

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213337

PATRICIA HOLLAND,
EMPLOYEE

CLAIMANT

HELENA REGIONAL MEDICAL CENTER,
EMPLOYER

RESPONDENT

ROYAL INDEMNITY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 13, 2005

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

Claimant represented by the HONORABLE CHARLES P. ALLEN,
Attorney at Law, West Helena, Arkansas.

Respondents represented by the HONORABLE RANDY MURPHY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals and the respondents cross-appeal
an administrative law judge's opinion filed July 28, 2004.
The administrative law judge found that the claimant proved
she sustained a compensable injury. After reviewing the
entire record *de novo*, the Full Commission reverses the
opinion of the administrative law judge. The Full
Commission finds that the claimant did not prove she
sustained a compensable injury.

I. HISTORY

Patricia L. Holland, age 57, testified that she became employed with Helena Hospital in about June 1971. The record indicates that the claimant complained of back pain and headache in September 2001. A radiology report in September 2001 showed mild degenerative change of the lumbar spine. It was noted in May 2002 that the claimant complained of back pain. The physician's notes appeared to indicate that the claimant complained of tenderness in her lumbosacral area.

The parties stipulated that an employment relationship existed on June 6, 2002. The claimant testified:

Q. Tell me exactly - tell the Judge exactly what you were doing at the time that the problem that you had that we're here about today hit you?

A. I was bending over the patient carrying (sic) for her G tube....It had gotten infected so we were doing the dressing changes and feeding, and this type stuff, and that's what I was doing whenever the pain hit me bending over the lady caring for her G tube....

Q. Describe exactly what you felt at that time.

A. I felt a sharp pain that went all the way down the leg into the foot, and it felt like the whole leg was in a muscle spasm. It was just a severe pain....

The claimant presented for treatment with her employer, Helena Regional Medical Center, on June 6, 2002. The record indicates that the claimant was seen by Dr. L.J. Patrick Bell:

Patient was back at work on A wing and had severe pain radiating down the patients left leg where she was unable to bare (sic) weight and concerned about the possibility of a herniated disc but definite sciatic and lumbar muscle spasm being into the play....Palpation of the dorsal spine revealed marked amount of tenderness over the lumbar region particularly over the left sciatic nerve with radiation all of the way down the patients foot.

The record indicates that the claimant was admitted to the Medical Center on June 6, 2002. A Nursing Data Base document indicated that the claimant complained of "left back sharp pain down left leg muscle spasm." A CT of the claimant's lumbar spine without contrast taken on June 6, 2002 showed degenerative changes and evidence of a central bulging disc at L4 and L5. The claimant was discharged from Helena Regional Medical Center on June 11, 2002:

This 54-year-old white female patient was at work on "A" wing when she had severe pain radiating down the left leg and was unable to bear weight. There was concern about the possibility of a herniated disc, but definitely sciatica and lumbar muscle spasm being into play....She had marked amount of tenderness on palpation of the dorsal spine at the lumbar region, particularly over the left sciatic nerve with radiation all the way down to the foot. She had a positive straight leg

raise of approximately 35 degrees. Physical exam was otherwise essentially negative....

On June 11, 2002, the patient was stable, improved, and discharged home on medications. She is to see a neurosurgeon in Little Rock....

The principal diagnosis at the time of the claimant's discharge was "herniated nucleus pulposus at L4 and L5."

The claimant's testimony indicated that she filed a claim for benefits with her group health insurance.

A neurosurgeon, Dr. Ronald N. Williams, noted on June 12, 2002, "She brings along a CT of the back that shows some degenerative change, but no well-defined ruptured disc."

The claimant admitted on direct examination that she informed Dr. Williams' office her pain was not work-related. "And it wasn't Workers' Comp because I didn't fill out Workers' Comp papers on it," the claimant testified. "I had not filed a Workers' Comp claim so therefore I put no."

Dr. Williams arranged an MRI of the claimant's back, which was taken on June 12, 2002 with the resulting impression, "Moderate-sized left paracentral disk herniation at L5-S1." Dr. Williams reported on June 13, 2002:

Ms. Holland's MRI of the back does confirm the presence of a fairly large ruptured disc at L5-S1 on the left. She wants to go ahead and have surgery and that has tentatively been scheduled for 6/21/02....In the meantime, I am going to get

a lumbar epidural steroid injection done on her today to give her some temporary relief.

Dr. Williams performed a left L5-S1 microdiskectomy on June 21, 2002. Dr. Williams reported to Dr. Bell on August 8, 2002, "Ms. Holland was in today for her six-week checkup. She is doing well and having very little if any pain....She attended the low back school and started doing their exercises. She is to get back with me if she has further problems."

The administrative law judge announced at hearing that a Form AR-C, Claim For Compensation, was received on November 27, 2002.

Dr. Bell stated on March 6, 2003, "Patricia Holland's injury was diagnosed while at work. Result of years of progressive deterioration."

The claimant's attorney questioned Dr. Bell at a deposition taken January 14, 2004:

Q. Dr. Bell, would you have an opinion based upon a reasonable degree of medical certainty or probability that there's more than a fifty percent probability that the injury that she sustained on June 6th, 2002, was directly related and caused by the work that she was performing at that time?

A. I think that's when her symptoms crescendoed, if you will, you know, when the disk ruptured.

A pre-hearing order was filed on February 23, 2004. The claimant contended, among other things, that she injured her back on June 6, 2002. The respondents contended, among other things, that the claimant did not sustain an injury in the course and scope of her employment. The parties agreed to litigate the following issues: "Compensability; notice; medical expenses; temporary total disability benefits; anatomical impairment; controversion and attorney's fees."

A hearing was held on April 29, 2004. The respondents' attorney cross-examined the claimant:

Q. You went to the emergency room on June 6, 2002 and turned it in to the group health carrier. Right?

A. I did not go to the emergency room. The emergency room physician, who was Dr. Bell, came to the floor....

Q. On the forms for the hospital where you were treated where it's got "insurance" or "primary payor," you listed your group insurance for the hospital. Right?

A. Well, I didn't do my admission, my husband did.

Q. But there was nothing reported as far as...

A. No sir.

Q.turning in to Workers' Compensation?

A. Correct.

Q. And if the document says that the primary payor is the group health carrier, that's exactly what happened and that was how it was handled and how it was paid. Right?

A. Well, it can be changed.

Q. Okay. But it wasn't changed?

A. No, sir, it was not....

Q. And when you went to see Dr. Williams upon the referral by Dr. Bell, you checked that it was not Workers' Compensation. Right?

A. I checked that it was not a Workers' Comp claim, yes, sir.

Q. Because you had not turned it in to be processed as Workers' Compensation?

A. Correct.

Q. And you had not reported a Workers' Compensation injury?

A. No, sir, I had not....

Q. Actually in your deposition when I asked you this, and you haven't really said anything different today, but just for clarification purposes, you told me that you told Ms. Moody that your back was hurting and you needed some relief?

A. Okay.

Q. You didn't tell her or you didn't tell me in your deposition that you told her that this was a Workers' Compensation injury?

A. No, I didn't say Workers' Comp, no, sir.

Q. And you didn't tell her that you had actually been injured on the job, you just told her your back was hurting?

A. Yes, sir....

Q. So we're in agreement that you never reported this officially as a Workers' Compensation injury?

A. No, sir, I never reported it officially as a Workers' Comp, no, sir.

Q. And the only statement you ever remember even mentioning it to anyone at Helena Regional was in September or October while you were filling out your long-term disability benefits?

A. Yes, sir.

Q. And this is after you had had your surgery and actually you had seen Dr. Williams for the last time on August 8, 2002. Right?

A. Uh-huh....Yes, sir.

Q. And after you had gone into Dr. Williams' office, and on the form or in response to a question whether it was Workers' Compensation, you had told him no, or his office?

A. Yes, sir, that's correct. I did not file it as Workers' Comp.

The administrative law judge found that the claimant proved she sustained a compensable injury. The administrative law judge found that the claimant failed to give statutory notice of a work-related injury until November 27, 2002, so that the respondents were not liable for benefits prior to that date. Both parties appeal to the Full Commission.

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 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 she sustained an accidental injury as the result of a specific incident occurring on June 6, 2002. The claimant testified that she felt a sharp pain on that date while bending over to care for a patient. The initial medical report on June 6, 2002, however, simply indicated that the claimant felt severe pain while working and did not detail a specific incident identifiable by time and place of occurrence. The hospital discharge report on June 11, 2002 did not mention a specific incident causing the claimant's back pain.

The claimant began treating with Dr. Williams on June 12, 2002. The claimant admitted at the hearing that she informed Dr. Williams' office her pain was not related to her work. After reporting that an MRI confirmed a large ruptured disc at L5-S1, Dr. Williams performed an L5-S1 microdiscectomy on June 21, 2002. The preponderance of evidence does not demonstrate that the claimant sustained a herniated disc as the result of a specific incident occurring on June 6, 2002. Dr. Williams did not attribute the claimant's herniation to an accidental injury occurring at the claimant's workplace. Dr. Bell stated in March 2003 that although the claimant's injury was diagnosed while at work, the injury was the "result of years of progressive deterioration." The Full Commission recognizes Dr. Bell's testimony that the claimant's symptoms "crescendomed" at work, leading to the disc rupture. Nevertheless, we also note another portion of Dr. Bell's testimony, where he stated that the claimant's accidental injury occurred while "she was leaning over the table at the nurses' station." The claimant testified that she felt a sharp pain while leaning over a patient, not leaning over the nurses' station.

Finally, the Full Commission places significant weight on counsel for the respondents' cross-examination of the

claimant at hearing. The claimant admitted that she did not report a work-related injury and did not file a claim for worker's compensation until after her surgery from Dr. Williams.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she sustained an accidental injury caused by a specific incident identifiable by time and place of occurrence on June 6, 2002. The claimant therefore did not prove she was entitled to medical treatment rendered in this case, temporary total disability compensation, or an anatomical impairment rating. The decision of the administrative law judge is reversed, 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 respectfully dissent from the Majority's finding that the claimant has not established the occurrence of a

compensable injury. In my opinion, the evidence contained in the record is more than sufficient to establish that the claimant suffered a specific incident injury while acting in the course and scope of her employment.

The claimant testified that she was bent over a patient examining a feeding tube inserted into the patient's stomach when she felt a severe pain in her back that radiated down her leg. The claimant stated that the pain was so severe that she immediately sat down in the patient's room and rested for several minutes before attempting to return to the nurses' station. She testified that she was only able to return to the nurses' station because of a rail which ran along the hallway wall which gave her some support. Once at the nurses' station, the claimant testified that she contacted her immediate supervisor and advised her that she had hurt her back. During the hearing, the claimant candidly testified that she could not recall whether she specifically told her supervisor that she had injured her back at work or merely that her back was hurting.

The claimant said that she had asked her supervisor to find a replacement for her as she was not able to continue working on that shift. However, the claimant

was apparently told that no replacement could be found and that she would have to continue working. The claimant, on her own, found another nurse in the hospital who was able to cover for her for the balance of that shift. Shortly after finding her replacement, the claimant was seen by Dr. Patrick Bell, who was working in the hospital emergency room. Dr. Bell, who coincidentally, was the claimant's family physician, immediately admitted the claimant to the hospital.

In his deposition, Dr. Bell stated that he could not recall whether he had been summoned to the nurses' station or whether he had arrived there while he was making his rounds. In any event, he stated that he had noticed that the claimant was in such severe pain that she was in tears. His immediate examination of her revealed that she was suffering muscle spasms in her lower back and was unable to stand without assistance. He immediately admitted her to the hospital for treatment of her back problem. After spending a few days in the hospital, the claimant was discharged and was referred to Dr. Ron Williams, a Little Rock neurosurgeon. Dr. Williams diagnosed the claimant as suffering from a herniated disc at L5-S1 and performed a micro-discectomy on her on June 21, 2002.

The Majority contends that the claimant's testimony and accompanying medical records are not sufficient to establish that she suffered a specific incident injury. The Majority explains that the "fairly large" herniated disc noted by Dr. Williams was the result of degenerative changes and not the activity the claimant described prior to the onset of her severe pain. However, that conclusion is refuted by the medical evidence.

In September 2001, the claimant underwent what was described as a "presyncopal episode." As it was later determined, this episode was because of a reaction to conflicting medication the claimant had been given for various non-job related health problems. However, in diagnosing this event, the claimant underwent a number of tests, including a MRI of her lumbar spine. This MRI was performed on September 6, 2001. The radiologist report from that MRI scan stated that the following had been found:

Hypertrophy spur formation is present on L4 and L5. Part of the effect at L5 on right cannot be excluded on the two views submitted. Vertebral body height inter-space and alignment are fairly well maintained. Mild facet joint osteoarthritis at L4 and L5 are present. S1 joints are patent.

The radiologist further described the claimant's condition as "mild degenerative change of lumbar spine and

other features as above in this patient with history of back pain." Conspicuously absent from the radiology report is any reference to disc herniations, bulges, protrusions, or other findings which would indicate a problem relating to the claimant's L5-S1 disc.

After the claimant's injury, she underwent a MRI at the direction of Dr. Williams, which noted a herniated disc at L5-S1. In a report dated June 13, 2002, Dr. Williams characterized the report as confirming, "the presence of a fairly large ruptured disc at L5-S1 on the left." While it is true that the claimant did have some degree of degenerative disease in her lower spine prior to her job related accident, this was a mild case which produced no symptoms more severe than occasional back pain. More significantly, the condition the claimant had prior to her June 2002 injury did not limit her job related activities. Prior to that time, the claimant was a 32 year employee who frequently worked back-to-back twelve hour shifts. While some of these shifts did involve the claimant working as a nurse supervisor, on other shifts she was working as a floor nurse, lifting patients, frequently bending, stooping, and doing the other strenuous tasks necessary to function as a regular duty nurse. However,

after the incident of June 6th 2002, she was unable to carry out any of those tasks, and a MRI taken only a few days after the incident showed a large disc herniation. This discovery is in stark contrast to the MRI of nine months before which demonstrated that she had only "mild degenerative changes" in her back. I believe there can be little argument that this disc herniation was the result of a traumatic event rather than an ongoing degenerative change.

That conclusion is supported by the medical opinion of Dr. Patrick Bell as set out in his deposition. During that deposition, Dr. Bell was asked if the incident described by the claimant, when she was bending over treating a patient was the direct cause of her disc injury. In reply, Dr. Bell stated as follows:

A. I think that when her symptoms crescendoed, if you will, you know, when the disc ruptured.

Q. Can the mere fact of a person bending over manifest or create the problem she had?

A. Sure. You know, you have undue pressure on that backbone, the leverage is extreme.

Q. But when you mentioned a while ago that this was the straw that broke the camel's back,

what do you exactly mean by that?

- A. Again, this is probably an ongoing condition where she has had, you know, arthritic changes that we all go through as we age. You know, and with her years of working out there, you know, pounding concrete floors, which has been shown to have detrimental effects just like it does on the old truck drivers, you know, as a result, it probably had a weakening, you know, which allowed it to go through and put undue pressure on that nerve root causing her severe pain.

Since the claimant is alleging a specific incident injury, the major cause requirement does not apply. In order to establish a compensable injury in this case, the claimant must only prove a causal connection between the employment and the disabling condition. Bates v. Frost Logging Company, 38 Ark. App. 36, 827 S. W. 2nd 664 (1992). Also, a pre-existing disease or infirmity, does not disqualify a claim if the employment aggravated, accelerated, or combined with the underlying condition to produce the disability for which compensation is sought. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S. W. 2nd 664 (1990).

In my opinion, the claimant has clearly established the compensability of her claim. The objective medical findings demonstrate a considerable worsening of her condition in June 2002. This is demonstrated by a comparison of the MRIs from September 2001 and June 2002. Also, Dr. Bell's opinion makes it very clear that the act of bending over at work placed pressure on the claimant's lumbar disc, causing it to rupture. Even if it is accepted that the claimant's degenerative spinal condition played a role in this injury, there can be no doubt that her job activities on the date in question accelerated and combined with this condition to cause her immediate disability as well as the need for medical treatment. For those reasons, I find that the claimant has established a compensable injury and would affirm the Judge's conclusion in this regard.

In denying the compensability of the claim, I believe that the Majority is ignoring the credible testimony of the claimant as well as the medical evidence. The Majority has attempted to attack the credibility of the claimant by pointing out what they believe to be discrepancies in her testimony. However, I fail to see the significance in the supposed conflicts.

For example, the Majority notes that the claimant testified that the pain began while she was bending over a patient. Dr. Bell is then cited for his statement that the claimant was bending over at the nurses' station. I fail to see any significant differences in these two statements. The key part is that the claimant was bending over while performing her job functions. Further, if there was any discrepancy between the two statements, I would find that the fault is with Dr. Bell's memory. He was not relating an incident he saw or was involved in, he was merely relating a statement made by him, as best he recalled it. As there is no great significance as to whether the injury happened while bending over a patient or bending over at the nurses' station, I do not see that Dr. Bell's slight lapse is of any consequence.

I also do not attach any great significance to the forms the claimant completed to obtain group medical and disability benefits in which she indicated that her injury had not happened at work. In filling out those forms, the claimant understood that her claim was not going to be covered under workers' compensation and obtaining group insurance benefits was the only way for her to obtain needed

medical treatment and financial benefit. Under those circumstances, her statements were clearly justified.

For the reasons set out above, I respectfully dissent from the decision of the Majority to deny benefits in this case. I believe that the claimant was a hard working, dedicated employee who suffered an injury to her back while performing a demanding and difficult job. I believe the denial of benefits in this case was in error and I respectfully dissent from this decision.

SHELBY W. TURNER, COMMISSIONER