

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312105

LEA JEAN FULENWIDER, EMPLOYEE	CLAIMANT
McDONALDS, EMPLOYER	RESPONDENT
EMPLOYERS INSURANCE CO., OF WAUSAU, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 7, 2005

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

Claimant represented by HONORABLE BILL STANLEY, Attorney at Law, Jonesboro, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondents appeal the decision of the Administrative Law Judge filed August 26, 2004, finding that the claimant established by a preponderance of the evidence that she sustained a compensable injury to her neck and that additional medical treatment is reasonable and necessary in connection with the claimant's compensable injury. Based upon our de novo review of the entire record, we find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her

neck. We further find that the claimant has failed to prove that the additional medical treatment she seeks is reasonable and necessary in connection with her admittedly compensable low back injury. Therefore, we find that the decision of the Administrative Law Judge must be reversed.

The claimant sustained an admittedly compensable injury to her back on October 28, 2003, when she fell during the course of her employment. The claimant described the actual mechanics of her injury as follows:

Okay. We were getting ready for the lunch rush, and I was doing the grill. At that time I did a little bit of everything in the store, but I was doing the grill at the time. The truck had come in that day, and there was pallets and boxes and the whole place was sort of cluttered anyway. But all I had to do was turn around and jerk this table to connect it to another one, but the marinater that the barbeque sauce sits in had leaked over in the floor, and a puddle of water that was in the floor when I pulled the dressing table to meet the other table, my feet landed in that water and just went straight up in the air, and I hit my lower back and my hip, plus my upper back. But I took the biggest blow, I guess, because of how heavy I am, was to my hip and my lower back, but I did land completely on my whole back.

When asked to describe where she now hurts, the claimant pointed to a place between her shoulder blades that was identified during the hearing to be about six inches below her shoulder.

The claimant sought medical treatment for her compensable injury from the Matthew Clinic on October 29, 2003. The claimant described her pain at that time as being in her neck and left side of the body. Dr. Armenthry Zshvetta Jones examined the claimant and made the following notations:

MUSCULOSKELETAL

Gait/station: Normal can undergo exercise testing and/or participate in exercise program.

Head and neck: Normal alignment and mobility; cervical paravertebral tenderness; left trapezius tenderness; tenderness with rotation of neck.

Trunk: Normal alignment, no deformity, no CVA tenderness.

RLE: Normal ROM and strength, no joint enlargement or tenderness.

LLE: Normal ROM and strength, no joint enlargement or tenderness; left lower extremity tenderness in the gluteus and thigh.

MUSCULOSKELETAL: decreased rotation, decreased right lateral bending,

decreased left lateral bending,
decreased extension, paravertebral
spasm.

Dr. Jones assessed the claimant with "cervicalgia, low back pain syndrome and spasm, muscle." Upon claimant's second visit with Dr. Jones on November 3, 2003, the claimant only reported a need to follow up on her left hip and low back pain. Dr. Jones did not exam the claimant's head or neck at that time. After examining the claimant and reviewing x-rays of the claimant's lumbar spine and hip, Dr. Jones concluded that the claimant still had left hip pain, low back pain and muscle spasm. Dr. Jones referred the claimant to HealthSouth for physical therapy.

The physical therapy notes from the claimant's first visit on November 5, 2003, described the claimant's history as follows:

10/29/03 Pt fell at work on water and landed on back & buttocks. Pt's L hip/buttocks and low back [bilateraly]

Pt. also has pain around medial L shoulder blade. Initially Pt was very sore, but all other areas have healed.

The claimant continued to receive treatment from Dr. Jones and physical therapy through HealthSouth

throughout the month of November. A second round of physical therapy was not approved by the carrier. On January 12, 2004, the claimant presented to Dr. Jones with a new complaint of right arm and neck pain. After examining the claimant, Dr. Jones noted in her report:

Discussed with patient that I don't think new complaints are related to initial injury. Also discussed that patient has maximized medical therapy that I can offer her. Given normal x-rays, cannot find any medical implications for continued pain. Recommended patient be evaluated by a pain specialist. No further treatment from my standpoint.

On February 3, 2004, the claimant sought medical treatment from St. Bernard's Medical Center where she complained of neck tingling and pain and right hand numbness. An MRI was ordered at that time.

The claimant's injury occurred after July 1, 1993, thus, this claim is governed by the provisions of Act 796 of 1993. The Full Commission has held that in order to establish compensability of an injury, a claimant must satisfy all the requirements set forth in Ark. Code Ann. § 11-9-102 as amended by Act 796. Jerry D. Reed v. ConAgra Frozen Foods, Full Commission Opinion filed Feb. 2, 1995

(E317744). When a claimant alleges that he sustained an injury as a result of a specific incident, identifiable by time and place of occurrence, he must prove by a preponderance of the evidence (1) the injury arose out of and in the course of his employment; and (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death. See Ark. Code Ann. § 11-9-102(4) (A) (i) and § 11-9-102(4) (E) (i) (Repl. 2002). He must also prove (3) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. See Ark. Code Ann. § 11-9-102(4) (A) (i). Moreover, the claimant must establish (4) that the compensable injury is supported by 'objective findings' as defined in § 11-9-102(16)." Ark. Code Ann. § 11-9-102(4) (D); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 31 Ark. App. 804, 20 S.W.3d 900 (2000). If the claimant fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability of the injury, he fails to establish the compensability of the

claim, and compensation must be denied. Jerry D. Reed, supra.

A review of the claimant's medical records fails to reveal any reference to the claimant's present neck complaints until January 12, 2004. Following her examination of the claimant, Dr. Jones clearly opined that she did not think the claimant's right arm and neck pain were related to the claimant's original slip and fall injury of October 28th. Not only does the doctor fail to state a causal relationship between the claimant's right arm and neck complaints, but the record fails to reveal any objective medical evidence of an injury to the claimant's neck. The Administrative Law Judge concluded that the reference to muscle spasm in the claimant's initial medical record referred to cervical spasm. We cannot reach this conclusion. First, and most importantly, Dr. Jones examined the claimant on October 29, 2003, and continued to follow her treatment until January 12, 2004, when the claimant complained of neck pain. Had this been a return of the claimant's initial complaint of neck pain, Dr. Jones was in the best position to make that determination; yet she clearly did not. Second, Dr. Jones allowed for a separate

line to note her findings during her examination of the claimant's neck and head. While Dr. Jones made three notations regarding tenderness after examining the claimant's head and neck, she did not note any evidence or finding of muscle spasm. The only reference with regard to muscle spasm is found under the last subheading "Musculoskeletal" which makes reference to examinations of lateral bending and extension which are routinely conducted during an examination of the lumbar spine. Third, the claimant did not identify her neck as the area where she has had pain, but rather an area at least six inches below her shoulder blade, toward the center of her back.

Accordingly, we find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her cervical spine when she fell on October 28, 2003, and sustained a compensable injury to her lumbar spine, as she has failed to present objective medical evidence of an injury. Moreover, the only medical opinion offered into evidence fails to state a causal relationship between the claimant's present complaints of right upper extremity pain and neck pain to the claimant's fall. As the additional medical treatment is

for the claimant's cervical and right upper extremity complaints, we find that the claimant has failed to prove by preponderance of the evidence that the additional medical treatment is reasonable and necessary in connection with her compensable low back injury. Therefore, we find that the decision of the Administrative Law Judge must be and hereby is, reversed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I dissent from the majority opinion because I find that claimant incurred a compensable cervical spine injury as a result of her slip and fall at work and that there are objective findings supporting compensability for this injury.

Contrary to the majority, I find that objective findings of claimant's injury are contained in the medical

reports from claimant's initial visit to Dr. Jones in which she was diagnosed as suffering from cervicalgia and para-vertebral muscle spasms. Cervicalgia refers to neck pain and related symptoms, and para-vertebral muscle spasms are muscle spasms along someone's spinal vertebrae. Tabor's Encyclopedic Medical Dictionary, 15th Edition. I do not see how Dr. Jones' reports can be construed in any other fashion than that the claimant's injuries in her fall of October 28, 2003 caused her to have muscle spasms along her spine. Clearly, the presence of these symptoms would satisfy the requirements for objective medical evidence establishing an injury to the claimant's spinal area, including her neck. The symptoms the claimant continued to complain of are consistent with an injury to her back and neck. I also note that the claimant was responding to medical treatment for these conditions when the respondent, for no apparent reason, decided to terminate her medical treatment. This action was taken in direct contravention of the directions from Dr. Jones, the doctor chosen by the respondent.

The majority concludes that Dr. Jones opined that the claimant's problems were not related to her fall, and that there is no further treatment available for her.

However, it is significant that Dr. Jones did not make this determination until after she had consulted with the respondent's case manager. Further, it also came after the respondent refused to provide further medical treatment as prescribed by Dr. Jones. I believe that, if the respondent had not intervened by terminating the claimant's medical treatment, Dr. Jones would have continued treating the claimant's problems and she would presumably would have received the treatment she needs to recover from her injury.

For these reasons, I find that the claimant incurred a compensable injury and is entitled to reasonable and necessary medical treatment, as well related disability benefits. I, therefore, find that the Administrative Law Judge's decision should be affirmed and adopted and the respondent should be directed to provide appropriate benefits to the claimant. Accordingly, I dissent.

SHELBY W. TURNER, Commissioner