

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106749

RADINA REYNOLDS,
EMPLOYEE

CLAIMANT

JOHNSON REGIONAL MEDICAL CTR.,
EMPLOYER

RESPONDENT

RECIPROCAL OF AMERICA,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 4, 2004

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

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

Respondents represented by HONORABLE GAIL MATTHEWS, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

The Arkansas Court of Appeals has reversed the
Commission's decision and has remanded for the Commission to
make specific findings of fact. Reynolds v. Johnson
Regional Medical Center, No. CA03-1338 (Ark. App. June 23,
2004). After again reviewing the entire record *de novo*, the
Full Commission affirms the administrative law judge's
finding that the claimant did not prove she sustained a
compensable neck injury on June 8, 2001.

I. HISTORY

The parties stipulated that Radina Dyane Reynolds, age 57, sustained a compensable injury to her back on June 8, 2001. Ms. Reynolds testified:

A. I went to give Geraldine a bath....She weighs probably 265, 275 pounds....I went to put her in the shower, which she had to step over the tub to get in....She went to fall and she was falling, and just instinctively, I caught her....I got her up; I had to pick her legs up to get them out of the tub, but whenever she come back and fell on me, I felt - I'm not going to say an explosion in my neck, but a very, very bad pain went up into my head and I thought at first maybe I was having a stroke, but, you know, I just was really concerned with Geraldine, and the pain was excruciating.

The claimant was treated at Johnson Regional Medical Center on June 8, 2001, on which date Dr. Kim Graves reported:

Patient is a 54-year-old white female who was working at Hospital Home Health helping a patient bathe and the patient started to slip, so she grabbed the patient and kept the patient from falling. Mrs. Reynolds did not fall to the floor or hit her back in any way but she came to the emergency room via ambulance with complaints of severe lower lumbar and mid lumbar pain that was constant. She has some radiation down both lateral thighs but no radiation below her knees and some tingling in her fingertips in both of her hands.

Dr. Graves' assessment included "Back strain in patient with previous history of lower back surgery times four, remote, approximately twelve years ago." There was no indication that the claimant complained of neck pain, and there was no assessment with regard to the claimant's neck. Dr. Graves planned pain control and a lumbar MRI. Three

views of the claimant's lumbar spine showed degenerative disc disease and "normal alignment except for a 2 mm. retrolisthesis L-4 and L-5." Degenerative disc disease was also seen in the claimant's middle and lower thoracic spine. (This was apparently an x-ray.)

A note dated June 8, 2001 from Clarksville Medical Group, where the claimant had previously treated for various physical ailments, indicated, "Tel. Conv. with Wal-Mart Pharmacy. They wanted us to refill her Xanax. Dr. Fisher is not in clinic. I declined to do this. Apparently she went to the ER anyway." Dr. Graves assessed "lumbar strain" on June 9, 2001. The impression from an MRI of the lumbar spine taken June 11, 2001 was "Bulging disc without a free fragment. Degenerative changes in the apophyseal joints at the 4-5 5-1 levels. No other findings are noted." A June 15, 2001 note from Clarksville Group indicated, "F/u lumbar strain. Still discomfort, especially with movements bending or side-to-side. Leg pain not as bad, still somewhat present."

The claimant presented for medical treatment on July 13, 2001:

The patient says her back was getting quite a bit better, but today she just bent over to pick up a very small stone and she had acute onset of severe pain again. She says this is about as bad as it was when she went to the ER on 6/8/01. She is having some pain in the upper left lumbar area, sometimes it radiates around the left lower ribs,

sometimes also her left thigh has an aching pain....I do think she has some left upper lumbar paravertebral muscle spasm present.

The physician assessed, "Persistent low back symptoms, reinjury today, muscle spasm."

It was reported at Clarksville Medical Group on July 25, 2001, "She had lumbar strain and still continues to have pain down the left side of her leg, and it's usually just on the anterolateral thigh area. Apparently, the Workman's Compensation people are going to send her to a spine clinic, which I think is fine right now[.]"

Dr. Wayne L. Bruffett examined the claimant on August 20, 2001:

She apparently sustained an injury on 6/8/01 when she was giving a bath to a very heavy patient. Apparently the patient began to fall, and Ms. Reynolds grabbed the patient to help her avoid this fall. She apparently had to go to the emergency room and since that time has been complaining of upper back pain with radiation down her left arm with associated headaches....

There is some tenderness around the C7 area. There are no skin changes noted in the cervical, thoracic, or lumbar areas, although she does have a well-healed midline lumbar incision from a previous surgery by Dr. Giles....

X-rays of her cervical spine today show evidence of disk space narrowing and degenerative changes primarily at C5-6. She also has an absence of the normal cervical lordosis here....

MRI of her lumbar spine is reviewed. This is dated 6/11/01. She has some disk bulging but no evidence of disk herniation or nerve root impingement. Lumbar and thoracic studies done on 6/8/01 show some degenerative changes and a subtle

retrolisthesis of L4 and L5 without evidence of fracture. She has some degenerative disk disease in the mid and lower thoracic spine.

IMPRESSION:

1. Cervical strain.
2. Cervical degenerative disk disease.
3. Thoracic strain.
4. Thoracic degenerative disk disease.

Dr. Bruffett planned additional diagnostic testing and conservative treatment, and he wrote, "I think it will be fine for her to be released at this point to at least a sedentary occupation with no pushing (sic) pulling, or lifting greater than 10 pounds and no standing over two hours."

An MRI of the cervical spine was taken on August 28, 2001:

There is signal loss in the intervertebral disk at the C3-4, C4-5, and C6-7 levels. There is associated volume loss of the disk at the C5-6 level as well. These findings are consistent with degenerative disk disease. At the C5-6 level there is evidence for combination of diffuse bulge of the disk and bony osteophyte formation. There is mild narrowing of the central spinal canal without frank central canal stenosis. I do not see evidence of focal disk herniation or significant diffuse bulge of the disk at any other level. The cervical spinal cord is without evidence of mass nor abnormal signal intensity.

Impression: Multi-level degenerative disk disease. The findings are most pronounced at the C5-6 level where there is evidence for combination of mild diffuse bulge of the disk and bony osteophyte formation.

Dr. Bruffett's impression on September 24, 2001 was "Cervical degenerative disk disease with cervical

strain....I reviewed the MRI scan with Ms. Reynolds. She does not have a problem of surgical significance and she is relieved to know this. I am going to have her see Dr. Bruce Safman for evaluation and non-surgical care. I am going to see her back as needed."

Dr. Safman examined the claimant on October 11, 2001, noting, "There is no guarding or muscle spasm present in the cervical, thoracic or lumbar spine or the upper trapezius muscles." Dr. Safman's impression was "Cervical, thoracic and lumbar strain." Dr. Safman wrote on October 23, 2001 that he was treating the claimant for "chronic pain syndrome." Dr. Safman reported on December 11, 2001:

I think that I have done all that I can do for her. I believe she is at maximum medical improvement. There is no objective pathology, either on examination or on testing that has been done, to explain the persistence of her symptoms. She has a 0% disability rating. I have released her to full duty without restrictions.

The patient would like to see a neurosurgeon, who has done surgery on her past. I have related that she would have to get this done through her adjuster, as she has already seen a spine surgeon who did not find any surgical indications. She related that she will be calling Mr. Baker about referral to the neurosurgeon. I will leave this at that level.

The claimant testified that she attempted to return to work on December 24, 2001, after an insurance representative purportedly told her, "Try, or we drop you." The claimant testified that she worked for two hours and could not

breathe. The claimant testified that she told her supervisor she was dying, and that she went home and went to bed.

The claimant returned to Clarksville Medical Group on December 26, 2001:

Pt states that she had a work-related back injury in June, was hospitalized. Says she has continued to have problems....She returned to work one day, on 12/24/01, says she was assigned to an obese, terminally ill pt who had to be turned often, and she says that because of that her back is now hurting a lot worse....At this point, I do not feel she is able to work as a nurses' aide, although hopefully she will be able to do a job that does not involve so much lifting and turning.

Dr. Laurie Fisher wrote a note for the claimant, stating, "Patient is not able to work as an aide at this time."

Another MRI of the cervical spine was taken on January 9, 2002:

There is a discoid complex at C-5, 6 that is broad based and does not lateralize. The remaining cervical disc spaces are normal. There is no disc protrusion. The bony alignment is normal. Marrow signal is normal. The cervical cord and cranial vertebral junction appear normal.

IMPRESSION:

Broad based disc ridge complex at C-5, 6 without spinal stenosis or disc protrusion.

MRI of the thoracic or "dorsal" spine was negative. An "acromial spur" was seen in the right shoulder; the left shoulder was negative.

An orthopaedist, Dr. Terry G. Green, wrote to Dr. Fisher on January 14, 2002:

Thank you for sending Radina down for my evaluation. She does have significant cervical disc protrusion and thecal sac impingement at the C5-6 level. This disc protrusion corroborates with her persistent interscapular and shoulder pain.

We are recommending anterior cervical diskectomy and arthrodesis. She will have that scheduled....

A neurosurgeon, Dr. Ronald M. Williams, wrote to Dr. Graves on February 26, 2002:

Ms. Reynolds' repeat MRI of the cervical spine shows moderate extrusion of disc at C5-6 with some degree of central canal stenosis. She wants to go ahead and have surgery and that has tentatively been scheduled for 3/4/02. I spoke with her about the technical aspects of an anterior cervical fusion, the possible complications and the expectations for some benefit.

Dr. Williams took the claimant off work on February 26, 2002 "until 6 weeks post op".

Dr. Jim J. Moore, a neurological surgeon, corresponded with Corvel Corporation on March 5, 2002:

I have reviewed the medical information you provided on this patient. I understand the injury date is 6-08-01. This was a lifting injury with a heavy patient in a bath tub....I get the idea from most that the injury seemed to be related to the low back and yet on the other hand some others are documenting that the patient had cervical or upper thoracic pain radiating into the upper extremities after the injury....Dr. Fravel reported there was evidence of a moderate extrusion of disk at C5/6 contributing to mild central canal stenosis and mild disk extrusion at C6/7....

These findings certainly are concerning and likely would be sufficient to recommend a surgical intervention. It would, however, not be inappropriate to consider doing a myelogram and contrasted CT on the patient before pursuing cervical surgery.

The parties deposed Dr. Williams on April 24, 2002.

Dr. Williams testified that he began treating the claimant in February 2002, and that she was complaining of neck pain.

"She indicated she had never had any difficulty with her neck until she injured it at work on 6/8, 2001," he

testified. The respondents' attorney queried Dr. Williams:

Q. If she had injured the spine or the cervical - I mean in the area that you saw the problem, which is - the C-5/6 is the problem you were talking about operating, right?

A. Yes, sir.

Q. If she injured that back in June, would you have anticipated that she would have a substantial amount of pain in the neck area or radiating pain to the arms and all?

A. Yes....

Q. Do you feel that the June 8 injury that she describes is the cause of her present need for surgery?

A. Yes.

Q. But that's based strictly upon what she tells you?

A. Strictly.

The claimant's attorney questioned Dr. Williams:

Q. Doctor, I want you to assume that Ms. Reynolds has testified that she was at her patient's house, and that her patient was getting ready to step into the bathtub and the patient began to fall and

that she caught the patient and had to lift the patient up. Would those actions be sufficient to cause the type of injury that she described to you when she presented with her problems?

A. Yes....

Q. And would her actions on June the 8th of 2001 have aggravated any preexisting condition that she would have had in her neck?

A. There wouldn't be any way to know that, I don't think.

Q. Okay. And is the purpose of the surgery to remove the bone spurs?

A. Yes.

The claimant testified that she underwent surgery on June 7, 2002. The claimant testified that she no longer had chronic headaches, "But I still cannot lift my arms; I still have the pain in the area where I can't breathe."

A pre-hearing order was filed with the Commission on July 2, 2002. The claimant contended that she had sustained a compensable injury to her neck and her back. The claimant contended that she was entitled to temporary total disability compensation from December 26, 2001 to a date yet to be determined. The claimant contended that she was entitled to reasonably necessary medical treatment and an attorney's fee. The respondents contended that the claimant's neck problems did not result from the June 8, 2001 specific incident.

Dr. Scott B. Harter of Radiology Consultants wrote to the respondents' attorney on July 23, 2002:

I was asked to review MRI studies from Arkansas Specialty MRI dated 8-28-01 and 2-26-02. I compared the two examinations. At C5-6, there is moderate diffuse spondylosis with accompanying disc bulge associated with mild mass effect upon the cord, mild to moderate central canal stenosis, and mild narrowing of the right foramen. The findings are stable over the period of examination.

At C6-7, there is mild predominantly right-sided spondylosis/disc bulge associated with mild right-sided narrowing without mass effect upon the cord. The foramina are patent.

The etiology of this spondylosis is uncertain. Typically, spondylosis develops over many years. This patient was traumatized on 6-8-01. Clearly if she had sustained an injury to C5-6 and C6-7 level, at that time which led to this rapid degree of disc degeneration and spondylosis, that would have been a painful injury at the time of the accident and for sometime after. The fact that the patient did not experience pain immediately after the accident and during the next couple of months is not consistent with that trauma causing this degree of disc degeneration by 8-28-01.

The parties deposed Dr. Bruffett on August 20, 2002. Dr. Bruffett recalled the claimant's history given to him regarding the June 8, 2001 specific incident, that is, "the patient began to fall, and Ms. Reynolds went to help her avoid that fall and started having some pain in her upper back with some radiation into her left arm." Dr. Bruffett testified that his review of the diagnostic studies did not show the claimant to be a surgical candidate.

After a hearing before the Commission, the administrative law judge found, "The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable neck injury on June 8, 2001." The claimant appealed to the Full Commission, which affirmed and adopted the administrative law judge's decision. The case is now back before the Full Commission on remand from the Court of Appeals.

II. ADJUDICATION

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

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, 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[.]

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. Ark. Code Ann. §11-9-102(4) (E) (i).

In the present matter, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained an accidental injury to her neck or cervical spine on June 8, 2001. The record does not show

that the claimant sustained any physical harm to her neck arising out of and in the course of the June 8, 2001 specific incident. The claimant testified that she experienced "horrible" neck pain after struggling with the falling patient on that date. However, the initial medical records exclusively detail only low back complaints, with no indication of any neck discomfort. All of the diagnostic testing involved the lumbar spine, and the claimant was diagnosed with "lumbar strain."

Some two and one-half months later, on August 20, 2001, Dr. Bruffett did diagnose cervical strain and thoracic strain, along with degenerative disc disease. An August 28, 2001 MRI confirmed multi-level degeneration, "The findings are most pronounced at the C5-6 level where there is evidence for combination of mild diffuse bulge of the disk and bony osteophyte formation." The Full Commission finds that these degenerative findings did not result from the June 8, 2001 specific incident involving the claimant's low back. There are no other objective findings of a neck injury.

Nor does the record show that the claimant sustained an aggravation of a pre-existing condition on June 8, 2001. An aggravation is a new injury resulting from an independent incident. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). An aggravation, being a new injury with

an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). Because the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her neck or cervical spine on June 8, 2001, the claimant likewise did not prove by a preponderance of the evidence that she sustained a compensable aggravation of a preexisting condition involving her neck or cervical spine on June 8, 2001.

Finally, we note that Judge Neal of the Court of Appeals has instructed the Commission to address the claimant's report of tingling in her hands following the alleged June 8, 2001 injury to her neck or cervical spine. Specifically, the record from Johnson Regional Medical Center on June 8, 2001 noted "some tingling in her fingertips in both of her hands." The Full Commission finds that this report of "tingling" does not constitute objective medical findings which can establish a compensable injury. See, Nixon v. Penntex Constr. Co., Inc., Workers' Compensation Commission E714417 (Aug. 4, 1999). The record does not otherwise show any causal connection between the June 8, 2001 compensable back injury and the claimant's complaints of pain in her neck. Nor was the neck surgery apparently performed by Dr. Williams in February 2002 the

causal result of the June 2001 back injury. We note that Dr. Williams testified that he performed surgery to remove bone spurs. The record does not show that these cervical bone spurs were the causal result of the compensable back injury.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her neck or cervical spine on June 8, 2001. The claimant likewise did not prove that she sustained a compensable aggravation of a preexisting condition involving her neck or cervical spine on that date, nor does the record show a causal connection between the claimant's pain complaints in her neck and the June 8, 2001 injury to the claimant's back. The Full Commission therefore affirms the opinion of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the Commission's finding that claimant failed to prove by a preponderance of

the evidence that her cervical difficulties are causally related to a prior work-related accident.

Claimant testified that on June 8, 2001, she sustained an injury when she grabbed and caught a falling patient. Respondent apparently accepted an injury to her lumbar spine. Following the injury, claimant was taken by ambulance to a local hospital. The recorded history indicates complaints of "some tingling in her fingertips in both of her hands." Eventually, claimant was diagnosed with an abnormality at C5-6.

Claimant testified that prior to the compensable injury, she had never had any problems with her neck, shoulders, or upper extremities. Claimant stated that after the compensable injury, she experienced pain in her neck and shoulders and tingling in her upper extremities on a regular basis. Dr. Williams, who performed surgery for claimant's cervical problems, opined that based on her history, there is a causal connection with the employment.

Based on the above evidence, I find that claimant has met her burden of proof by a preponderance of the evidence. Accordingly, the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner