

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F011948

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| RAMONA BECKWITH, EMPLOYEE                           | CLAIMANT   |
| RILEY'S OAKHILL MANOR, EMPLOYER                     | RESPONDENT |
| CANON COCHRAN MANAGEMENT SERVICES,<br>INC., CARRIER | RESPONDENT |

OPINION FILED DECEMBER 1, 2004

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE STEVEN McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal the decision of the Administrative Law Judge filed on June 21, 2004. Our carefully conducted de novo review of the record reveals that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on September 23, 2000.

Specifically, the claimant has failed to establish by objective medial evidence that she sustained an injury to her leg on the above date. Therefore, the decision of the Administrative Law Judge is hereby reversed and dismissed.

Aside from the claimant's full-time employment during the week, she worked as an LPN on the weekends for the respondent

employer. On September 23, 2000, the claimant testified that she was entering a patient's room in response to an alarm when she slipped on something wet, hyper-extended her left leg, and fell into a sitting position. The claimant testified that she reported her injury to her supervisor. Thereafter, she received emergency medical treatment at Baptist Memorial Hospital in North Little Rock. Emergency Room records reveal that the claimant reported pain in the posterior left leg "similar to a previous episode of hamstring tear." The claimant testified that she had injured her hamstring in a prior ski jetting accident, and thus she knew how that injury felt. According to hospital records, a possible pulled hamstring was the only injury reported by the claimant during her Emergency Room visit. The emergency room physician, Dr. Robert E. Harrell, examined the claimant and made the following comments:

**Joints, Extremities:** Pelvis- There is some tenderness with pressure over the anterior superior iliac spine and pressure over the left pelvis. Motion of the left leg produces pain. Dorsalis pedis pulses are 2+. There is good capillary refill. The range of motion of the foot is normal. The knee has normal range of motion without swelling. There is tenderness along the posterior thigh, especially in the mid belly of the hamstring and its proximal end. The popliteal pulse is 2+.

Based upon his physical examination of the claimant and a normal pelvic X-ray, Dr. Harrell assessed the claimant with a strained left hamstring, for which she was given Flexeril, Vicodin, an ACE bandage, and a cool pack. The claimant was told that she could return to work with no specific limitations, and she was instructed to follow-up with her primary care physician.

The claimant was seen on follow-up by her personal physician, Dr. Irving, on September 29, 2000, and again on October 16, 2000. Dr. Irving diagnosed the claimant with left hamstring muscle strain for which he prescribed Naprosen and Ulsergic.

On December 18, 2000, the claimant was seen by a designated medical provider, namely Dr. Scott Carle at Concentra Health Centers in Little Rock. The claimant's chief complaints during her initial visit were left hip pain, leg numbness, and tingling across her left buttocks and lower left back. Dr. Carle noted that the claimant reported bruising immediately following the accident, but he commented "There is no evidence of discoloration at this time." Dr. Carle further noted:

... she is able to get on and off the exam table without difficulty. Examining her spine reveals some positive performance stretch discomfort as well as positive Patrick's test for left SI pain posteriorly.

Dr. Carle assessed the claimant with left sacroiliac strain with intermittent piriformis syndrome and left leg pseudo radiculitis with paresthesia. In addition to medications, Dr. Carle prescribed physical therapy and he ordered an MRI of the claimant's lumbar spine in order to rule out a herniated disc. An MRI performed on December 20, 2000, revealed no abnormalities.

The record reveals that the claimant attended a physical therapy session on December 22, 2000, at which time her condition was noted as "improved ... with near normal function." Dr. Carle referred the claimant to the Pain Care and Neurology Center, where she underwent an EMG and nerve conduction study on January 16, 2001. These tests, which were administered by Dr. Reginald Rutherford, revealed normal motor, reflex, and sensory function in all four of the claimant's extremities. Concerning these findings, Dr. Rutherford stated:

The nerve conduction study and needle examination are normal. There is no evidence of lumbar radiculopathy, lumbosacral plexopathy or peripheral neuropathy.

Evidence reflects that the last authorized physician to see the claimant was Dr. William Warren on or about February 5, 2001. In his report dated February 5, 2001, Dr. Warren listed the

claimant's primary diagnosis as lumbar strain, thoracic or lumbosacral neuritis or radiculitis, unspecified, and unspecified site of sprain or strain.

The claimant denies having experienced any other accident or injury since her September 13, 2000, incident. The claimant admits, however, that she has continued working since September of 2000, and that she only missed two days of work following the incident. The claimant testified that she continues to experience episodes of inflammation in her left leg which results in tingling sensations in her left leg and hip, and occasional left leg weakness. The claimant further testified that her left leg has been consistently larger than her right leg since the incident in September of 2000. In light of these symptoms, however, the claimant testified that since the time of the incident and up until January of 2004, she has not sought medical treatment for the episodes of pain in her left leg and hip. The claimant contends that the medical treatment she sought in January and February of 2004 from her family physician, Dr. Clyde Paulk, was associated with the incident which occurred on September 23, 2000. The claimant further contends that the symptoms which she experienced on January 26, 2004, which

rendered her unable to work, resulted from the September 2000 incident.

The respondent correctly contends that no objective medical findings were presented in this claim to substantiate that the claimant sustained a compensable injury on September 23, 2000. Ark. Code Ann. § 11-9-102(4) (A) (Supp. 2003), defines a "compensable injury" as an accidental injury causing internal or external physical harm to the body arising out of and in the course of employment 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." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). Furthermore, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4) (E) (i) (Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55

S.W.3d 791 (2001). It is likely, even undisputed, that the claimant fell at work as described in her testimony. The record in this claim, however, is devoid of any objective medical evidence showing that the claimant was injured as a result of that fall. The claimant sought emergency medical treatment on the day of the incident, and based solely upon the claimant's subjective complaints, the emergency room doctor diagnosed her with a hamstring pull. Thereafter, the claimant was seen by her primary care physician, Dr. Irving, who also diagnosed her with a pulled hamstring. The "note" contained in the record of the claimant's visit with Dr. Irving is, at best, vague. There is certainly no evidence presented which shows that Dr. Irving based his diagnosis of the claimant's condition on any objective findings. Likewise, when the claimant first saw an authorized treating physician in mid-December of 2000, she presented with no objective physical evidence of an injury having occurred on September 23, 2000. To the contrary, subsequent diagnostic testing, including an MRI and EMG/NCV studies, each revealed normal findings.

The claimant contends that she was badly bruised as a result of her injury and that this bruising helps prove that she was injured as a result of her fall. However, aside from the

claimant's own testimony, no evidence is presented in this claim that substantiates any such bruising. Moreover, after her medical examination on February 5, 2001, the claimant did not seek medical treatment for symptoms allegedly related to the September 23, 2000, incident until nearly three years later. As described above, during the course of her initial treatment each of the claimant's "diagnoses" indicated that she may have strained or sprained a muscle in some "unspecified site" as a result of her fall on September 23, 2000. However, these diagnoses were based upon the claimant's subjective complaints of pain, and not upon objective medical findings. As previously stated, objective medical evidence is necessary to establish the existence and extent of an injury. Horticare Landscape Mgt. V. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002). Moreover, objective findings are defined at Ark. Code Ann. § 11-9-102(16) as those findings which cannot come under the voluntary control of the patient. Reasonable minds would have to conclude that a soft tissue injury, such as a strained or pulled muscle, would have resolved long before three years had passed. In regards to the claimant's claims of "flare ups" prior to January of 2004, the file is devoid of any medical evidence that supports such claims. Furthermore, had these flare ups been symptoms of a more

severe problem, the diagnostic tests performed contemporaneously with the claimant's alleged injury would surely have indicated the source and origin of these symptoms. As previously mentioned, the MRI and EMG/NCV studies each revealed normal findings. Based upon the above and foregoing, it is more likely than not that the symptoms for which the claimant currently seeks compensation are not related to her alleged work related incident of September 23, 2000. Moreover, due primarily to a lack of objective medical evidence, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on September 23, 2000, in the course of her employment with the respondent employer. Accordingly, this claim is hereby reversed and dismissed in its entirety.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.