

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F709965

GLEND A NUNN, Employee	CLAIMANT
HOLIDAY RETIREMENT CORPORATION, Employer	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED MARCH 18, 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 JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On February 20, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 19, 2007, 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/carrier relationship existed among the parties on or about July 20, 2007.
3. The respondents have controverted this claim in its entirety.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$288.00 which would entitle her to compensation at the rate of \$192.00 for total disability benefits and \$154.00 for permanent partial disability benefits.

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

1. Compensability.

2. Medical.
3. Temporary total disability benefits.
4. Attorney fee.

At the time of the hearing the claimant modified her request for indemnity benefits to include both temporary total and temporary partial disability benefits.

The claimant contends that on or about July 20, 2007 she sustained an injury while pulling a crate of dishes up to the dishwasher and her hand slipped and she hit her wrist on the arm of the dishwasher. She contends she is entitled to temporary total and temporary partial disability benefits, medical, and an attorney fee.

The respondents contend the claimant did not sustain a compensable injury which arose out of and in the course of her employment with the respondent employer.

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 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 19, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$288.00 which would entitle her to compensation at the rate of \$192.00 for total disability benefits and \$154.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right wrist while employed by the respondent.

FACTUAL BACKGROUND

The respondent operates a senior living facility known as the Gardens at Arkanshire. Claimant was hired by the respondent to work primarily as a dish washer in October 2006. Claimant testified that her job duties included washing dishes by placing them in racks and running them through an automatic dishwasher.

Claimant testified that on a particular day in July 2007 she was in the process of loading the dishwasher and as she grabbed a tray of dishes to load her hand slipped causing her to strike her wrist on the dishwasher handle. According to claimant's testimony she reported this incident to Pamela Garner, the night cook who was also a supervisor. Claimant testified that the next day she also reported the incident to Cody Redden, the executive chef and supervisor of the respondent's kitchen. Claimant testified that as she was reporting this incident to Redden, Dan McIntyre appeared. Dan and Debbie McIntyre are husband and wife and are the managers of the respondent's Arkanshire facility. According to claimant's testimony, Redden instructed her to report her injury to Debbie McIntyre. Claimant testified that she did in fact report the incident to Debbie McIntyre.

Claimant testified that her condition continued to worsen but that she thought it would go away; therefore, she did not request medical treatment. On August 2, 2007, claimant sought medical treatment from Dr. Gaston, her personal physician, for headaches. While undergoing that evaluation claimant also mentioned a bump on her right wrist and another on her left arm. Dr. Gaston diagnosed claimant's right wrist condition as a ganglion cyst due to "overuse on her job." Dr. Gaston referred claimant to Dr. Henley, a specialist.

Claimant sought medical treatment from Dr. Henley on August 28, 2007 and he provided claimant with a splint and work restrictions. After this visit with Dr. Henley the claimant apparently had a conversation with Debbie McIntyre which resulted in McIntyre completing workers' compensation paperwork and claimant being referred to Dr. Wilson,

the respondent's workers' compensation physician. Claimant was also evaluated by Dr. Wilson on August 28, 2007. Dr. Wilson provided claimant with medication and work restrictions. Since that time claimant has continued to receive medical treatment for her right wrist condition.

Claimant has filed this claim contending that she suffered a compensable injury to her right wrist while employed by the respondent. She seeks payment of medical treatment, temporary total or temporary partial disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her right wrist when she struck it on a dishwasher while working for respondent on a date in July 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, without giving the benefit of the

doubt to either party, I find based upon the inconsistencies in this case that claimant has failed to meet her burden of proof by a preponderance of the evidence that she suffered a compensable injury while employed by the respondent.

Claimant testified that on the day after her injury she reported the incident and showed the bump on her wrist to Cody Redden, the executive chef and kitchen supervisor. According to claimant's testimony, while she was having this conversation with Redden Dan McIntyre, one of the facility managers, happened by and heard a portion of the conversation. According to claimant's testimony Redden told her to report the injury to Debbie McIntyre which she proceeded to do.

Redden testified at the hearing and acknowledged that at some point in the summer of 2007 the claimant showed her a bump on the wrist. However, claimant did not indicate that the injury had occurred from striking the wrist against the dishwasher. Instead, Redden testified that claimant informed her that she might have bumped the wrist on a valve connected to the garbage disposal while cleaning a wall. Redden indicated that claimant informed her that she was not sure how the injury had occurred.

Also testifying at the hearing was Daniel McIntyre. As previously noted, Daniel McIntyre and his wife, Debbie McIntyre, are the managers of the respondent property. Daniel McIntyre testified that the claimant never reported a work-related injury to him.

Finally, also testifying at the hearing was Debbie McIntyre. She testified that at one point the claimant came into the office and indicated that she had been given extra duties to perform but was concerned about performing those duties because she had a bump on her wrist and her wrist was hurting. Debbie McIntyre testified that she specifically asked claimant what had happened and claimant responded: "I don't know. I woke up with it like that this morning."

Debbie McIntyre further testified that at some point claimant had indicated that she had a doctor's appointment but did not indicate that it was for a work-related injury. Debbie

McIntyre testified that it was not until August 28, 2007 that claimant reported a work-related injury to her. After claimant had been evaluated by Dr. Henley on referral from Dr. Gaston the claimant while passing by a table where Debbie McIntyre was sitting on that date stated: "You do know that this is work comp." Debbie McIntyre testified that at this point she completed workers' compensation paperwork and an appointment was made for claimant to see Dr. Wilson later that day.

Obviously, the testimony of the claimant and the testimony of respondent's witnesses are at odds. Daniel McIntyre testified that claimant never reported a work-related injury to him. Debbie McIntyre testified that claimant did mention a bump on her wrist, but indicated that she did not know how it occurred but that she had simply woke up with it that morning. Redden testified that claimant attributed the injury to bumping her wrist on a valve while cleaning a wall, not on a dishwasher handle while washing dishes.

In considering the contradictory testimony of the witnesses, I believe it is important to review the medical report from Dr. Gaston. The first medical report relating to claimant's wrist injury is from Dr. Gaston dated August 2, 2007. While undergoing an evaluation from Dr. Gaston for headaches, claimant showed Dr. Gaston a bump on her right wrist and a bump on her left arm. While it is claimant's testimony that she suffered the compensable injury as a result of striking her right wrist against a dishwasher handle, Dr. Gaston's medical report does not contain a history of a specific injury. Dr. Gaston's medical report does note that claimant works as a dishwasher for the respondent. He attributed the claimant's right wrist problem to "overuse on her job." Claimant's testimony does not support a finding that her right wrist injury was related to overuse syndrome, but rather she contributes her injury to a specific incident identifiable by time and place of occurrence. In fact, claimant testified that prior to this specific incident she had no problems with her right wrist as a result of a gradual onset.

Q. Ms. Nunn, I understand that you have had no problems with your right wrist before this specific incident at work where you struck your hand on the dishwasher - - dishwasher handle. Is that correct?

A. Correct.

Q. You had not had any gradual onset of any kind of wrist problems prior to this specific incident. Is that correct?

A. Correct.

It was not until claimant sought medical treatment from Dr. Henley and Dr. Wilson on August 28, 2007 that the medical records contained a history of injury consistent with claimant's testimony.

In summary, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist while employed by the respondent. Here, there are inconsistencies in the testimony between claimant and witnesses called on behalf of respondent. Significantly, the initial medical report from claimant's family physician does not support a history of injury consistent with claimant's testimony. Dr. Gaston's medical report indicates no trauma and attributes her right wrist problems to overuse at work. However, claimant has testified that she had no wrist problems prior to the alleged date of injury or any problems caused by overuse. Based upon the inconsistencies presented, I find that claimant has failed to meet her burden of proof by a preponderance of the credible evidence of record.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right wrist while employed by respondent. 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 \$428.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE