

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F708821

KATHRINA HERVEY, EMPLOYEE	CLAIMANT
NORTH LITTLE ROCK SCHOOL DISTRICT, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED AUGUST 21, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on August 18, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Melissa Wood, Attorney-at-law, Little Rock, Arkansas.

Respondent #2 did not appear.

STATEMENT OF THE CASE

A hearing was conducted August 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 July 23, 2008, and a Prehearing Order was filed on said date. In addition, this claim has a lengthy and complicated procedural history. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to an affirmative defense, specifically, a statute of limitations defense, as well as an amended contention concerning the last day that

the claimant worked for the employer herein which gave rise to the affirmative defense as will be set out further below.

The claimant has, on multiple occasions, including at the hearing on this claim, been advised of her right to legal representation; that an attorney could not charge her a fee for representing her in a workers' compensation claim without approval of this Commission; that fees were normally awarded only out of benefits obtained in her behalf, and that she would only be responsible for a portion of the fee if an attorney was successful in obtaining benefits for her. In addition, the claimant was advised, on numerous occasions, that she had the burden of proving her claim; that she was only entitled to one hearing; and that, for any reason, if she was unsuccessful, she could not request a second hearing while maintaining that the reason for any failure to prove the claim was lack of legal representation. The claimant elected to proceed in her own behalf pointing out that she had made numerous attempts to retain an attorney and had been unsuccessful.

At the prehearing conference, it was stipulated that the employment relationship existed between the parties during 2005; that the claimant earned sufficient wages to entitle her to compensation rates of \$210.00 per week for temporary total disability and \$158.00 per week for permanent partial disability; and that respondents had controverted compensability of this claim in its entirety. Because of conflicting contentions concerning dates of employment, respondents were directed to provide records concerning the dates claimant worked. At the

hearing, the claimant withdrew her previous stipulation concerning the compensation rates; however, was extremely vague and ambiguous as to her average weekly wage. Upon further questioning, it became apparent that respondents' proposal that the claimant's average weekly wage was \$315.00 was correct. However, in view of the findings of fact and conclusions of law which follow, the compensation rate is a moot issue.

By agreement of the parties, the primary issue 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 to both feet which arose out of and during the course of her employment, specifically maintaining that the injury was the result of a chemical exposure resulting from standing in water on or about October 1, 2005; that respondents should be held responsible for all related medical treatment, together with continued reasonably necessary medical treatment; that she was entitled to disability benefits, the exact dates to be identified at the hearing, while reserving entitlement to permanent disability, if applicable. At the hearing, the claimant contended that she had been totally disabled beginning October 1, 2005, and continuing through the present.

The respondents contended that the claimant did not sustain a compensable injury at any time while working for the employer herein, while further maintaining that there was no medical evidence to support claimant's entitlement to medical

benefits and/or indemnity benefits. Respondents maintained that the claimant was last employed by the school district on or about August 18, 2005. Respondents further contended that no notice of injury was given until on or about August 30, 2007, and that if compensability was found, which was specifically denied, that it would not be responsible for any benefits prior to the notice of injury on August 30, 2007. At the hearing, respondents clarified its contention stating that the claimant last worked at the North Little Rock School District on February 4, 2005, but was subsequently terminated due to excessive absenteeism on August 18, 2005. (Resp. Ex. B, pp.3, 5)

At the conclusion of the hearing, respondents asserted that the claim was barred by statute of limitations.

The claimant testified in her own behalf. Kim Collie, claimant's supervisor, was called as a witness for the respondents. The record is composed solely of the transcript of the August 18, 2008, hearing containing numerous exhibits, including a thirty-one (31) page medical exhibit packet introduced as "Respondent's Exhibit A" and a five (5) page non-medical exhibit packet introduced as "Respondent's Exhibit B."

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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The relationship of employee/employer existed between the parties at relevant times beginning July, 2001, and continuing through August 18, 2005, at which time claimant's employment was terminated for cause.
3. A preponderance of the credible evidence reflects that the claimant did not perform any employment services for the employer herein after March 31, 2005.
4. The claimant has failed to prove, by a preponderance of the evidence, that she sustained a work-related injury which arose out of and during the course of her employment with the North Little Rock School District which was the result of a specific event identifiable in time and place of occurrence, and which can be established by medical evidence supported by objective findings.
5. The claimant has failed to show, by a preponderance of the evidence, that her physical problems, need for treatment, and disability, if any, are causally related to an injury sustained while working for the North Little Rock School District.
6. The immediate claim is barred by statute of limitations.

7. Respondents have controverted this claim in its entirety.

DISCUSSION

The record in this claim is replete with inconsistencies and contradictions. Further, the claim turns entirely upon the claimant's credibility. A claimant's testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

The claimant's testimony was extremely vague and ambiguous. The claimant could not remember dates of employment or facts relevant to establishing a claim. Although she appeared to be argumentative at times, it is my belief that the claimant simply lack an understanding of the requirements necessary to establish a workers' compensation claim. Further, she failed to offer any medical evidence of any nature or kind necessary to establish a work-related injury. She relied solely upon respondent's medical exhibit packet which clearly failed to establish a causal connection between the claimant's employment and her current disability. At the time of the within hearing, the claimant was drawing social security disability. The record reflects that the claimant has a multitude of physical problems which prevent her from working, including, but not limited to, cardiovascular problems, pulmonary problems, arthritis, possible lupus, and obesity. Although the claimant, at all times,

maintained that her injury occurred on October 1, 2005, the record clearly reflects that the claimant was not employed on October 1, 2005. During her testimony, the claimant stated that on the day following her alleged exposure to chemicals while standing in water, she was hospitalized at the St. Vincent Hospital in Little Rock, Arkansas, where she maintains that she reported a history consistent with her claim while further testifying that she never returned to work for the North Little Rock School District after the hospitalization.

The medical records reflect that the claimant went to the St. Vincent Hospital on March 31, 2005, where she was admitted with a history of unexplained lower extremity swelling, primarily in the left lower extremity which is the exact symptom that the claimant maintained was caused by her exposure to standing in water. The claimant was admitted with a diagnosis of cellulitis, together with a history of systemic lupus erythemathosus. The claimant was discharged on April 4, 2005, in stable condition. (Resp. Ex. A, pp.8-14)

Again, the medical evidence is void of any medical history consistent with the claim.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

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 which required medical services or resulted in disability or death;

3. medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,

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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim, and compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Rather than conduct an exhaustive analysis of the record in this cause, suffice it to say that the claimant has failed to establish any of the requirements necessary to establish compensability.

Kim Collie, the custodial supervisor at North Little Rock School District, as well as the claimant's immediate supervisor, testified at the hearing. Ms. Collie stated that the claimant's employment began on July 2, 2001, and that she last worked during February, 2005. Ms. Collie stated that the claimant was subsequently terminated for having missed one hundred twenty (120) straight days of work. Further, the documentary evidence reflects that the claimant was terminated for excessive absenteeism. Ms. Collie further stated that the claimant never reported a work-related injury to her and that she did not even know that the claimant filed a workers' compensation claim until after August 27, 2007.

Ark. Code Ann. §11-9-702 requires that any claim for compensation shall be

barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury.

The claimant candidly acknowledged that she did not file the immediate claim until August 27, 2007.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The within claim is barred by statute of limitations. The claimant has a multitude of physical problems. None of her problems can be related to her work for the respondent herein. Even if the claim was not barred, which is totally inconsistent with the facts of this claim, nevertheless, the claimant cannot establish

a work-related injury.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that she is entitled to any workers' compensation benefits. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge