

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NOS. F704906/F700156

SARITA GREEN, Employee	CLAIMANT
ARKANSAS DEPARTMENT OF HEALTH, Employer	RESPONDENT #1
PUBLIC EMPLOYEE CLAIMS, Carrier	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #3

OPINION FILED APRIL 21, 2008

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondent #1 represented by RICHARD SMITH, Attorney, Little Rock, Arkansas.

Respondent #2 represented by DAVID PAKE, Attorney, Little Rock, Arkansas, although not participating in hearing.

Respondent #3 represented by JUDY RUDD, Attorney, Little Rock, Arkansas, although not participating in hearing.

STATEMENT OF THE CASE

On March 24, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on December 13, 2007, and a pre-hearing order was filed on December 14, 2007. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed between claimant and respondent #1 on December 19, 2006 and May 7, 2007.

At the time of the hearing the parties agreed to stipulate that on December 19, 2006 the claimant earned an average weekly wage of \$223.37 which would entitle her to compensation for total disability benefits at the rate of \$149.00 per week. The parties also agreed to stipulate that on May 7, 2007 she earned an average weekly wage of \$208.93 which would entitle her to compensation at the rate of \$139.00 for total disability.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left knee and low back on December 19, 2006.
2. Compensability of injuries to claimant's right knee, head, shoulders, and low back on May 7, 2007.
3. Temporary total disability benefits from May 7, 2007 through a date yet to be determined.
4. Alternatively, claimant is entitled to permanent total disability or permanent partial disability benefits.
5. Medical.
6. Attorney fee.

At the time of the hearing the claimant reserved the issue of her entitlement to permanent total/permanent partial disability benefits. She also modified her request for temporary total disability benefits to include the period of December 19, 2006 through March 19, 2007 for her first injury and from May 7, 2007 through a date yet to be determined with respect to her second injury.

The claimant contends she sustained compensable injuries on December 19, 2006 and May 7, 2007, and that she is entitled to medical treatment and temporary total disability benefits from December 19, 2006 through March 19, 2007, and from May 7, 2007 through a date yet to be determined, as well as an attorney fee on all controverted benefits.

Respondent #1 contends that neither claim is compensable in that the first claim is

not supported by objective clinical findings of a job-related injury and in claim number 2 the only findings were the same before and after the alleged injury.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 13, 2008, and contained in a pre-hearing order filed December 14, 2007, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$223.37 on December 19, 2006 which would entitle her to compensation at the rate of \$149.00 for total disability benefits is also hereby accepted as fact.

3. The parties' stipulation that claimant earned an average weekly wage of \$208.93 on May 7, 2007 which would entitle her to compensation at the rate of \$139.00 for total disability benefits is also hereby accepted as fact.

4. Claimant has failed to prove by a preponderance of the evidence that she suffered any compensable injury while employed by the respondent.

FACTUAL BACKGROUND

_____The claimant is a 53-year-old woman who began working for the respondent in February 2006 as a home health aide. Claimant's job duties included feeding patients, giving them baths, helping patients get dressed, and normal housework as needed. Claimant contends that she suffered two compensable injuries while employed by the respondent.

First, claimant contends that on December 19, 2006 as she was stepping over a table she had moved for a client she twisted her knee and left back. Claimant testified that she reported this incident to her supervisor and that she received treatment from Dr. Daniel and Dr. Mumme. Claimant testified that she was off work for approximately three months until March 19, 2007. The respondent initially paid for some of claimant's medical treatment but not all of it. In addition, respondent has not paid claimant any temporary total disability benefits for the December 19, 2006 injury.

Claimant contends that she suffered a second compensable injury on May 7, 2007. Claimant testified that on that date she was taking a client a cup of coffee when she tripped over a telephone cord causing her to twist and turn her back and fall on her face. Claimant testified that she injured her head, knee, and back as a result of this injury. Following this incident claimant sought medical treatment from Dr. Ulmschneider, a chiropractic physician. Respondent paid for some of Dr. Ulmschneider's medical treatment, but has not paid temporary total disability benefits.

Claimant has filed this claim contending that she suffered compensable injuries to her left knee and low back as a result of the incident on December 19, 2006. She also contends that she suffered a compensable injury to her right knee, head, shoulders, and low back on May 7, 2007. She seeks payment of related medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

_____ Claimant contends that she suffered compensable injuries to various parts of her body as a result of incidents which occurred while she was employed by the respondent on December 19, 2006 and again on May 7, 2007. Claimant's claim is for injuries which were caused by specific incidents identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion

filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered any compensable injury while employed by the respondent.

Initially, it should be noted that claimant had an extensive medical history prior to her employment with the respondent. The medical records indicate that claimant suffered a work-related injury when she was struck in the head and shoulder by a pot lid while working in Texas in 1993. Since that time the claimant has undergone three surgical procedures on her right shoulder. In addition, claimant has also been evaluated for cervical complaints since that time. When claimant moved to Arkansas she began receiving treatment from Dr. Ulmschneider, chiropractic physician, for her various complaints of pain, including her lumbar spine.

Claimant contends that she suffered a compensable injury to her left knee and low back while stepping over a table on December 19, 2006. The medical records indicate that claimant had made complaints of knee problems prior to December 19, 2006. In his report of January 15, 2004, Dr. Daniel noted that claimant was making complaints of pain

between her shoulders, her neck, and in her knees. Specifically, Dr. Daniel in a report dated November 17, 2004 noted that claimant was complaining of left knee pain which he believed might be related to arthritis. He also noted that claimant might need an injection in the left knee in the future. On December 12, 2006, just one week prior to December 19, 2006, Dr. Daniel in his office note stated that claimant was complaining of pain in her knees. After the incident on December 19, 2006, claimant sought medical treatment from Dr. Daniel.

I find insufficient objective findings establishing an injury to the claimant's knee as a result of an incident on December 19, 2006. Dr. Daniel's medical report dated December 20, 2006, the day after this incident, indicates that there was no effusion or bruising present. Dr. Daniel prescribed claimant medication and saw claimant on a follow-up appointment on January 9, 2007. Dr. Daniel ordered an EEG which returned normal. He again noted in his report of that date that there was no effusion or instability of the claimant's left knee joint. Dr. Daniel subsequently referred claimant to Dr. Mumme for an evaluation of her left knee. Dr. Mumme ordered an MRI scan of the claimant's knee which revealed no tear or swelling. Instead, the MRI scan revealed only degenerative changes. Dr. Mumme in his report of February 9, 2007 indicates that his examination revealed no redness or effusion of the claimant's left knee.

The only objective finding with respect to claimant's left knee is contained in Dr. Mumme's report of March 2, 2007 when he notes that there is a slight effusion of her left knee. This notation was more than two and a half months after the alleged injury and after multiple examinations and testing revealing no effusion. Thus, while the effusion of March 2nd is an objective finding, I find insufficient evidence that this effusion is sufficient to establish an injury which had occurred more than two and a half months earlier after multiple examinations and testing revealed no effusion present.

Based upon the medical evidence which indicates that claimant had made

complaints of pain in her knees prior to December 19 as well as the lack of objective findings establishing an injury, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee while employed by respondent on December 19, 2006.

I likewise find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by respondent on December 19, 2006. Again, the medical evidence indicates that prior to that date the claimant had significant complaints of low back pain. In his report of July 5, 2005, Dr. Daniel noted that the claimant was complaining of low back pain. In addition, claimant had been receiving significant medical treatment from Dr. Ulmschneider at the Ozark Chiropractic Clinic for complaints of upper and lower back pain. In fact, Dr. Ulmschneider's medical report of November 15, 2005 assesses the claimant's condition as chronic. His report of December 13, 2005 indicates that claimant's pain and discomfort in the lumbar region has continued "unabated". He also noted that the claimant showed persistent chronic symptomatology.

Claimant sought medical treatment from Dr. Ulmschneider on December 20, 2006, the day after her alleged injury on December 19. Dr. Ulmschneider's medical report does not contain a history of any work-related injury having occurred the day before. Furthermore, a review of the medical records fails to reveal any objective findings of an injury subsequent to December 19, 2006 which did not exist prior to that date. Absent objective findings establishing an injury, claimant cannot meet her burden of proof.

In summary, the medical evidence indicates that claimant had significant complaints of back pain for which she was receiving treatment prior to December 19, 2006. Claimant's low back complaints had been described as chronic by Dr. Ulmschneider. The medical reports contain no objective findings establishing an injury or any condition different than the one that existed prior to that date. Accordingly, I find that claimant has failed to meet

her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back on December 19, 2006.

Claimant contends that she suffered a second compensable injury on May 7, 2007. Claimant contended that she injured her right knee, head, shoulders, and low back as a result of this injury. Initially, I note that claimant contended that she suffered a compensable injury to her shoulders. However, during direct examination, claimant testified that she did not injure her shoulders at that time.

Q. And what parts of your body did you injure?

A. I hit on my head and my knee and my back.

Q. Did you injure your shoulders?

A. No.

Thus, I find that claimant did not suffer a compensable injury to her shoulders on May 7, 2007.

I also find that claimant has failed to prove by a preponderance of the evidence that she suffered an injury to her right knee, head, or low back on May 7, 2007. There are no objective findings establishing an injury to the claimant's head or to her right knee as a result of an incident which occurred on May 7, 2007. In fact, the medical evidence indicates that claimant has received little, if any, medical treatment for these alleged injuries.

I also find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back on May 7, 2007. Following May 7, 2007, the claimant sought medical treatment from Dr. Ulmschneider on various occasions. Dr. Ulmschneider's medical reports of numerous dates do not contain any history of a work-related injury on May 7, 2007. These visits include May 16, May 18, May 21, May 23, May 25, May 28, May 30, June 8, June 11, June

13, June 15, June 18, June 20, June 22, June 25, June 27, and June 29. The first medical report mentioning a potential work-related injury on May 7, 2007 is dated July 2, 2007, which was admitted as Page 16 of the claimant's exhibit.

With respect to this issue, I also note that Dr. Ulmschneider authored a letter dated July 20, 2007 indicating that he was treating claimant for an injury to her back, neck, and right knee which occurred on May 7, 2007. However, Dr. Ulmschneider's prior medical reports do not support a finding that claimant was receiving medical treatment for any new injury from Dr. Ulmschneider. In fact, a review of Dr. Ulmschneider's medical reports prior to and subsequent to May 7, 2007 reveals no significant difference in the claimant's complaints and/or the treatment provided by Dr. Ulmschneider.

In summary, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury while employed by the respondent. Here, claimant had complained of pain involving all of the alleged body parts prior to the dates of injury. In order to prove a compensable injury, claimant must offer objective findings establishing an injury. I find that claimant has failed to meet that burden of proof.

ORDER

_____ Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury while employed by respondent on December 19, 2006 or on May 7, 2007. Therefore, her claim for compensation benefits is hereby denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$346.25.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE