

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501885

ANGELA E. OWENS, EMPLOYEE	CLAIMANT
ALLTEL ARK., INC., EMPLOYER	RESPONDENT
LIBERTY INSURANCE, CARRIER	RESPONDENT

OPINION FILED JULY 24, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on June 25, 2008 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE SHEILA F. CAMPBELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102 and §11-9-113. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated an employer-employee-carrier relationship on January 20, 2005 at which time the claimant was involved in an altercation with a co-worker. Initially the claim was accepted as compensable and benefits were paid before the claim was controverted. After her deposition was taken, the parties stipulated to a compensation rate of \$309.00 in the event of an

award.

The claimant contends she developed mental illness pursuant to Ark. Code Ann. §11-9-113 as a result of an assault by a co-worker. She seeks payment of medical expenses, temporary total disability benefits from January 20, 2005 to June 15, 2005, and attorney's fees.

The respondents contend the assault was not work-related in origin and therefore this claim is not compensable.

The claimant was the only witness to testify at the hearing. She disagreed with some of the information contained in her medical records and there were some inconsistencies between her deposition and hearing testimony. Her EEOC claim against the respondent-employer has been dismissed.

The claimant, (D.O.B. May 21, 1965) graduated from Capital City Business College. Her work history includes several different jobs as a retail sales clerk, cook, factory assembler, and receptionist. She has worked for the respondent-employer for the past ten years running mail machines. Her health history includes a prior workers' compensation claim while employed with Mom's Biscuits. She has been an insulin dependent Type I diabetic for the past 32 years currently taking four shots per day. Dr. Lawson Glover treats her diabetes. The claimant has also had breast cancer. The claimant's heart was evaluated by Dr. Scott Davis in July 2005 and Dr. Andrew Kumpuris in September 2005.

On January 20, 2005 the claimant was injured when a co-worker, Greg Tucker, kicked her. Another co-worker, Ms. Randolph, had scheduled a baby shower for their supervisor, Michael Compton, in the lunch room. The claimant did not participate in the party but was offered a cupcake. Mr. Tucker asked the claimant twice that day about throwing a baby shower for him as his wife was

also pregnant. The claimant told him she had nothing to do with the party. Later in the day the claimant was standing at her locker when Mr. Tucker kicked her. The claimant was scheduled to be off work for the next two days. When she returned to work she reported the incident. She came under the care of her family physician, Dr. Kenneth Johnson, for bruising, pain and stress. Dr. Johnson prescribed medication, light duty for two months, and referred her to psychologist, Dr. Patricia Griffen. The claimant stated she was nervous, upset and confused.

On March 16, 2005, the claimant became disoriented while driving and had to call for help. Dr. Johnson took her off work from March 16 to June 13. According to the medical reports, the claimant has had episodes in the past of hypoglycemic amnesia.

The claimant has also been treated by Dr. Ward for ringing in her ears.

MEDICAL EVIDENCE

Although this claim is limited to mental illness, the claimant told her physicians that the incident at work caused ringing in her ears, amnesia, hemorrhoids, depression, and anxiety.

The claimant saw general practitioner, Dr. Kenneth Johnson on February 25, 2005 complaining of pain in her buttocks from an incident on January 20, 2005. She was diagnosed with a contusion of the buttocks and lumbar disc degeneration at L4-5 based on a March 11, 2005 MRI. He commented, "she may have proctitis by her description. I doubt that is related to injury sustained in the workplace." Dr. Johnson prescribed medication, light duty, and released her to return to work if she felt able to do her job. He assessed no anatomical impairment.

Dr. Johnson referred the claimant to Dr. Patricia Griffen, psychologist, commenting, "the request for counseling has a possible probable (handwritten) relationship to her work injury because the patient does have some stress and anxiety issues related to her injury dated January 20, 2005."

On February 26, 2005 the claimant saw an unidentified physician at Arkansas Physician Management complaining of ringing in her right ear one day in duration.

On March 21, 2005, Dr. Glover referred the claimant to otolaryngologist, Dr. Edward Gardner for ringing in her right ear and otalgia, one month in duration. An MRI scan ruled out an acoustic neuroma but an audiogram showed hearing loss. Dr. Gardner prescribed Elavil for tinnitus which the claimant found helpful but he has not seen her since November 18, 2005.

Dr. Kenneth Johnson commented, "I am unaware of any relationship between an ear problem and her work injury of January 20, 2005."

On March 16, 2005 the claimant was seen in the Emergency Room (ER) for an episode of disorientation while driving. In her medical history, she denied having tinnitus. At the time of her admission her blood sugar was 306. An arterial doppler test showed 40% stenosis in the carotid arteries. A CT and MRI scan of the brain was performed to evaluate the possibility of a seizure. The CT scan was negative but the MRI scan showed a cyst of "uncertain significance." There are inconsistencies between the ER records and Dr. Glover's treatment of the claimant in the hospital.

Dr. Farmer's report of March 16, 2005:

She has been having episodes of amnesia for the past 2 weeks. She said she has had a total of 3. One occurred when she was driving; she got lost and did not know where she was, but never blacked out or actually wrecked her car...

She says about a week ago she awakened from sleep and was in her kitchen searching for orange juice. She said she turned several things over in the kitchen and does not remember anything that happened. Today, the patient checked her blood sugar after eating breakfast and it was 110. She went to the beauty shop, and the next thing she knew, she was on the side of the road in England, Arkansas. She states that she did wake up to know that she was lost and called 911. They came out and gave her some peppermint and she did feel better. However, she does not know whether they checked her blood sugar or not.

Dr. Bursey's report of 3/18/06:

...starting about 9 months ago she had her first episode in which she became unaware of what was happening... She was in Southwest Little Rock, but then became aware... she was near Alltel Arena. Then about three to four weeks ago... she had knocked several things over in her kitchen when she was attempting to get orange juice and today...around 11:30 she was at McDonald's and she was eating and that is the last thing she remembered...until she arrived in Lonoke... approximately 2 o'clock this afternoon. For some reason paramedics were called. She was given Glucose and the patient reported that she thinks her blood glucose at that time was in the 60's...

Dr. Glover's Discharge Summary of 3/22/05:

Ms. Owens was admitted by my associate Dr. Bursey after an episode of disorientation. She had been driving home and was found in Lonoke, many miles North and East of where she had intended to go. She was seen emergency (sic) medical technician personnel and her blood sugar was not found to be low. She was brought to the hospital. By the time she arrived, she was apparently oriented. Her blood sugar in the emergency room was 258...

...she did complain of some tinnitus and right ear pain and was seen by Dr. Gardner.

The claimant had some episodes of hypoglycemia while hospitalized and Dr. Glover adjusted her insulin medications. Dr. Glover also referred the claimant to Dr. Reid to evaluate her anxiety but it appears that the claimant went to Dr. Griffen instead.

Dr. Griffen opined that the claimant needed continuing psychotherapy and medication for anxiety and stress. Dr. Griffen was apparently unaware of the claimant's hypoglycemic amnesia and mistakenly diagnosed her medical condition as a mental illness, dissociative disorder. The Commission is not bound by a doctor's opinion based on inaccurate information, Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

Dr. Griffen's report of February 16, 2007:

Mrs. Owens was referred for treatment due to trauma she was

suffering from an assault that occurred on her job, January 2005. While putting on her coat at her locker, a co-worker reportedly kicked her in the buttocks. Mrs. Owens suffered both physical injury and psychological trauma. When initially seen on April 1, 2005, she was diagnosed with Post Traumatic Stress Disorder. Physically she reported having been diagnosed with bruises, inflamed muscles, and had developed a ringing in her ear possibly causing nerve damage. Her diabetes was also unstable at that time.

Psychologically, Mrs. Owens was experiencing intense anxiety, depression, a dissociative reaction in which she lost awareness of location and identity causing alarm to her family when she could not be located..

In addition to the intense anxiety, Mrs. Owens had recurring thoughts about the incident, intense psychological distress, was unable to work, had difficulty sleeping and concentrating. She was hypervigilant and was constantly on edge.

She has required treatment from several medical specialists to include a diabetic specialist, neurologist, and otolaryngologist. I referred her to a psychiatrist for medication to be used in conjunction with the psychotherapy.

Psychiatrist Richard Owings saw the claimant by referral from Dr. Kenneth Johnson. The claimant was diagnosed with depression and anxiety and prescribed medication.

Dr. Owings report of 4/22/05:

HISTORY OF PRESENT ILLNESS:

She has had a dramatic emotional response to this (incident at work). She states that she cries constantly and daily, and talks incessantly about the abuse. She describes typical symptoms of depression, including loss of sense of humor, anhedonia, daily crying, loss of energy, and low self-esteem... She is having panic attacks occurring two to four times per week, during which she feels palpitations, nervousness, shakiness. She had one episode of blackout on March 16, 2005. She woke up by the side of her car on the side of the road, with no idea how she got there. She went to Baptist Medical Center, where she was hospitalized six days for a seizure work up, that revealed nothing. She believes this came about because she was so upset about what happened to her.

REVIEW OTHER SYMPTOMS OF MENTAL ILLNESS:

She admits she is generally anxious. She admits that since the incident she has become more worried and fretful...

MEDICAL HISTORY:

She has developed hemorrhoids, which she believes are due to being kicked in the behind...

ATTITUDE:

...She is tense, unhappy and determined to persuade us of her point of view. This may color her account.

ASSESSMENT:

Angela Owens describes an event at work that would certainly upset most people. Her reaction is extreme. It raises a question of secondary gain, particularly since she has a work release based on this.

Dr. Owings prescribed medication and referred her back to Dr. Griffen for therapy.

Dr. Owings' report of 9/16/05:

...She is back on the job and seems to be successful. She is still upset over what happened to her, but this is no longer preventing her from working. Her company paid out Workers' Compensation benefits, and she hopes this taught them a lesson.

FINDINGS AND CONCLUSIONS

The respondents have denied this case as a non-work-related assault under Ark. Code Ann. §11-9-102(4)(B)(ii). A three part test must be satisfied before an assault acts to bar a claim. A claim is not compensable if it is shown:

- (1) that the injured employee was an active participant in the assault
- (2) that the assault is the result of non-employment-related hostility
- (3) that the assault amounts to a deviation from customary duties.

A claim is not barred if proof concerning one requirement of the statute is lacking. Walker v. Independence Case Management, E705055, Full Commission opinion of June 15, 1999 and June 19, 2000.

Based on the claimant's unrefuted testimony, I find the assault was the result of non-employment related hostility involving a party, and the assault deviated from the customary mail room duties. However, I also find the claimant was not an active participant in the assault, therefore, this claim is not barred by Ark. Code Ann. §11-9-102 as all three parts of the test have not been proven.

The claimant contends that she developed depression and anxiety as a result of the incident at work. In pertinent part, Ark. Code Ann. §11-9-113 provides that in order to receive 26 weeks of disability benefits, the claimant must prove by a preponderance of the evidence that:

1. The mental illness was caused by a physical injury to the body provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence, and
2. the mental illness must be diagnosed by a licensed psychiatrist or psychologist meeting the criteria in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders, (DSM).

In this case, I find that although the claimant did have a physical injury, the contusion mentioned in Dr. Kenneth Johnson's reports, she was also the victim of a crime of violence, battery. Additionally, both Dr. Griffen and Dr. Owings, licensed mental health specialists, based their diagnosis of depression and anxiety on the DSM. However, I find the claimant's mental illness was not caused by bruised buttocks.

While the incident at work was certainly embarrassing and painful, the claimant's reaction was extreme. As Dr. Owings noted, the claimant's hysterics called into question the issue of secondary gain. Taking into consideration her EEOC claim, her statement to Dr. Owings about teaching her employer a lesson, and her attribution of every malady (amnesia, tinnitus, hemorrhoids) to the incident, I find the claimant's testimony concerning the extent of her injuries implausible. Because I find the claimant is not a credible witness, she cannot meet her burden of proving a causal connection between the compensable injury and mental illness.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employee-employer-carrier existed among the parties on January 20, 2005 at which time the claimant sustained a compensable injury (bruise to the buttocks) after an assault by a co-worker.
2. The claimant has failed to prove by a preponderance of the credible evidence of record a causal connection between the compensable injury and mental illness.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge