

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605906

PAMELA JO, EMPLOYEE	CLAIMANT
AUBURN HILLS HEALTH & REHABILITATION, INC., EMPLOYER	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, INC., CARRIER	RESPONDENT

OPINION FILED JANUARY 23, 2008

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on January 16, 2008, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by THE HONORABLE Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by THE HONORABLE James A. Arnold II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on January 16, 2008, in Mountain Home, Arkansas. A Prehearing Order was previously entered in this case on October 30, 2007.

The following stipulations were submitted by the parties, either in the Prehearing Order or at the start of the hearing, and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times, including March 10, 2006.

3. This claim has been controverted in its entirety.

By agreement of the parties, the issues to be presented at the hearing were as follows:

1. Compensability of claimant's injury to her knees, back and neck.

2. Constitutional issues.

3. Unpaid medical bills from Baxter Regional Hospital.

4. The issue of permanency is reserved.

The claimant contends that she sustained compensable injuries and she is entitled to have her medical bills paid from Baxter Regional Medical Center, as they are the result of her visit to the emergency room immediately after her injury, which occurred on March 10, 2006.

The respondents contend that the claimant did not sustain a compensable injury which arose out of and in the course of her employment with Auburn Hills Health and Rehabilitation, Inc. Without waiving other defenses, the respondents contend that the incident of March 10, 2006 was due to a personal medical condition and is, therefore, properly characterized as an idiopathic injury.

The documentary evidence in this case consists of the Commission's Prehearing Order, the claimant's response to the prehearing questionnaire, and the respondents' response to the prehearing questionnaire, which were all marked as Commission's Exhibit No. 1. The claimant's medical packet has been marked as

Claimant's Exhibit No. 1. The claimant's unpaid medical bills was marked as Claimant's Exhibit No. 2. The claimant's Motion to Recuse, Constitutional Challenges and Brief in Support thereof, have been blue-backed and are hereby incorporated herein by reference, as these have been marked Claimant's Exhibit No. 3. The unpaid ambulance bill was marked as Claimant's Exhibit No. 4.

The following witnesses testified at the hearing: the claimant and Jeff Graves.

DISCUSSION

The claimant, age 53, alleges that she sustained injuries to her knees, back and neck on March 10, 2006. According to the claimant, these injuries occurred while attempting to subdue a combative resident. The claimant testified that during this incident, she was thrust backwards, as this caused her to fall to the floor. The claimant testified that the charge nurse, Ruth Almond was notified of the incident. According to the claimant, the charge nurse instructed her not to move, and advised that an ambulance had been called. The claimant essentially testified she told the charge nurse that she did not need an ambulance because she did not have the money to pay for this service. The claimant specifically testified that she was told by Nurse Almond not to worry about it.

The claimant was in fact taken to Baxter County Regional Medical Center by ambulance, where upon admission, several

diagnostic tests were conducted. The claimant also admitted that a portion of her expenses for the emergency room visit has been paid through what she described to be some type of indigent fund administered by the hospital.

Upon being questioned about her seizure disorder, the claimant admitted to having this condition all of her life. However, the claimant denied having a seizure during this incident. She also admitted to taking several medications for her seizure disorder.

The claimant's husband, Jeff Graves, also gave testimony during the hearing. He essentially corroborated the claimant's testimony and he admitted to having been notified by the respondent-employer that the claimant had been transported to the hospital on the day of the incident.

A review of the medical evidence of record shows that the claimant was seen at Baxter Regional Medical Center emergency room on March 10, 2006 due to complaints of back pain and abdominal pain as a result of a fall. The claimant gave a history of having hit her head and back during the fall, and she also complained of lumbar and coccyx pain.

Several diagnostic tests were conducted pursuant to the claimant's many complaints. Specifically, an x-ray of the thoracic spine revealed no evidence of a fracture or dislocation. There were mild degenerative changes, but no swelling of the

paravertebral soft tissue was seen. X-rays consisting of an AP and lateral of the lumbosacral spine demonstrated degenerative changes in the lumbar spine, but no fracture or dislocation was seen. A CT scan of the abdomen and pelvis with contrast was "unremarkable." A CT scan of the head without contrast was "unremarkable," and a CT scan of the chest with contrast was "unremarkable." Also, a CT scan of the cervical spine with sagittal reconstruction demonstrated, "degenerative change in the cervical spine, but no fracture or dislocation was seen."

The claimant was discharged home and given instructions of no driving for one year. For follow-up care, she was instructed to contact Dr. Robbins.

ADJUDICATION

A. Compensability

The instant claimant maintains that on March, 10, 2006, she suffered compensable injuries to her knees, back and neck while attempting to subdue a combative resident. Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury":

- (i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical

evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102 (4)(E)(i).

After reviewing the evidence in this case impartially, without giving the benefit of doubt to either party, I find that the claimant failed to establish compensable injuries to her knees, back and neck, by medical evidence supported by objective findings. Therefore, the claimant did not suffer a compensable injury pursuant to Arkansas Workers' Compensation law.

Although the claimant was treated and released by medical personnel at Baxter Regional Medical Center on the day of the incident, there are no reports of any swelling, contusion, bruising, or any other objective findings establishing a compensable injury to either the claimant's back or neck. In fact, extensive diagnostic testings were conducted during the claimant's emergency room visit immediately after her fall, but none of these tests demonstrated any acute injury to the claimant's back or neck, or to any other area of the body for that matter. Specifically, x-rays taken on March 10, 2006 of the thoracic spine were unremarkable, and x-rays taken of the lumbar spine on that same day demonstrated only degenerative change in the spine. In addition to this, there are no reports of a fracture, dislocation, swelling, bruising, or contusion, to the claimant's knees.

Therefore, under these circumstances, I am constrained to find

the claimant failed to prove by medical evidence supported by objective medical findings that she sustained compensable injuries to either her knees, back or neck during the March 10, 2006, work-incident.

However, it is well-settled that where an employer has prompted/or caused the claimant to incur medical expenses, the employer is responsible for the cost of treatment rendered to the claimant notwithstanding the fact that the claimant's injury has been found to be noncompensable. See Southern Hospitalities v. Britain, 54 Ark. App. 318, 925 S.W. 2D 81 (1996). Here, the claimant essentially testified that the charge nurse on duty, Ms. Almond, summoned an ambulance for her shortly after the accident, and told her not to worry about payment. Therefore, in light of the claimant's testimony and there being no other evidence to the contrary, I find that the respondents are responsible for the medical expenses of record, which were incurred by the claimant pursuant to the directive of the respondent-employer, which includes the ambulance service fee, and emergency room visit at Baxter Regional Medical Center, along with the diagnostic tests.

The respondents have also alleged an idiopathic injury. However, I find the evidence does not indicate the claimant suffered from an idiopathic injury. Although the claimant does suffer from a seizure disorder, and has previously suffered seizures, there is no evidence that this condition caused the

incident or contributed in any way to her fall. The claimant credibly testified that the work-related incident on March 10, 2006, resulted from a fall sustained due to a combative resident rather than her seizure disorder. Based on the claimant's testimony and there being no evidence to the contrary, I find that the March 10, 2006 work-incident was not caused by an idiopathic injury. Instead, I find that the claimant's fall resulted due to her attempt to subdue a combative resident.

B. Constitutional Challenges

The claimant filed a Motion to Recuse and a Brief in support of said Motion on December 21, 2007. Therein, the claimant sought my recusal from hearing this case, and challenged, *inter alia*, the constitutionality of the Workers' Compensation Act as it provides for administrative adjudication of workers' compensation claims. At the time of the hearing, the claimant renewed this request. With respect to the claimant's Motion for Recusal and the balance of the motion pertaining to the constitutional challenges, I find that the Arkansas Court of Appeals has soundly rejected the same arguments in Long v. Wal-Mart Stores, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (Ark. Ct. App. Feb. 21, 2007). Therefore, the claimant's Motion for Recusal is hereby denied, and I find her constitutional challenges to be without merit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed on or about March 10, 2006, and at all other relevant times.
3. This claim has been controverted in its entirety.
4. The claimant failed to prove by a preponderance of the evidence that she sustained compensable injuries to her knees, back and neck during the March 10, 2006 work-incident. Specifically, there are no objective findings establishing an injury as required by Arkansas law.
5. Respondents are liable for the medical expenses of record that the claimant incurred as a result of the respondents having summoned an ambulance for emergency treatment, notwithstanding the fact that the claimant's alleged injuries have been found not to be compensable.
6. The claimant's Motion to Recuse is denied, and her constitutional challenges are found to be without merit pursuant to Long v. Wal-Mart Stores, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (Ark. Ct. App. Feb. 21, 2007).

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied. However, the respondents are directed to pay for all the medical expenses of record incurred by the claimant as the result of her employer having summoned an ambulance for emergency treatment, immediately following the March 10, 2006 work-related incident.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml