

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309885

JOYCE DOLPHUS,  
EMPLOYEE

CLAIMANT

LEISURE ARTS, INC.,  
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 20, 2004

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

Claimant represented by HONORABLE EMILY S. PAUL, Attorney at  
Law, Little Rock, Arkansas.

Respondents represented by HONORABLE ROBERT H. MONTGOMERY,  
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed February 19, 2004. The administrative law  
judge found, "The claimant meets her burden of proving by a  
preponderance of the evidence of record that she has  
sustained a gradual onset injury to her low back as a result  
of her work duties as a mail handler." After reviewing the  
entire record *de novo*, the Full Commission finds that the  
claimant proved she sustained a compensable injury. We  
therefore affirm the opinion of the administrative law  
judge.

I. HISTORY

Joyce A. Dolphus, age 45, estimated that she began working for Leisure Arts when she was about 17. Ms. Dolphus testified that she first worked in the warehouse, then as a picker, and that she began working as a mail clerk for the respondents in about 1983. The claimant credibly testified that her work involved a great deal of lifting and bending.

The parties stipulated that the employment relationship existed in March 2003. The claimant testified that her last day of work for the respondent-employer was March 14, 2003. The claimant presented to Dr. Venkatesh P. Nagalapadi on March 17, 2003. The claimant's complaints included left side and back pain with dizziness. The physician's assessment included lumbar back pain. The claimant returned to Dr. Nagalapadi on March 24, 2003:

Ms. Senhouse is a 44 y/o African American female with a history of obesity, uterine myoma, low back pain and iron deficiency anemia....She presents with persistent complaints of lower back pain with radiation down the left leg....She has not been lifting weights again....She has significant lower back tenderness and spasm....

The physician's assessment included "lumbosacral strain and sprain."

Dr. Nagalapadi again noted "significant lower back spasm" on April 4, 2003. The following findings resulted from an MRI of the lumbar spine taken April 10, 2003:

There is mild loss of height at the disc space at the L5-S1 level with decreased signal intensity on

T2 weighted images consistent with desiccation. Broad-based disc herniation is seen centrally and extending towards the left. Bulging is noted as well. There is mild displacement of the left S1 nerve root. The right S1 nerve root is touching the disc, but is not displaced. Degenerative changes of the facets are seen with moderate left foraminal narrowing and mild right foraminal narrowing. The remainder of the disc spaces are otherwise unremarkable as are the neural foramen. There are some degenerative changes of the facets and lower lumbar spine.

IMPRESSION: THERE IS BROAD-BASED DISC HERNIATION CENTRALLY AND TO THE LEFT AT THE L5-S1 LEVEL WITH MILD LEFT S1 NERVE ROOT DISPLACEMENT.

The claimant began treating with Dr. Andrew Prychodko on April 11, 2003:

Ms. Joyce Senhouse is a 44-y/o woman referred for disability status evaluation. She stopped working at Leisure Arts on 3/17/03, due to a cluster of health problems, and is currently drawing disability insurance benefits provided through her employer.

Last September, she noted some problems with her usually excellent state of health. She relates that after a flu shot she began to feel malaise. This seemed to persist, and began to be accompanied with reduced activity tolerance and increasing shortness of breath with limited exertion. Alongside this, she also began to note pain (sic) in the lower back and leg. This pain was most notable after significant physical activity. For example, she has worked as a mail clerk for her employer for 25 years without difficulty. But during the recent period, she has noticed that on the 2-days per week that she is not assigned a helper and must perform frequent lifting of mail containers weighing up to 50# her back and leg pain become markedly aggravated....

Dr. Nagalapati (sic) also diagnosed a large herniated disc at the L-5/S-1 level which displaces the S-1 nerve root. This finding is

entirely likely to be the principal pain generator in her back and leg region....

Dr. Prychodko treated the claimant conservatively, and he reported on September 25, 2003:

Mrs. Joyce A. Senhouse is under my care for a back problem involving a herniated disc. In examining her medical history, it appears that she began experiencing progressive symptoms of low back and leg pain in the Autumn of 2002. She was initially reluctant to seek medical attention, and did not do so until March, 2003. The problem was diagnosed at that time and she has been receiving medical care accordingly.

Mrs. Senhouse has been working as a mail handler for 25-years. She was doing so at the time the symptoms began to manifest, and continued to work in this capacity until March, 2003. She has no outside hobbies that involve significant stresses to her low back, and has not been involved in any accidents. The symptoms of back and leg pain arose while she was employed full time as a material (mail) handler, and progressed while she continued to perform such duties.

Therefore, it is my opinion, within a reasonable degree of medical certainty, that Mrs. Senhouse's lumbar disc herniation arose in the course of her employment as a mail handler.

Ms. Dolphus claimed entitlement to worker's compensation, and a pre-hearing order was filed on December 1, 2003. The claimant contended that she sustained a gradual-onset injury to her low back in March 2003. The claimant contended that she was entitled to reasonably necessary medical treatment, and temporary total disability compensation from March 15, 2003 through January 16, 2004. The respondents contended that the claimant did not sustain

a compensable injury. The administrative law judge indicated at hearing that the only issue for consideration at that time was "compensability." The administrative law judge found, "The claimant meets her burden of proving by a preponderance of the evidence of record that she has sustained a gradual onset injury to her low back as a result of her work duties as a mail handler." The respondents appeal to the Full Commission.

## II. ADJUDICATION

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

- (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
  - (b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). The claimant's burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(4) (E).

In the present matter, the Full Commission finds that the claimant proved she sustained a compensable injury

pursuant to Ark. Code Ann. §11-9-102(4)(A)(ii). The claimant worked for the respondents for about 25 years, performing manual labor. The claimant credibly testified that she did not experience back problems until around 2003, and the record indicates that she was diagnosed with "lumbosacral strain and sprain" in March 2003. The claimant's initial treating physician reported "spasm" in the claimant's low back on two occasions, which reports satisfy the objective findings requirement of Ark. Code Ann. §11-9-102(4)(D) and Ark. Code Ann. §11-9-102(16). In addition, the MRI taken in April 2003 showed a disc herniation at L5-S1 with displacement at S1. The reports of Dr. Prychodko indicate that the claimant's symptoms arose out of and in the course of her employment with the respondents. Dr. Prychodko expressly opined that the claimant's lumbar disc herniation was the result of the claimant's employment.

Based on our *de novo* review of the entire record, and pursuant to Ark. Code Ann. §11-9-102(4)(A)(ii) and following, the Full Commission finds that the claimant proved she sustained an injury causing physical harm to the body and arising out of and in the course of her employment with the respondents. The claimant established a compensable injury by medical evidence supported by

objective findings. In addition, the claimant proved that the compensable injury was the major cause of her disability and need for treatment. The Full Commission therefore affirms the opinion of the administrative law judge. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(2) (Supp. 2003).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that she sustained a gradual onset injury to her lower back as a result of her work duties as a mail handler. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

The record demonstrates that the claimant last worked for the respondent employer on Friday, March 14, 2003. The claimant testified that she had already asked to be off work on Monday, March 17, 2003, as she had a doctor's

appointment for her various health problems. The claimant stated that she did not tell anyone at the respondent employer that she thought she had a back injury related to her work duties. The claimant was asked several times when she reported an alleged work-related injury and her answer was consistently "I didn't tell anybody." It was not until much later, in fact some 7 months after the last time the claimant worked for the respondent employer, that she reported that her back pain was job related. When the claimant was asked how she arrived at that conclusion, the claimant related that her doctor told her.

The respondent offered the testimony of Ms. Sheila Smith, the Human Resources Coordinator for the respondent employer. Ms. Smith testified that she helped the claimant with the paperwork needed for a medical leave of absence from work. She testified that the claimant failed to mention any work related back problems at the time she requested the leave of absence. Ms. Smith testified that the first time she received any notification of any work related back problems was on October 14, 2003, 7 months after the claimant last worked for the respondent employer.

Ms. Smith testified that the claimant was given an employee handbook explaining the procedures for filing workers' compensation benefits. Ms. Smith also testified

that the claimant had filed a prior workers' compensation claim and was familiar with the process. The claimant was a 20-something year employee of the respondent employer.

Ms. Smith also testified that the claimant took some personal items from her desk when she left on March 14<sup>th</sup>.

Simply put, I cannot find that the claimant has proven by a preponderance of the evidence that she sustained a compensable gradual onset back injury. The claimant left work and requested a medical leave of absence because of various health problems including anemia and gynecological problems. The claimant left work taking personal items from her office and her desk. The claimant reported to her doctor on Monday, March 17, 2003, and never returned to work for the respondent employer. When she filled out her leave of absence forms, the claimant did not report a job-related back problem, but reported it when her doctor told her to some 7 months later. The claimant also admitted to working as a mail handler for the post office during the time she worked for the respondent employer. Therefore, when I consider all of this evidence, I cannot find that the claimant has proven by a preponderance of the evidence that she sustained a compensable gradual onset back injury. Accordingly, I must respectfully dissent from the majority's

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opinion. Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner