury, including, but not limited to the cervical MRI now recommended by Dr. Alkire in his September 9, 2007, report. (Cl. Ex. 1, pg. 38).

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable neck injury on April 25, 2006. Respondents are responsible for all reasonable and necessary medical treatment related to the claimant's compensable neck injury, including, but not limited to the cervical MRI now recommended by Dr. Alkire.

As this is a medical award only, at this time, attorney's fees do not apply.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb