

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711331

JUDY FREEMAN, EMPLOYEE	CLAIMANT
FOOD GIANT SUPER MARKETS, INC., EMPLOYER	RESPONDENT
LIBERTY INSURANCE CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 26, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on April 18, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Thomas W. Mickel, Attorney-at-Law, Conway, Arkansas.

Respondent represented by Mr. Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted April 18, 2008, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim on March 5, 2008, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1."

It was undisputed that the employee/employer/carrier relationship existed at all relevant times, including October 9, 2007; that the claimant earned sufficient

wages to entitle her to compensation rates of \$167.00 per week for temporary total disability and \$154.00 per week for permanent partial disability; and that the claim had been controverted in its entirety for purposes of attorney's fees.

By agreement of the parties, the primary issue to be presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that she sustained a compensable injury as the result of a specific incident identifiable in time and place of occurrence on October 9, 2007; that she was entitled to temporary total disability benefits for the period beginning October 9, 2007, and continuing through the present while maintaining that her healing period had not ended; that respondents should be held responsible for all outstanding medical expenses, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

The respondent contended that the claimant did not sustain an injury when she fell on October 9, 2007, specifically maintaining that there were no objective medical findings to support compensability.

The claimant was the only witness to testify. The record is composed solely of the transcript of the April 18, 2008, hearing containing a packet of medical reports consisting of twenty (20) pages which was introduced as "Claimant's Exhibit A."

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 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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that she sustained a compensable injury arising out of and during the course of her employment with Food Giant Supermarkets, Inc., as the result of a specific incident identifiable in time and place of occurrence on October 9, 2007, when she slipped and fell at work.
4. The claimant's injury has been established by medical evidence supported by objective findings as defined in A.C.A. §11-9-102(16).
5. Respondents are responsible for all outstanding medical and related expenses as the result of claimant's October 9, 2007, injury, and respondents remain responsible for continued, reasonably necessary medical treatment, including, but not limited to additional imaging studies of claimant's lumbar spine.
6. The claimant has failed to prove, by a preponderance of the evidence, that

she remains temporarily totally disabled within the meaning of the Arkansas workers' compensation laws. Respondents have previously paid appropriate temporary total disability.

7. Because respondents have controverted this claim in its entirety, claimant's attorney, Mr. Thomas W. Mickel, is entitled to the maximum statutory attorney's fee on all benefits previously paid and which may be awarded in the future pursuant to, and limited by, Ark. Code Ann. §11-9-715.
8. All additional issues are, by necessity, specifically reserved.

DISCUSSION

The relevant facts in this case are basically undisputed. In fact, respondents do not dispute that the claimant sustained a slip and fall arising out of and during the course of her employment with Food Giant Supermarkets, Inc., on October 9, 2007. Respondents' sole defense to this claim was that there is no medical evidence supported by objective findings to establish compensability. I cannot agree with respondents' interpretation of the medical evidence.

The claimant, Judy Freeman, testified in her own behalf. The claimant is forty-nine (49) years old. She has a seventh grade education. The claimant denied having undergone any additional vocational training. The claimant's injury occurred during the first day that she worked for the employer herein. The claimant worked in the deli department where she sliced and sold meat. The claimant was apparently walking between the kitchen and the deli area that she served food when

she slipped on some liquid on the floor and fell, landing on her hip and right side. The claimant was immediately assisted by some co-workers. She reported her injury to her supervisor, Sheila (last name unknown). The claimant stated that the employer did not send her to the doctor or complete any reports of injury at that time. The claimant completed her shift and went home. She stated that she took some over-the-counter medication, but that later in the evening, her symptoms were so bad that she was required to go to the emergency room for treatment. The claimant was initially examined and treated at the SMC Regional Medical Center emergency room in Osceola, Arkansas. X-rays were taken of the claimant's right arm, right leg, and right hip. The x-rays were negative for any fracture; however, the records reflect multiple contusions to the right arm and hip. The claimant was discharged and taken off work, and prescribed medications and ice packs. The claimant reported going to the emergency room to her employer, at which time she requested additional medical treatment. The claimant was then sent by her employer to Dr. Dill at the NEA Clinic, a family practice clinic in Osceola, Arkansas. Dr. Dill is also the claimant's family doctor. The claimant was initially seen by Dr. Dill on October 12, 2007. Dr. Dill kept the claimant off work and prescribed various medications, rest, as well as continuing to apply ice to the hip and arm, and to return in one week. Dr. Dill also referred the claimant to South Mississippi Regional Medical Center for an MRI of the right hip. The claimant underwent the MRI on October 17, 2007, which revealed a small subchondral cyst in the anterior aspect

of the right femoral head. Otherwise, the hip appeared normal. The claimant returned to Dr. Dill on October 19, 2007, with increased complaints and difficulty walking. Dr. Dill felt an orthopedic consultation was warranted. Dr. Dill continued the claimant on medications. The claimant was next evaluated by Dr. Thomas Day, an orthopedic surgeon at the NEA Clinic. Dr. Day performed a physical examination and determined that the claimant's right hip rotated normally, without any restrictions and that her lower extremities were neurologically intact. Dr. Day recommended an injection in the right hip while further indicating that if the injection did not give the claimant relief, he would recommend an imaging of claimant's lumbar spine and possible referral for pain management. Dr. Day injected the hip with a mixture of Lidocaine and 40 mg of Triamcinolone. (Cl. Ex. A, p.14)

The record reflects that the respondents initially exercised good faith in meeting its obligations under our workers' compensation laws by providing the claimant with prompt, reasonably necessary medical treatment. In addition, respondents apparently paid the claimant temporary total disability from the date of her injury until on or about December, 2007, which is beyond the period that it provided medical treatment. The claimant last saw Dr. Dill on November 9, 2007. His final report reflected that the claimant was awaiting approval by respondent for another MRI which was subsequently refused. (Tr. 32)(Cl. Ex. A, pp.15-16)

Respondents maintained that there is no objective medical findings to support compensability. I cannot concur.

The initial emergency room consultation on October 9, 2007, reflects examinations of both the right hip and right arm with a diagnosis of multiple contusions. (Cl. Ex. A, p.3)

Contusions, or bruising, are objective findings. A physician's diagnosis of "contusion" can constitute an objective medical finding, establishing a compensable injury. See, *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001); *Meister v. Safety Kleen*, 339 Ark. 91, 3 S.W.3d 320 (1999). It is up to the Commission to determine whether the notation of contusion is objective or subjective under the circumstances of each case. *Rodriguez v. McDaniel Co., Inc.*, 98 Ark. App. 138 (2007).

Again, the facts in this case are undisputed. The claimant slipped and took a hard fall on her right hip and right side. The nature of the claimant's fall, the diagnosis noted in the medical records, and the form of treatment, in my opinion, supports a finding of bruising which is sufficient objective findings to establish compensability.

ADDITIONAL MEDICAL TREATMENT

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech*

Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The claimant's authorized treating physicians have recommended an additional diagnostic study to rule out potential lumbar injury. In my opinion, such a recommendation is reasonably necessary in order to ascertain the nature and extent of claimant's injury. Respondents' refusal to pay for additional diagnostic studies was not warranted in this claim.

TEMPORARY TOTAL DISABILITY

Temporary total disability is determined by the extent to which a compensable injury has affected a claimant's ability to earn a livelihood. It is that period in which an employee is within the healing period and totally incapacitated to earn wages. *Arkansas State Highway Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990); *Stafford v. Arkmo Lumber Co.*, 54 Ark. App. 286, 925 S.W.2d 170 (1996). The healing period is that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period continues until the employee is as far restored as the permanent character of the injury will permit, and if the underlying condition causing the disability has become

stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996); *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The persistence of pain may not of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. *Mad Butcher v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

"Disability" means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant's physical capabilities and evaluate her ability to engage in any gainful employment. The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. *see, Palazolo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

The claimant has previously worked as a cashier. By her own admission, her treating physicians have released her to return to light-duty work pending further diagnostic studies which may allow her to return to unrestricted work duty. Further, I feel compelled to point out that the claimant candidly acknowledged that if respondents had not terminated her prescription medications, she would be working at the time of the within hearing. (Tr.30)

I find that the claimant is capable of returning to some form of gainful employment. The claimant was earning minimum wages. The claimant has failed

to prove, by a preponderance of the credible evidence, that she is totally disabled within the meaning of the Arkansas workers' compensation laws.

AWARD

_____Respondent, Liberty Insurance Corporation, is hereby directed and ordered to pay any outstanding medical and related expenses, if any, and respondent remains responsible for continued reasonably necessary medical treatment, including, but not limited to additional diagnostic studies recommended by Drs. Day and Dill.

Claimant's entitlement to additional benefits is specifically reserved pending further development of the medical evidence awarded herein.

Additionally, claimant's attorney, Mr. Thomas W. Mickel, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to, and limited by, Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge