

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613992

GLENDA G. FLYNN

CLAIMANT

SOUTHWEST CATERING CO., INC.

RESPONDENT EMPLOYER

TRAVELERS

RESPONDENT CARRIER

ORDER AND OPINION FILED JANUARY 14, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE SHANNON MUSE CARROLL, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on December 7, 2007. A prehearing conference was held on October 16, 2007, and a prehearing order was filed on the same date. A copy of the prehearing order was admitted into evidence as Commission Exhibit No. 1 without objection.

At the prehearing conference and before the hearing, the parties agreed to the following stipulations:

1. There was a December 16, 2006, compensable foot sprain injury.
2. The average weekly wage is \$174 and the temporary total disability rate is \$116.
3. Respondents paid temporary total disability benefits through June 16, 2007, for the foot and ankle injury.

The claimant contends that on December 16, 2006, she sustained a

compensable work injury not only to her foot and ankle but also to her neck and arms. The claimant contends she is entitled to medical benefits for her neck and arms and she is entitled to temporary total disability benefits from June 16, 2007, to a date to be determined as well as full attorney's fees.

Respondents contend the claimant did not sustain a neck or upper extremity injury in December 2006, but did sustain an ankle and foot injury for which benefits have been paid. The neck and upper extremity injuries have been controverted in their entirety.

ISSUES TO BE LITIGATED

1. Compensability of the neck and arms.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

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 December 16, 2006, compensable foot sprain injury.
2. The average weekly wage is \$174 and the temporary total disability rate is

\$116.

3. Respondents paid temporary total disability benefits through June 16, 2007, for the foot and ankle injury.

4. The claimant has proven by a preponderance of the evidence that she sustained not only a right foot injury on December 16, 2006, when she tripped over a mat at work, but she also has proven that she sustained a neck and arm injury at the same time.

5. Respondents are responsible for the reasonable and necessary medical treatment the claimant has received and for the recommended testing and treatment for the compensable neck and arm injury.

6. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from June 17, 2007, to a date to be determined.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

DISCUSSION

The claimant, 63 years old, was employed as a waitress at the race track and had worked in that capacity for a year and a half. The claimant had worked in the waitress field for over 40 years. The claimant tripped on a hard rubber mat and fell into a formica counter. The claimant testified that she heard a snap and immediately had foot pain. The claimant caught herself on the counter by using both hands. The

claimant reported her injury, put ice on the foot and went home. The claimant testified that she was unable to walk the next day so she rested and kept off her foot that day. The following day the claimant was taken to the doctor by the supervisor where she was examined and given prescription medication. The claimant testified that the evening after she got home from seeing the doctor was when she felt like “something hit me in the back of the head.” T., p. 15. The claimant then began experiencing problems from her shoulder down her arms. According to the claimant, she reported the problems to her treating physician and when she was in physical therapy for her foot and ankle, heating pads were applied to her arms and shoulders and she was prescribed muscle relaxers by her treating physician. According to the claimant, the muscle relaxers and the heating pads helped her shoulders and arms.

Dr. Michael Atta referred the claimant to Dr. Paul Tucker, a neurologist, and he found her arm was swollen, according to the claimant. Dr. Tucker also found a knot in her arm and he ordered a MRI of the neck. The claimant has not worked since December 16, 2006, and has had to move in with her sister since she was unable to afford her apartment. The claimant confirmed that the problems with her arms started with the December 16th incident.

Under cross examination, the claimant confirmed that she advised Dallas Pomeroy, a nurse practitioner, on December 27, 2006, that her arms and shoulders were hurting. Ms. Pomeroy ordered the muscle relaxers that day. The claimant testified that she saw Dallas Pomeroy two times and Dr. Atta about five times and was then referred to Dr. Tucker. The claimant testified that she did not believe she could return to her former job.

ADJUDICATION

There is no dispute that there was an incident on December 16, 2006, when the claimant almost fell after tripping over a mat. The claimant caught herself, using both hands on a counter near the coffee machines. Respondents accepted a right foot injury and paid medical and temporary total disability benefits associated with that injury. Respondents have controverted the claimant's neck and arm problems. 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 presented a credible account of her fall in December and her problems following the fall. After an impartial review of the testimony and the medical evidence, I find the claimant did sustain a fall on December 16, 2006 and not only injured her right foot but also her upper extremity and neck. I found the claimant's

testimony of experiencing problems almost immediately after the fall with her arms and neck to be credible. The claimant testified that she notified Dallas Pomeroy, nurse practitioner, on her second visit about her neck, shoulders and arm hurting. Ms. Pomeroy's records do not record complaints from the claimant with her neck, shoulder and arm; however, on January 17, 2007, Ms. Pomeroy renewed a Naproxen prescription for the claimant.

The first mention of the claimant's arm pain was Dr. Atta's May 24, 2007, report and he ordered a cervical MRI. While Dr. Atta's August 9, 2007, report indicates that he explained to the claimant that the objective findings were such that he could not clearly correlate these with a traumatic injury from falling, Dr. Atta suggested the claimant have Dr. Tucker, the neurologist, evaluate the MRI findings and her symptoms.

The claimant was referred to Dr. Paul Tucker, neurologist, and he evaluated the claimant on April 2, 2007, and his report notes the knot in the claimant's left arm and his report notes the measurements of this knot. Dr. Tucker further mentions the "small lump in her arm" later in his report and states, "There seems to be something there when she caught herself, when she started to fall." Cl. Exh. No. 1, p. 39. On September 5, 2007, Dr. Tucker reviewed the claimant's MRI and addressed the results, as follows:

This is a difficult problem. Clearly she has a definite abnormality. I think the least expensive and most precise way to improve her status would be to obtain a myelogram with a post myelographic CT rather than doing further EMG and nerve conduction studies, and then going on to do this study. I think this would be economical and reasonable. We could repeat the MRI with a higher resolution machine, but will go to the definitive test to see if she needs something specifically at C6-7 done. (Cl., Exh. No. 1, p. 41.)

Dr. Tucker ended his September 5, 2007, progress report stating that the claimant's problems with her legs seem to have cleared completely but he stated that the claimant had sustained a significant injury, particularly at C6-7 on the right side when she fell on December 16, 2006. Cl. Exh. No. 1, p. 42.

After considering all the medical evidence, I give Dr. Tucker's opinion greater weight since he is a specialist and his reports provide a more thorough analysis of the claimant's condition than the general practitioner, Dr. Atta. It is the province of the Commission to weigh conflicting medical evidence and the resolution of conflicting evidence is a question of fact for the Commission. *Southeast Ark. Human Dev. Ctr. v. Courtney*, 99 Ark. App. 87 ___ S.W.3d ___ 2007. I found the claimant to be most credible with a consistent long standing working history and found her testimony was consistent with Dr. Tucker's history and findings.

Since the claimant has proven by a preponderance of the evidence that she sustained a neck and arm injury on December 16, 2006, when she fell in the course and scope of her employment, I find respondents are responsible for the reasonable and necessary treatment the claimant has received concerning her neck and arm injuries and is further responsible for the recommended reasonable and necessary treatment recommended by Dr. Tucker. Ark. Code Ann. §11-9-508.

The claimant next contends that she remains unable to work and is entitled to temporary total disability benefits from June 16, 2007, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and 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 claimant has proven by a preponderance of the evidence that she remains in her healing period and unable to earn wages from June 17, 2007, to a date to be determined. Dr. Atta's May 14, 2007, medical report states that the claimant is to be continued on her current work restrictions until the MRI is performed. Dr. Atta had primarily been treating the claimant for her foot sprain, but did order the MRI of the cervical spine. The claimant's restrictions had been only seated work. The MRI was performed on August 7, 2007. The claimant continued to see Dr. Tucker for further evaluations and treatment after that and further testing was recommended. The claimant testified that waitress duties required her to use her hands and arms and she was unable to do that now. I found the claimant's testimony to be credible and found the claimant remained in her healing period and continued to undergo treatment and testing after June 16, 2007 and remained unable to work.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained not only a right foot injury on December 16, 2006, when she tripped over a mat at work, but she also has proven that she sustained a neck and arm injury at the same time. Respondents are responsible for the reasonable and necessary medical treatment the claimant has received and for the recommended testing and treatment for the compensable neck and arm injury. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from June 17, 2007, to a date to be determined.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be

paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

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**