

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F800059

RITA LEAL, Employee	CLAIMANT
MAPLES AT HAR-BER MEADOWS, Employer	RESPONDENT
CANNON COCHRAN MANAGEMENT, Carrier	RESPONDENT

OPINION FILED JULY 1, 2008

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 11, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 20, 2008, and a pre-hearing order was filed on that same date. 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 relationship existed between the parties at all relevant times.

Subsequent to the hearing the parties agreed to stipulate that claimant earned sufficient wages to entitle her to compensation at the rate of \$160.00 for total disability benefits and \$154.00 for permanent partial disability benefits. The parties also agreed that claimant was employed at the Richardson Center from June 25, 2007 through October 19, 2007.

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

1. Compensability of injury to claimant's hand.
2. Temporary total disability benefits.
3. Medical expenses.
4. Attorney fee.

The claimant contends she injured her hand in March of 2007 while moving a lady who had landed on top of her. She contends she is entitled to temporary total disability, medical, and an attorney fee.

The respondents contend that while claimant was seen in the ER at NW Medical on March 3, 2007, she was released from care and returned to work. She worked until March 29, 2007 and quit. Respondents contend there are no objective medical findings.

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 a pre-hearing conference conducted on February 20, 2008, and contained in the pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned sufficient wages to entitle her to compensation at the rate of \$160.00 for total disability benefits and \$154.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist in the form of a contusion on or about March 2, 2007.

4. Respondent is liable for payment of the emergency room visit of March 3, 2007,

treatment for which it has already paid.

5. Claimant has failed to prove by a preponderance of the evidence that her wrist problems subsequent to March 3, 2007 are causally related to her original compensable right wrist contusion.

#### FACTUAL BACKGROUND

\_\_\_\_\_The claimant is a 36-year-old woman who began working for the respondent as a certified nurse's aide approximately three weeks before March 2, 2007. Claimant testified that she suffered an injury to her right wrist some time in March 2007. Based upon claimant's testimony that she sought medical treatment from the emergency room the next day and the fact that the emergency room record is dated March 3, 2007, this would indicate that the injury occurred on March 2. Claimant testified that on that date she was attempting to get a patient out of bed and into a wheelchair by herself. As she attempted to perform this procedure the patient fell on top of her, pinning her right wrist between the two of them. Claimant testified that she had a sharp pain in her wrist and that it began hurting and swelling shortly thereafter.

Claimant testified that she reported this incident to the charge nurse and was instructed to put ice on the wrist. Claimant worked the remainder of her shift some three to four hours and according to her testimony had help with her work.

On March 3, 2007 the claimant informed her supervisor that she could not work because of the injury the day before. Claimant was sent by that supervisor to the emergency room which diagnosed claimant's condition as a contusion of the right wrist. Claimant was given an ACE wrap, instructed to take Ibuprofen for pain and swelling, instructed to receive follow-up treatment in some three to five days if her condition did not improve, and she was also given work restrictions for seven days of wearing the ACE wrap and no lifting more than 10 pounds. Claimant returned to work for the respondent. At one

point claimant testified that her employment lasted an additional two days and at another point indicated that she worked an additional two weeks or more after the injury.

Claimant next sought medical treatment for her right wrist in December 2007 and January 2008. Claimant was diagnosed as suffering from tendinitis and carpal tunnel syndrome.

Respondent paid for claimant's initial emergency room visit, but has not accepted liability for any additional compensation benefits. As a result, claimant has filed this claim contending that she suffered a compensable injury to her right wrist and seeking payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

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#### ADJUDICATION

\_\_\_\_\_ Claimant contends that she suffered a compensable injury to her right wrist on or about March 2, 2007. Claimant's claim is for a specific injury 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, I find that claimant has met her

burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a contusion to her right wrist.

First, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist which arose out of and in the course of her employment with respondent and that the injury was the result of a specific incident identifiable by time and place of occurrence. Claimant testified that she injured her right wrist when a large patient landed on her and her wrist was caught between their two bodies. Claimant reported the incident that day and the next day requested medical treatment. As a result, she was sent by the respondent to the emergency room where she was diagnosed as suffering from a contusion to the right wrist. The emergency room record contains a history consistent with claimant's testimony.

Based upon the claimant's testimony, the medical records which contain a history consistent with claimant's testimony, and all other evidence presented, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered an injury which arose out of and in the course of her employment with respondent and that it was the result of a specific incident identifiable by time and place of occurrence.

I also find that the claimant has established the injury by objective medical findings and that the injury caused internal or external physical harm to her body which required medical services. As previously noted, claimant was sent to the emergency room on March 3, 2007, and she was diagnosed as suffering from a contusion of the right wrist. A contusion is a bruise and is considered an objective finding. At the time of that visit claimant was treated with an ACE wrap, medication, and work restrictions. Based upon this evidence, I find that claimant has satisfied the remaining elements of compensability.

Accordingly, for the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a contusion to her right wrist while employed by respondent on March 2, 2007.

Respondent is liable for payment of the emergency room treatment provided to claimant on March 3, 2007.

The next issue for consideration is whether respondent is liable for medical treatment subsequent to March 3, 2007. Claimant has the burden of proving by a preponderance of the evidence that the additional medical treatment is reasonable and necessary and causally related to her compensable injury. After reviewing the evidence in this case, I find that claimant has failed to meet her burden of proof.

Medical evidence subsequent to March 2007 indicates that claimant's condition has been diagnosed as tendinitis and carpal tunnel syndrome. Claimant's original diagnosis was a contusion of the right wrist. At the time of her initial emergency room evaluation on March 3, 2007, claimant was instructed to receive follow-up treatment in some three to five days if her condition did not improve. Claimant did not request additional medical treatment from the respondent and did not seek additional medical treatment for her right wrist until December 2007, some nine months later.

Claimant testified that her wrist pain was so bad that she was forced to quit her employment with the respondent in March 2007. Despite that testimony, the medical evidence indicates that claimant sought medical treatment from Dr. Jones on March 27, 2007, for anxiety and depression. Dr. Jones' medical report makes no mention of wrist pain. More significantly, Dr. Jones' medical report contains the following notation: "She denies any extra stress at home or at work." According to claimant's testimony at the hearing she quit her job with the respondent because she could not get other employees to help her perform her job and she could not perform it with her wrist hurting. This testimony seems contradictory to Dr. Jones' notation that claimant was not under any extra stress at work.

Claimant subsequently sought medical treatment from Dr. Poemoceah on August 2, 2007 for complaints of abdominal pain. Dr. Poemoceah's medical reports mention no

complaints of wrist pain.

It was not until December 18, 2007 that claimant sought medical treatment for her right wrist at which time she was diagnosed as suffering from tendinitis. Furthermore, when claimant sought medical treatment from Dr. Poemoceah on January 9, 2008, his medical report notes a history of right wrist pain following a fall at work two months ago, not March 2007.

In support of her contention, claimant has introduced a letter from Dr. Jones dated June 5, 2008 indicating that claimant had an accident more than one year ago at work when she fell while working as a CNA. Dr. Jones also noted that she had diagnosed claimant with carpal tunnel syndrome which is generally an overuse type of injury. However, Dr. Jones indicated that the fall aggravated and injured the wrist. I do not find Dr. Jones' opinion to be persuasive for several reasons. First, as previously noted, claimant was evaluated for her right wrist on March 3, 2007, and was diagnosed as suffering from a contusion of the right wrist. Claimant did not receive any follow-up treatment despite being instructed to do so by the emergency room physicians. Claimant did seek medical treatment for other conditions, but did not make any complaints of right wrist pain. In fact, Dr. Jones was one of those physicians. The evidence also indicates that claimant went to work for the Richardson Center on June 25, 2007 and continued working there until October 19, 2007. According to claimant's testimony she was not having problems with her hands when she began working at the Richardson Center, but did begin having problems with her right hand approximately one and a half months after she began working there. Finally, Dr. Jones' opinion seems to indicate that claimant had a pre-existing condition which was aggravated by the fall in March 2007. However, claimant testified that she had no problems with her right wrist prior to that date.

In summary, claimant has the burden of proving by a preponderance of the evidence that her subsequent right wrist problems are causally related to her original compensable

injury. Here, claimant was diagnosed as suffering from a contusion of the right wrist in March 2007. Claimant did not seek any additional medical treatment for that condition until December 2007, some nine months later. Claimant had sought medical treatment for other conditions and did not make any complaints of right wrist pain, even though according to her testimony she had quit working for the respondent because of the right wrist pain. Claimant subsequently went to work for another employer beginning on June 25, 2007, and according to her testimony had no hand problems at the time she began employment there. Claimant did begin having problems with her hands approximately one and a half months after beginning work for the second employer. Finally, Dr. Jones seems to imply that claimant had a pre-existing condition which was aggravated by the fall; however, claimant testified that she had no complaints of any problems with her hands prior to March 2007. Based upon the foregoing evidence, I simply find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her right wrist problems subsequent to March 2007 are causally related to her compensable right wrist contusion injury of March 2, 2007.

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a contusion to her right wrist on March 2, 2007. Respondent is liable for payment of the emergency room visit on March 3, 2007. Claimant has failed to prove by a preponderance of the evidence that her right wrist problems subsequent to March 2007 are causally related to her compensable right wrist injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been

awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$271.75.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE