

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602720

PAULA VALENZUELA	CLAIMANT
STAFFMARK INVESTMENTS	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY CARRIER	RESPONDENT

OPINION FILED AUGUST 1, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MARK VELASQUEZ, Attorney, Fayetteville, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 6, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 5, 2008, and a pre-hearing order was filed on February 6, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The employment relationship existed between them at all relevant times, including September 22, 2005.

2. The claimant sustained a compensable neck and back injury on said date.

3. She earned sufficient wages to entitle her to compensation rates of \$280.00 per week for temporary total disability and \$210.00 per week for permanent partial disability.

4. The claimant's healing period ended on or about January 31, 2006.

5. Respondents No. 1 have controverted all benefits beyond those previously paid.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether the claimant sustained any permanent impairment as the result of her admitted injury.

2. Whether the claimant is entitled to any wage-loss disability.

3. Whether the claimant sustained an independent intervening accident on February 18, 2006.

Claimant's contentions are, in summary:

"That she sustained a compensable injury as the result of a specific work-related incident on September 22, 2005, when a forklift hit her in the back; that she sustained a thirteen percent (13%) whole body impairment as the result of the injury, together with a degree of wage-loss disability in an amount to be determined by this Commission; and that a controverted attorney's fee should attach to any additional benefits awarded. The claimant maintained that all of her permanent disability was related to September 22, 2005, admitted injury while, alternatively, requesting wage-loss from either party/respondent."

Respondents' contentions are:

"That there were no acute objective findings to support a permanent impairment rating

related to the admitted injury, maintaining that all of the claimant's problems were degenerative in nature and that any rating was associated with degenerative changes. Alternatively, respondents further contend that the claimant sustained an independent intervening accident resulting in new injury on February 18, 2006, which would relieve respondents of liability for any benefits subsequent to said date."

#### DISCUSSION

In this matter the claimant suffered an admittedly compensable injury on September 23, 2005, when the claimant sustained an injury to her neck and back. The claimant received medical treatment for those injuries and her healing period ended on January 31, 2006. The claimant's injuries occurred while she was seated in a chair in her work area, a forklift hit a cart behind her chair, and that cart was knocked into the chair the claimant was seated in. The claimant was not knocked out of the chair and had no visible cuts, bruises, scrapes, or other visible injuries at that time.

On September 23, 2005, at the Arkansas Occupational Health Clinic an x-ray was taken of the claimant's lower spine which consisted of three views. The radiological findings were as follows; "moderate cervical spondylosis as described and mild to moderate degenerative spinal stenosis from C4 through C5, C5 through C6, and C6 and C7, also there was mild to moderate neural foraminal stenosis as described which is greatest at C6 C7. Also there was noted mild bulging disc at T3 and T4 without significant central spinal stenosis. On the MRI the L-spine was noted that the alignment was normal in position L1. There is a mild to moderate loss of disc height and signal intensity at all levels compatible

with degenerative disc disease. The L1-2 disc is otherwise unremarkable. At L2-3 there is mild generalized disc bulging and moderate hypertrophic facet disease with ligamentum flavum thickening. This results in mild trefoil-type central spinal stenosis. There is also mild bilateral neural foraminal stenosis. At L3-4, there is mild to moderate disc bulging which is somewhat greater toward the left. There is also moderate hypertrophic facet degenerative disease. This results in moderate trefoil-type central spinal stenosis which is greatest involving the left lateral recess. However, there is no significant neural foraminal stenosis. At L4-5 there is moderate generalized disc bulging and mild hypertrophic facet degenerative disease. This causes mild trefoil-type central spinal stenosis with mild right neural foraminal stenosis owing to a symmetric degenerative disease. At L4-5 there is mild bilateral lateral recess stenosis which is greater on the left. There is also moderate bilateral degenerative neural foraminal stenosis.”

On September 30, 2005, Dr. Berestnev of the Arkansas Occupational Health Clinic wrote the following in a letter regarding the claimant, “The patient has no evidence of bruising, swelling, discoloration or anatomical deformities of her neck. The patient has pain to palpation of her C6-C7 cervical area and C7-C1 level as well. The patient has some muscle tightness on examination of her trapezius muscles bilaterally and levator scapulae bilaterally. The patient has no pain to palpation of the thoracic and lumbar spine. No evidence of muscle spasm on

examination of the rhomboids and paraspinous musculature. The patient has brisk and symmetric reflexes bilaterally. No sensory deficit to pin prick. Good muscle strength and tone. Good ability to walk on her tip toes and heels. Good ability to bend forward all the way down to the floor level.”

An MRI was performed on the claimant at Arkansas Open MRI on January 17, 2006, at the request of Dr. Wade Fox. The following impressions were reported; “degenerative disc disease at L2-3 through L5-S1 and Broad-based disc bulges mildly flatten the anterior aspect of the thecal sac at ligamentum flavum hypertrophy, the central canal is mildly to moderately narrowed at these same levels.”

On January 31, 2006, the claimant was seen by Dr. Kelly Danks where a review was done by Dr. Danks of the MRI which reported the radiological review as follows; “MRI of the cervical spine reveals degenerative disc changes with disc bulges at 3-4, 4-5, 5-6, and 6-7 without spinal cord compression or neural foraminal narrowing. She has a lumbar MRI that reveals some disc bulging with spinal stenosis present at L3-4 and 4-5.”

On March 22, 2006, the claimant went to C & S Medical Clinic and was seen by Dr. Snodgrass with the chief complaint of “has previously injured right hip, on Saturday 2-18-06 6:30 a.m. patient fell has been in pain since then.” An MRI was performed on March 23, 2006, at the direction of Dr. Snodgrass which revealed the following impressions; “moderate cervical spondylosis as described above. There is mild to moderate degenerative central spinal

stenosis from C4-5 through C6-7. There is also mild to moderate neutral foraminal stenosis as described above which is greatest at C6-C7.”

#### ADJUDICATION

One of the major issues in this matter is whether the claimant sustained an independent intervening accident on February 18, 2006. In testimony before the Commission the claimant testified that she did not relate to the doctor that she had fallen on February 18, 2006. The claimant explained in testimony that the doctor must have misunderstood her due to a language barrier in that the claimant is Spanish speaking and the doctor was English speaking.

Throughout the course of testimony before the Commission, the claimant was asked several questions through an interpreter who translated those questions to the claimant as well as translated to the Commission the claimant's answers to the questions. However, throughout the course of her testimony the claimant often answered questions posed in English prior to the interpreter translating the question in Spanish. I also note that she gave those answers in English on several occasions.

I give great weight to the hand written note of Dr. Snodgrass which was specific in that it even indicated a time, 6:30 a.m., that the claimant fell and began having pain. It is a possibility that due to the language barrier described by the claimant that some mistake in giving history could have been made; however, I find it unlikely that it was made to a point of an explanation that the claimant fell, a date for that fall was given, and a specific

time was given. I find that the claimant did sustain a fall which caused difficulties to her back on February 18, 2006.

There are two MRIs that have been submitted into evidence, one that is dated January 17, 2006, and one that is dated March 23, 2006, performed at Dodge City Diagnostics in Kansas. These two pieces of evidence are very important in that we are able to look at the impressions of an MRI prior to the accident that was not work related suffered by the claimant on February 18, 2006, by viewing the January 17, 2006, MRI. We are also able to view the impressions of the MRI performed at Dodge City Diagnostics which is after the claimant experienced the fall on February 18, 2006. Both of those MRIs show that the claimant certainly had degenerative disc changes present; however, the March 23, 2006, MRI shows a protrusion at C6-C7 that was not present in the January 17, 2006, MRI. I find that this protrusion was most likely caused by the fall the claimant sustained and reported to the physician on February 18, 2006.

The claimant did sustain an admittedly compensable injury on September 23, 2005. In suffering that injury, I believe that the claimant had a preexisting condition which is shown on both MRIs as degenerative disc change at several different levels throughout her spine. I believe the September 23, 2005, incident did aggravate that preexisting condition which has caused the claimant pain and discomfort which was treated until the stipulated end of her healing period of January 31, 2006. However, I do not believe that the claimant's compensable injury is the major cause of any

disability that the claimant may have at this time. I find that it was merely an aggravation of a preexisting condition that resulted from her September 23, 2005, injury.

The claimant is not entitled to any wage loss disability as the claimant has not suffered any permanent impairment as a result of the September 23, 2005, admittedly compensable injury.

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 the pre-hearing conference conducted on February 5, 2008, and contained in a pre-hearing order filed February 6, 2008, are hereby accepted as fact.

2. The claimant failed to prove by a preponderance of the evidence that she sustained any permanent impairment as a result of the admittedly compensable injury of September 23, 2005.

3. The claimant failed to prove by a preponderance of the evidence that she is entitled to wage loss disability.

4. The claimant did sustain an independent intervening accident on February 18, 2006, that caused damage to her back.

5. No controverted benefits are to be awarded in this matter.

ORDER

\_\_\_\_Based upon my foregoing findings and conclusion, I have no alternative but to deny and dismiss this claim in its entirety.  
IT IS SO ORDERED.

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ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE