

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. **G305583**

EVA CALDERON, EMPLOYEE	CLAIMANT
TYSON POULTRY, EMPLOYER	RESPONDENT
TYNET CORPORATION, INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 16 , 2016

Hearing before ADMINISTRATIVE LAW JUDGE AMY GRIMES, in Springdale, Washington County, Arkansas.

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

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On November 23, 2015, the above captioned claim came before the Workers' Compensation Commission in Springdale, Arkansas, for a hearing. A pre hearing conference was conducted on October 20, 2015, and a pre hearing order filed that same date. A copy of the pre hearing order has been marked as Commission's Exhibit No. 1 and with modification and no objection is made part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employer/employee relationship existed on September 20, 2011.
3. The claimant sustained a compensable injury in the form of a pelvic fracture on September 20, 2011.
4. Respondents are controverting any alleged back injury.

The issues to be litigated are limited to the following:

1. Whether the claimant sustained a compensable injury to her back on September 20, 2011.

2. Whether the claimant is entitled to medical treatment for back injuries related to the September 20, 2011 incident.

The claimant contends that “she is entitled to receive medical treatment for a work related injury to her back, pelvis, hip and leg. The claimant reserves all other issues including any additional medical treatment related to the accepted pelvic injury.” The respondent contends that “it has accepted the pelvic fracture as compensable and has provided all appropriate benefits. Respondent denies that the claimant sustained a back injury on September 20, 2011. Respondent denies that any additional medical treatment is reasonably necessary for the work-related injury.”

The above stipulations are hereby accepted as fact. From a review of the record as a whole to include medical reports, documents, and having heard testimony and observed demeanor of all witnesses, the following decision is rendered. The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her back on September 20, 2011. She has failed to prove that there are objective medical findings that are causally connected to the incident that occurred on September 20, 2011. Additionally, having found that she did not suffer a compensable back injury, the claimant is not entitled to any additional medical treatment.

FACTUAL BACKGROUND

The claimant, here, suffered a compensable injury to her pelvis on September 20, 2011. She is now asking the Commission to determine if she suffered a compensable injury to her back as a result of that same incident. On the date in question, the claimant was hit by swinging doors while working for the respondent. She was hit and trapped between the wall and the door for a short period of time. As a result, she suffered a pelvic fracture. She was treated for the pelvic fracture by Dr. Haws from September 20, 2011 through January 10, 2012 and was thereafter released to full duty. The claimant then returned to work. After her return to work, the claimant testified that she continued to have pain

and made a request for additional medical treatment. The claimant stated that she showed the plant nurse a picture of her hip. The claimant stated that the picture was taken by her husband. The picture is in evidence and is undated, however, the claimant states that the picture was taken 3-5 days after the accident. She continued that she was not allowed to return for additional medical treatment.

The claimant stated that she sought medical treatment for her continued pain on her own. The claimant returned to see Dr. Haws on June 2, 2014. This visit was the first visit to Dr. Haws since the claimant's release in 2012. She complained of lower back pain. The claimant's history notes that she had chronic lower back pain. Dr. Haws diagnosed lumbago with right hip pain. The claimant was given medication. She returned to see Dr. Haws on July 8, 2014. He noted no improvement and ordered an MRI. An MRI was performed on July 22, 2014. It revealed a disc protrusion that Dr. Haws noted as degenerative disc disease changes at L5-S1. She was given an injection for her back and advised to begin home exercises. The claimant continued to see Dr. Haws in July and September of 2014. He noted pain, administered an injection, and continued to note lumbar disc degeneration. In December of 2014, Dr. Haws noted that the claimant's pain was not improving and suggested that she might see a neurosurgeon.

The claimant saw Dr. Knox on January 21, 2015. He noted that she was continuing physical therapy, but had continuing pain. He further noted that the pelvic fracture had healed, but the claimant still experienced pain. Dr. Knox placed the claimant on lifting restrictions and home traction with a return for follow up in two months. In March of 2015, the claimant returned to Dr. Knox. He noted continued low back pain. He further noted tenderness to the midline only at the right L5-S1. Dr. Knox also stated that the claimant had a "huge disc" at 5-1 on the right, but that it was not bad enough for surgery. The claimant has placed a letter into evidence from Dr. Knox. He states that the claimant's pain is related to her prior pelvic injury. He, however, states that he based his assessment on facts from

the claimant's attorney and clinical notes he reviewed in which the claimant "relates her back and hip pain to be related to her original injury." The claimant testified that she had no prior hip issues and had no injury subsequent to her September 20, 2011 accident.

DISCUSSION

The claimant has asked the Commission to determine if she suffered a compensable back injury on September 20, 2011. Arkansas Code Annotated §11-9-102(4)(A)(i) defines compensable injury as:

"An accidental injury causing internal or external physical harm to the body . . . 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."

The claimant must prove by a preponderance of the evidence that she sustained a compensable injury as defined under A.C.A. §11-9-102(4)(A)(i); *See also* §11-9-102(4)(E)(i). A preponderance of the evidence means the evidence having greater weight or convincing force. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W. 2d 442 (1947). Furthermore, to be compensable under the same burden, the claimant must prove that the existence of physical injury or damage is supported by medical evidence. A.C.A. §11-9-102(4)(D) requires that a compensable injury must be established by medical evidence.

The statute also requires that the medical evidence submitted be in the form of objective findings. Objective findings are defined in A.C.A. §11-9-102(16)(A)(i) as those findings which cannot come under the voluntary control of the patient. The statute requires medical opinions addressing compensability must be stated within a reasonable degree of medical certainty, A.C.A. §11-9-102(16)(B).

Here, the claimant testified that after suffering a compensable pelvic fracture, she continued to suffer back pain. She stated that after returning to full duty she had continuing back pain. The claimant also stated she asked the respondent for additional medical treatment, and showed the plant nurse a

picture of her bruised right hip. The record reflects that the nurse mentioned the claimant's picture in January 2013 when the claimant first mentioned hip pain to him. The claimant's medical records show that she was treated for her initial injury and released to full duty in January of 2012. Dr. Haws noted continuing pain and ordered an MRI. Upon review of the MRI, he stated that the claimant suffered from degenerative disc disease. Dr. Knox treated the claimant in January of 2015 and noted her continued back pain. He also noted his review of a six-view lumbar spine series which revealed disc space changes at the lower lumbar level mostly at 5-1 and 4-5. In March of 2015, Dr. Knox stated that the claimant had a "huge disc" at 5-1 on the right. He stated the disc was not bad enough for surgery. However, his records and a later letter to the claimant's attorney reflect that the claimant had told him she felt the back pain was related to her September 2011 injury. Dr. Knox's opinion is based on what the claimant believed to be the source of her pain.

It is clear that the claimant continued to complain of back pain after being released subsequent to her pelvic fracture. However, she waited almost a year before it appears she reported pain to her employer. The nurse's note, in the record, reflect that the claimant first mentioned back pain to him in January of 2013. Dr. Haws stated that the claimant had degenerative disc disease and stated no connection between the claimant's back pain and the September 20, 2011 accident. Dr. Knox's opinion based on information provided by the claimant is not credible. Furthermore, while the claimant submitted a picture of her bruised hip three to four days after the 2011 injury there is no time and date stamp on that photo. The bruising clearly is an objective medical finding of some injury to the claimant's right hip. Here, however, there is no causal connection between the bruising and the claimant's low back pain. Additionally, the nurse's notes in evidence reflect that he was shown the picture in January 2013, several months after the September 20, 2011 injury. The record also reflects numerous medical records. These records all contain objective medical findings supporting the

contention that the claimant has low back pain and degenerative disc disease. However, these records do not support a finding that the claimant's current back pain issues are causally connected to the September 20, 2011 accident. There is no causal connection. The claimant must prove by a preponderance of the evidence that she sustained a compensable injury and the compensable injury must be supported by objective medical findings. Here, there is no causal connection between the claimant's low back pain and the September 20, 2011 accident. The claimant has failed to prove that she suffered a compensable low back injury on September 20, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable back injury on September 20, 2011. While there are objective medical findings in the record, none of these findings are causally connected to the claimant's accident occurring on September 20, 2011.
2. Having found that the claimant did not suffer a compensable injury to her low back on September 20, 2011, the claimant is not entitled to additional medical treatment related to the low back.

ORDER

Based on the above findings and conclusions, I have no choice but to deny and dismiss this case in the entirety.

IT IS SO ORDERED.

AMY GRIMES
ADMINISTRATIVE LAW JUDGE